

(1964) 09 CAL CK 0026
In the Calcutta High Court

Aswini Kumar Rath and Others

APPELLANT

Vs

Director of Public Instruction and Others

RESPONDENT

Date of Decision : 28-09-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1966) 2 LLJ 277

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Judgement

D. Basu, J.—This application under Article 226 arises out of an alleged discrimination between ordinary graduates, on the one hand, and honours graduates and post-graduates, on the other, The 45 petitioners are ordinary graduates.

2. In June 1954, or thereabout, the Director of Public Instruction (respondent 1) invited applications for the posts of sub-inspectors of schools in the pay-scale of Rs. 100-5-215-10-225, from persons possessing a Bachelor's degree in the minimum, with a degree or diploma in teaching. The petitioners' case is that in pursuance with this advertisement (annexure A to the petition), candidates having passed as well as honours B.A. and B.Sc. degrees and M. As. and M. Scs. applied and were appointed to these posts in the same pay-scale as announced, without making any distinction between ordinary graduates and those possessing higher academic distinctions, and they were all placed in the same rank having the same duties, which are catalogued in Para 3 of the petition,

3. Subsequent to this appointment, the Government of West Bengal (respondent 3, the secretary being impleaded as respondent 2) issued the impugned order No. 7754 on 20/21 July 1959 (annexure B). By this order, with a view to attracting " people with good academic qualifications " "to the cadre of sub-inspectors of schools, " the pay of those sub-inspectors who were honours graduates or held a Master's degree, was raised to a higher scale of Rs. 130-5-115-10-350 and this order was given retrospective effect from 1 April

1959 and the benefit was extended to those existing sub-inspectors who had been appointed since 1954, provided they possessed the higher qualifications mentioned and it was ordered that the existing officers should be classified into two classes, that is, those entitled to the lower scale and those entitled to the higher scale, according to the aforesaid qualifications.

4. The opposite parties have subsequently revised the pay-scales of Sub-inspectors of schools by an order dated 2 January 1962, by framing a rule notified in the Calcutta Gazette (Para. 10 of the petition) which has been given effect from 1 April 1961. According to the petitioners, there has been immediate improvement in the lot of the petitioners by an increase of pay in the revised scale but their grievance as to discrimination has been aggravated. This revised scale has divided sub-inspectors and Sub-inspectresses of schools into two classes as follows:

Trained graduates in Arts and Science ?Rs. 176-325.

Trained graduates with honours degree or Master's degree?Rs. 225-475.

5. The petitioners' case is that they have been discriminated against by the impugned order of 1959, as modified by the foregoing order of 1962, by the introduction of different scales of pay for officers of " the same rank and same cadre " and having the same duties, without any justification.

6. The petitioners accordingly claim that the respondents should be directed to treat them at par with the honours graduates and post-graduates, for the purpose of giving them the pay-scales of Rs. 130 to Rs. 350 from 1 April 1959 and the revised pay-scales of Rs. 225 to Rs. 475 with effect from 1 April 1961, after quashing the impugned orders as being violative of Articles 14 and 16 of the Constitution.

7. The contents of the counter-affidavit filed on behalf of the respondents, which I am constrained to say, is a poorly drafted document, will be adverted to in proper places.

8. At the very outset, it must be said that the object expressed in the order of 1959 (annexure B), namely, that higher emoluments should be offered to better qualified sub-inspectors of schools in order to attract better talents to the service and to have more onerous tasks performed by such better qualified persons, as disclosed in Para. 6 of the counter-affidavit, is a laudable one, and if Government introduces two cadres with two different pay-scales according to the qualifications of the candidates, the now appointees will enter the service and accept the appointments with notice of this differentiation and will have little to complain of. We are, however, not called upon to make any pronouncement upon this general question.

