
(1981) 11 P&H CK 0016
In the Punjab And Haryana At Chandigarh

Ajit Singh Dutta and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:

Constitution of India, 1950 — Article 309
Contempt of Courts Act, 1971 — Section 12, 2

Citation : (1982) CriLJ 2207

Hon'ble Judges : M.M. Punchhi, J;Kulwant Singh Tiwana, J

Bench : Division Bench

Judgement

M.M. Punchhi, J.—This judgment will dispose of Civil Writ Petns. Nos. 2322, 2472, 2794 of 1980 and C.O. (C.P.) Nos. 193 of 1978; 10, 13, 18, 19, 22, 23 of 1980. These have arisen and brought on our board in the following circumstances:

2. For the teachers working in the Department of Education, Government of Punjab, three sets of rules regulating the recruitment and the conditions of service of persons appointed thereunder are operative. These are- (1) The Punjab State Education Class III (School Cadre) Rules, 1955 which are operative with effect from May 30, 1957; (2) The Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961; and (3) The Punjab State Education Class III (School Cadre) Service Rules, 1978.

3. In these matters, principally we are concerned with the first set of Rules namely the Punjab State Education Service Class III (School Cadre) Rules, 1955 (hereafter called the Rules). The Punjab Government vide a letter dated 23rd July, 1957, which became effective from 1st May, 1957, conferred the right of revised grades on the teachers if they took degrees or diplomas improving their professional qualifications. The letter was on the subject "Revision of Scales of Pay of Low Paid Government Servants". The decision was that all teachers according to their qualifications should be placed in the following two broad categories:

Category "A":

B. A./B. Sc./B. Com./B. Sc. (Agriculture) and

B. T./Diploma in Physical Education/Diploma in Senior Basic Training.

Category "B";

Group 1 : Matric with Basic Training (including J. Ts.)

Group 2: J. S. Ts. (including Assistant Mistresses) with B. A./Inter/Matric and J. A. V. Training.

Group 3 : (i) Shastris;

(ii) Gianis, Prabhakars, Training Masters and Craftsman (Craftsman Certificate Holders);

(iii) Munshi Fazals; and

(iv) S. Ts. including S. Vs. with Training in Physical Education or Agriculture,

Group 4: Untrained teachers with qualifications like B. Com., B. Sc. (Agriculture) etc. In addition, there are similar categories of special posts such as Headmasters/Headmistresses/District Inspectors/Inspectresses of Schools with qualifications of Category A above.

Teachers in these categories regardless of men and women cadre should carry the following scales of pay (not given herein).

4. By the improvement/addition of professional qualifications (contra-distinct from academic qualifications) the teachers under the letter dated 23rd July, 1957 became en-titled to revised pay scales with effect from 1st May, 1957, subject to the satisfaction of the tests laid therein, irrespective of the fact that a teacher was not manning the post requiring minimum professional qualifications which he had come by to improve or add upon. Since a team of teachers falling in Category "A" were denied revised pay scales in accordance with the Government letter dated 23rd July, 1957, they approached this Court in a writ petition. A learned single Judge allowed the petition. The Union of India and others filed a Letters Patent Appeal against the judgment and order of the learned single Judge which was dismissed. The judgment is reported as *Union of India v. Kirpal Singh Bhatia* 1972 Serv LR 402 : 1973 Lab IC 40 (Punj & Har). The Government then approached the Supreme Court in appeal against the judgment of the Letters Patent Bench, but the same was dismissed. See *State of Punjab and Another Vs. Kirpal Singh Bhatia and Others*, . The Supreme Court approved the view of this Court that teachers holding B.A.B.T.I.B.A., B. Ed. qualifications would henceforth be placed in Category A and that the revised pay scales would be effective either from the date when the teachers would pass an examination of Bachelor of Teaching, or its equivalent or on 1st May, 1957, whichever is later.