9. The issue raised in the instant proceeding is a limited one, namely, whether the impugned orders are unconstitutional in so far as they affect the petitioners who were appointed on the condition that all persons appointed in pursuance of

the announcement in annexure A will get the same pay-scale, Irrespective of their beanpoles or honours graduates or M. As. and M. Scs. The petitioners have been affected simply because the order in annexure B was given retrospective effect from 1 April 1959 and, by Para. 3 of that order, the existing sub-inspectors were directed to be classified by?

forming a panel of existing officers as may be eligible for the new scale now sanctioned according to the qualifications.

10. There is little doubt that the announcement in annexure A forms a part of the conditions of service of those appointed in pursuance of that announcement and that the salary promised therein which induced the petitioners to apply for and accept that appointment forms a part of those conditions of service vide *The Accountant General, Bihar and Another Vs. N. Bakshi*, .

11. It has also been settled that?

(a) Article 16 of the Constitution is a corollary from the general rule against discrimination enunciated in Article 14 and that these two provisions supplement each other *The General Manager, Southern Railway Vs. Rangachari*, .

(b) The equality of opportunity guaranteed by Clause (1) of Article 16, in particular, extends to "all matters in relation to employment, both prior and subsequent," so as to include equality as regards the conditions of service including salary *The General Manager, Southern Railway Vs. Rangachari*, . In the result, Article 16(1) stands in the way of "introducing discriminatory provisions in respect of employees soon after their employment.

(c) Just as Article 14 permits of a reasonable classification, so does Article 16(1) *All India All India Station Masters' and Assistant Station Masters' Association, Delhi and Others Vs. General Manager, Central Railway and Others*, provided, of course, there is a reasonable basis for such classification, having a nexus or reasonable relation to the object or purpose of the measure which introduces the classification.

(d) The mere fact that two different cadres are created does not show whether Article 14 or 16 has or has not been violated, but once having included employees into a single grade or unit of employment, it is not permissible for Government to provide a differential treatment between two sections of the same unit, with retrospective effect. This last-mentioned proposition was established in the case of *State of Punjab Vs. Joginder Singh*, which, in my opinion, is decisive of the instant case.

12. In that case *State of Punjab Vs. Joginder Singh*, there was, of course, a difference of opinion in the Supreme Court. But the difference between the majority and the minority did not rest on principle but on facts. Municipal school teachers and State school teachers in Punjab were recruited separately and entered into two independent services. By an order of 1957, the former were "provincialised" and integrated with the State employees. Subsequently the

Government divided these teachers into two separate cadres, as a result of which the "provincialised" teachers were denied equal chances of promotion. The difference between the minority and the majority rested on the assessment of the effects of the order of 1957, namely, whether it had completely integrated the two services so as to place all the employees on equal footing, irrespective of the sources of their recruitment. The opinion of the minority (Shah and Subba Rao, JJ.) was that the order of 1957 had integrated the two services completely and had amalgamated them into the same cadre and class so that any differentiation between them in the matter of promotion offended against Articles 14 and 16(1). In the words of Shah, J.:

... it cannot be forgotten that in the first instance Government of the State admitted the "provincialised" teachers into a single unit of employment and thereafter by retrospective provision they have sought to provide a differential treatment between the two sections constituting one unit. It is against the differential treatment that the protection of Article 16 is claimed and in our judgment avails (P. 927 *ibid.*)

13. The majority, reversing the finding of the High Court, held that the order of 1957 had not integrated the two services but continued them as distinct services, though the provincialised teachers had been offered equal pay with the Government teachers (pp. 920, 922). Upon this finding, no question of discrimination by offering different chances of promotion to the two services could possibly arise. But a reading of the majority judgment amply shows that if their finding of fact was otherwise, their lordships in the majority would have upheld the contention that the alteration of the conditions of service as between employees belonging to the same class, with retrospective effect, offended Articles 14 and 16(1). This is clear from the observations of the majority at pp. 919 and 922 of the report, *ibid.*:

The main basis upon which the learned Judges of the High Court have rested their judgment is that the order dated 27 September 1957 which was brought into force on 1 October 1957 by which the teachers in the erstwhile district board and municipal board schools were "provincialised" and made State employees, effected a complete integration of these teachers with the then existing members of the State Education Service governed by the rules of 30 May 1957. It would be manifest that unless this step were established there could be no basis for the contention that the impugned rules which proceed on the basis that the provincialised teachers were not in the State cadre violated Article 14 or 16(1) " (p. 919):

As we have stated already, the two services started as independent services. The qualifications prescribed for entry into each were different, the method of recruitment and the machinery for the same were also different and the general qualifications possessed by and large by the members of each class being different, they started as two distinct classes. If the Government order of 27 September 1957 did not integrate them into a single service, it would follow that

the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two articles. The foundation there of the judgment of the learned Judges of the High Court that the impugned rules created two classes out of what was formerly a single class and introduced elements of discrimination between the two, has no factual basis if, as we hold the order of 27 September 1957 did not effectuate a complete integration of the two services. On this view it would follow that the impugned rules cannot be struck down as violative of the Constitution (p. 922).

14. In the case before me, there is not the least-doubt that the M. As. and honours graduates who were appointed along with the petitioners (pass graduates) in pursuance of the announcement in annexure A were recruited to the same grade and rank of, sub-inspectors of schools, with the same pay. scale, i.e., Rs. 100 to 225, irrespective of any difference of their individual qualifications (vide Para. 4 of the counter-affidavit). They formed "a single unit of employment." The subsequent differentiation on the basis of qualification, in the matter of pay, as between members of this same unit must, accordingly, be struck down as violative of Article 16(1), at the instance of the petitioners who have been discriminated against. The plea of the Government that there was a natural class division as between the less qualified and the higher qualified members of the sub-inspectors of schools is not tenable inasmuch as in making the announcement in annexure A and in appointing the petitioners on the basis thereof, the Government did not treat the lesser qualified and the higher qualified as belonging to two different classes but treated them alike.

15. The case made in the counter-affidavit was that the honours graduates and M. As. " were being given higher pay for doing duties involving greater responsibilities and not for doing the same work like other sub-inspectors" (Para. 11) and that work of a more onerous nature was being called for owing to the introduction of the national plan in the sphere of education (Para. 5). But this case has completely broken down at the hearing since the contents of annexures E, F, and J to the affidavit-in-reply, that the members of the two new cadres are still treated as interchangeable in the matter of posting and transfer go uncontradicted and pass graduates like the petitioners are still being engaged in the same posts and duties as before. It is abundantly clear that so far as the existing employees are concerned no rational basis for classification exists to justify the differentiation made by annexure B, with retrospective effect, so as to affect the petitioners who were recruited on the same terms as the honours graduates and the M. As. Annexure B is thus hit by Article 14 also, in so far as it is given retrospective effect, to affect the petitioners.

16. The above findings extend also to the notification of 1962 (Para. 10 of the petition), which proceeds on the differentiation already made by annexure B.

17. A preliminary objection was raised on behalf of the respondent that the application was bad because so many applicants had joined in one application. But it has been fairly settled that the provisions of the CPC as to joinder apply to applications under Article 226 unless excluded by the rules made by the High Courts and that a joint application would, accordingly, lie where the applicants are aggrieved by a common order vide *Manindra Nath Pal and Others Vs. Municipal Commissioners of Baranagore Municipality and Another*, ; *Rainbow Dyeing v. industrial tribunal* (1959) 1 M.L. J. 53; *Uma Shankar Rai and Others Vs. Divisional Superintendent, Northern Railway, Lucknow and Others*, . This objection must, therefore, be rejected.

18. In the result, this application must succeed. The proper order should be an order in the nature of mandamus directing the opposite parties not to enforce the impugned order in annexure B read with the order of 1962, as specified in Para. 10 of the petition in such manner as to subject the petitioners to a lower scale of pay than other sub-inspectors of schools who have been recruited on the basis of the announcement in annexure A, but who happen to be honours graduates or M. As. or M. Scs. In view of the nature of the litigation, there will be no order as to costs. The rule is made absolute accordingly.