5. The success of the teachers in *Kirpal Singh Bhatia's* case (supra) gave rise to

a spate of petitions by teachers claiming to go from Category B to Category A and from one group to another in Category B. One such petition (C. W. P. No. 1810 of 1976) came up for hearing before a Division Bench of this Court in *Labh Singh Garcha v. State of Punjab* 1976 SLWR 476, and the same was allowed in view of *Kirpal Singh Bhatia's* case (supra). The Bench observed as follows:

The relief claimed by the petitioners in the present writ petitions is based upon the same circular letter of the Government which was the subject matter of scrutiny by the Supreme Court. The only distinguishing feature is that the present petitioners fall under Category "B" whereas those who had taken the matter to Court in the earlier cases; were from Category "A". The petitioners are, therefore, quite justified in contending that the inaction on the pay scales admissible to their category is arbitrary and discriminatory.

For the reasons recorded above, the writ petition has to be allowed. A direction is issued to the respondents to release to the petitioners, the revised pay scales admissible to them, on the basis of the circular letter of the Government dated July 23, 1957, as has been done in the case of B. A. B. T. teachers, There will be no order as to costs.

6. So far as the present matters are concerned, it would be appropriate to identify them at this stage individually:

(1) C. W. P. No. 7260 of 1976 was preferred by some teachers and was allowed by a Division Bench of this Court on 7-3-1977. Direction was ordered therein to issue in the terms of *Labh Singh Garcha's* case 1976 SLWR 476 (Punj & Har) (supra). Since there was alleged breach of the direction, *Dalip Singh* and another filed C.O. (C.P.) No. 193 of 1978 arraigning the then Secretary to the Government of Punjab, Department of Education, and the then Director of Public Instruction as respondents. The matter was kept pending since *Labh Singh Garcha's* case (supra), as also other cases based there-on, had been subjected to appeal before the Supreme Court. The hearing in contempt petition was thus deferred till after the decision of the Supreme Court. The appeals preferred were dismissed by the Supreme Court on Aug. 7, 1979. The contempt matter was then revived.

(2) C. W. P. No. 7290 of 1976 was similarly preferred and was allowed by a Single Bench of this Court in the terms of the decision in *Labh Singh Garcha's* case (supra). Some of the petitioners therein being *Varinder Kumar* and another, filed C.O. (C.P.) No. 18 of 1980 complaining breach of the direction.

(3) C. W. P. No. 7291 of 1976 was similarly instituted and allowed on 25-1-1977 by a Single Bench of this Court on the same terms as in *Labh Singh Garcha's* case (supra). Two petitioners therein filed C.O. (C.P.) No. 19 of 1980 complaining that there was a breach of the direction.

(4) C. W. P. No. 6083-A of 1976 was filed by a few teachers and was similarly allowed by a Division Bench of this Court by passing same orders as in *Labh*

Singh Garcha's case (supra). One petitioner therefrom approached this Court in C.O. (C.P.) No. 22 of 1980 complaining breach of the direction.

(5) C. W. P. No. 5207 of 1976 was similarly filed and allowed on 15-9-1976 by a Division Bench of this Court which passed the same order as in Labh Singh Garcha's case (supra). Twenty-seven teachers, writ petitioners therefrom, filed C.O. (C.P.) No. 23 of 1980 complaining breach of the direction so given by this Court and lastly,

(6) C. W. P. No. 7260 of 1976 was similarly allowed (as has been noted in S. No. 1) by a Division Bench of this Court on 7-3-1977 in which the same direction as ordered in Labh Singh Garcha's case (supra) was ordered. One of the teachers named Avtar Singh then preferred C.O. (C.P.) No. 10 of, 1981 complaining breach of the direction.

7. The Secretary to the Education Department as also the Director of Public Instruction and others in the respective contempt petitions took up various defences inclusive of the defence that the President of India on 22nd May, 1980 in exercise of his powers under Article 309 of the Constitution of India had promulgated the Punjab Educational Service Class III (School Cadre) (First Amendment) Rules, 1980 which were deemed to have come into force with effect from the first day of May, 1957. In the parent Rules, Rule 10 was renumbered as Sub-rule (1) and after it Sub-rule (2) was inserted which is to the following effect:

(2) Notwithstanding any Judgment, decree, order or direction of any Court, the categories of teachers mentioned under column 2 of the Table given below shall be entitled to the scales of pay as mentioned against the respective category under col. 3 of the said Table irrespective of their academic qualifications or any improvement made after joining service.

Provided that where the scale of pay of any category of teachers specified in the said Table was revised by the Government after the 23rd July, 1957, the pay scales as revised shall be admissible to the teachers belonging to that category and not any other higher scale.

8. The learned single Judge before whom these contempt petitions were pending initially took the view of May 5, 1980 (at a time when the amendment afore-referred to had not been brought about and placed before him) that since the respective writ petitions filed by the contempt petitioners were allowed by this Court despite the pleas taken in the written statement by the Government, it should be taken that the pleas raised by the Government on facts had been turned down. Thus a tentative decision was taken on that day in all these contempt petitions that the action of the contemnors fell squarely within Section 2(b) of the Contempt of Courts Act, 1971 punishable u/s 12 of the same Act. It is thereafter that the amendment in the Rules was brought about which has been aforementioned. The learned single Judge then vide his order dated May 28, 1980, common in all the contempt petitions, took note of the amendment and noticed the comment of the contempt petitioners that the amendment had been

brought about with mala fide intention to undo the proceedings for contempt. Finding the matter to be of importance, since questions of law involved therein were such, he referred the matter to Hon"ble the Chief Justice for constituting a Division Bench to hear these petitions. Accordingly, these were listed before a Division Bench but their hearing was ordered to be deferred till the decision of C. W. P. No. 2794 of 1980, since by that time the aforesaid petition and two others challenging the amendment dated 22nd May, 1980 had been preferred and admitted to a Division Bench at the instance of the affected teachers.

9. Initially the three writ petitions were listed before us and the debate was in full swing. Since the views of the Hon"ble single Judge in the contempt petitions were vehemently being pressed by the learned Counsel for the petitioners supporting challenge to the amendment, we considered it appropriate and so ordered listing of the contempt petitions also before us. That is how all these matters were placed on our board and heard together.

10. During the course of the resumed hearing, Mr. Jawahar Lal Gupta, the common counsel for the State of Punjab in the writ petitions and for the contemnors in the contempt petitions, Indicated to us that the Government was contemplating withdrawal of the amendment challenged in the writ petitions. He placed before us letter dated 30th Sept., 1981 issued to him by the Undersecretary (Education) which was placed on the record. Subject to the move fructifying in a formal withdrawal of the amendment, learned Counsel for the petitioners in the writ petitions, prayed for the dismissal of their writ " petitions as withdrawn. The grouse of Mr. Bali in C. W. P. No. 2322 of 1980 that the letter dated 23rd July, 1957 had not been implemented in full was met by Mr. Jawahar Lal Gupta by stating that if any relief under the said letter had been withheld by the State on account of lapse, error or misinterpretation, the teachers can individually point out the matter to the Department which would have no hesitation in obeying the said letter in spirit and in essence. We heard arguments on the con-tempt petitions and reserved judgment on 1-10-1981 but partly to await the formal withdrawal of the amendment. During this while, Mr. Jawahar Lal Gupta, learned Counsel for the State, has conveyed to us that the Punjab Government Gazette Extraordinary dated Oct. 10, 1981 has been issued whereby Sub-rule (2) of Rule 10 of the Rules has been omitted and is deemed always to have been omitted. Consequential amendments under the other two sets of Rules mentioned at the outset on parallel lines have been brought about as these two became consequentially necessary.

11. Now the three civil writ petitions are not a matter of moment. They have to be dismissed as withdrawn.

12. On the withdrawal of the amendment of the Rules dated 22nd May, 1980, it automatically ceases to be a defence in the, contempt petitions and as such no question of law of importance arises which need be gone into or otherwise on the score of malice, That defence of the contemnors being no longer available is ordered to be struck off.

13. Now the question remains whether we should refer the cases back to the learned single Judge or decide the contempt petitions ourselves. Having deliberated on the intricate facts emerging therefrom and also being cognizant that an order of the single Judge is otherwise appealable in contempt matters to a Division Bench, we have chosen it fit to dispose of the contempt petitions since the entire matter otherwise was ordered to be placed before a Division Bench.

14. It is plain from the language of Labh Singh Garcha's case 1976 SLWR 476 (Punj & Har) (supra) that a direction was issued to the respondents to release to the then petitioners" the revised pay scales admissible to them on the basis of the circular letter of the Government dated: 23rd July, 1957 as had been done in the case of B.A.B.T. teachers. In an earlier part of the judgment, some settlement and some inferences on facts appear to have been made as arising from the pleadings in that case. But the Bench was persuaded to allow the writ petition predominantly on the view that there was inaction on behalf of the State in the matter of release of pay scales admissible to the category of the petitioners and thus the inaction was arbitrary and discriminatory. The writ petition was allowed for the reasons recorded in the judgment and thereafter a direction was ordered to be issued. Now in all the orders in writ petitions from which the contempt petitions have arisen, it is only the direction in Labh Singh Garcha's case (supra) which has been adopted in disposing of those writ petitions without going into the factual controversy. Nowhere does any judgment in these writ petitions specifically accept the averments made in the petition or reject the defences disclosed in the written statement. All what is said is that a direction in the terms of Lahh Singh Garcha's case (supra) is issued or same orders as in Labh Singh Garcha's case are passed. It only implies, to our mind, that the respondents were directed to release to the petitioners the revised pay scales admissible to them on the basis of the circular letter of the Government dated July 23, 1957 on the guidelines provided in State of Punjab and Another Vs. Kirpal Singh Bhatia and Others, as also in Labh Singh Garcha's case (supra). In other words, if a relief is due to any particular petitioner on the construction of the letter as done by this Court and approved by the Supreme Court, the relief must flow to the respective teacher. Merely because en masse teachers had become petitioners in this Court, it did not automatically follow that there was no scope for deliberation at the end of the Government to see whether a particular teacher's case falls squarely within the Government's letter dated 23rd July, 1957 so as to be entitled to the revised pay scales. The blank cheque given to the petitioners, to our mind, was subject to the availability of professional qualification credit in their professional banks. If none is found therein, improved upon or added to, the blank cheque has to bounce. Having laid the guidelines, this Court cannot be meant to have gone further in these cases conceding the claims of the petitioners on mass facts as asserted by them, which could only be disentangled at the end of the Government and not by this Court. The learned Counsel for the State/contemners having frankly made statement that if any relief under the said letter had been withheld by the State on account of lapse,

error or misinterpretation, the teachers can individually point the matter out to the Department which would have no hesitation in obeying the said letter in spirit and in essence, we do not find for the present to pursue further these contempt petitions and would order the proceedings therein to be dropped. We, however, before parting with the judgment, express our concern that these teachers, who should normally be in their classrooms building future citizens of the society, should not be constrained to crowd the Courts again by the sloth of the Government taking shelter of the proverbial red-tape. We have no doubt that the qualified undertaking given by Mr. Jawahar Lal Gupta would be carried out in each individual case when the occasion is invited, and as quickly as possible, to forestall future litigation and unnecessary expense.

15. With these observations, we dismiss Civil Writ Petns. Nos. 2322, 2472 and 2794 of 1980 as withdrawn and C.O. (C.P.) Nos. 193 of 1978; 10, 13, 18, 19, 22 and 23 of 1980 as dropped. There would be no order as to costs in all these cases.