

(1975) 12 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1199 of 1972

Bhanwarlal Paliwal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-12-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) WLN 494

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—This writ petition under Article 226 of the Constitution of India has been filed by Bhanwarlal Paltwal, who was initially appointed as a lecturer in Physics in a temporary capacity at the Maharana Bhopal College, Udaipur in the grade of Rs. 200, 400, vide order dated October 9, 1954 In the year 1956 the petitioner was selected by the Rajasthan Public Service Commission hereinafter referred to as "the Commission" for the post of lecturer in Physics for intermediate colleges in the pay scale of Rs. 200,350 Consequently the petitioner was appointed on the aforesaid post during the year 1956-57 on a temporary basis by the order of the State Government dated August 17, 1956 Thereafter the Commission by its advertisement No. 32 dated January 18, 1957 invited applications for the posts of lecturers in Physics for teaching Intermediate classes in Degree and Postgraduate colleges. The petitioner applied for the aforesaid post & be was selected by the Commission for the same. The State Government thereupon appointed the petitioner as a lecturer in Physics at the Government College, Kota by its order dated August 7, 1957 on probation for a period of one year. In the endorsement of the aforesaid appointment order of the petitioner to the Accountant Genaral Raj, it was mentioned that the petitioner was appointed in the pay scale of Rs. 200, 400 plus dearness allowance. Later on by the order of the State Government dated August 23, 1958 the petitioner was confirmed on

the aforesaid post of lecturer in Physics with effect from August 14, 1958. The case of the petitioner is that one Shri S.P. Bhargava was also appointed as a lecturer in Physics along with the petitioner by the same order of the State Government dated August 7, 1957 and that on the representation made by Shri Bhargava and other persons like him, the State Government referred their cases to the Commission for adjudgment of their suitability for allowing them the higher grade of Rs. 250-600, which was admissible to lecturer in Degree and Postgraduate colleges, who were selected for teaching degree and Postgraduate classes. The State Government, on the recommendation of the Commission, appointed some lecturers as officiating Degree lecturers in the grade of Rs 250-600 with effect from the date they started teaching Degree classes by its order dated September 29, 1966. When the petitioner came to know about the above mentioned order passed by the State Government, he also made representation to the effect that he should also be given the same treatment which, was given by the order dated September 29, 1966 to other lecturers, who were alleged to be similarly situated like the petitioner. The first submission of the learned Counsel for the petitioner is that the State Government should be directed to appoint the petitioner as officiating Degree College lecturer with effect from 14-8-1957, the date on which he joined the post of lecturer in a Degree College after he was appointed as such by the order of the State Government dated, August 7, 1957. in the same manner as Shri S.P. Bhargava and other persons were appointed by the order of the State Government dated September 29, 1966, The second submission of the learned Counsel for the petitioner is that the petitioner was senior to the respondents Nos. 2 and 3 Suri R.C. Sharma and Mohan Prakash and therefore, he should have been considered for promotion to the higher posts of Vice Principal and Principal of Degree Colleges along with and in preference to the aforesaid respondents Nos. 2 and 3 The petitioner has also prayed that the appointments of the respondents No. 2 and 3 as Principal or Vice Principal of Degree Colleges by promotion should be quashed.

2. The State Government has contested the writ petition on the ground that the order giving higher grade to some lecturers passed by the State Government on September 29, 1966, was issued erroneously and was being withdrawn I was also stated in the reply to the writ, petition that the respondents Nos. 2 and 3 were senior to the petitioner and that they were rightly promoted to the posts of Vice Principal of Degree Colleges prior to the petitioner. The respondent No. 2 has also, filed a separate reply and has stated that the petitioner was never selected by the Commission for the post of a lecturer in Degree and Postgraduate college for teaching Degree classes and and that the respondents Nos. 2 and 3 were senior to the petitioner even in the category of Intermediate grade lecturers and, therefore, the petitioner could have no grievance if the respondents Nos. 2 and 3 were promoted as Vice Principle of Degree college prior to the petitioner.

3. In respect of the first contention of the learned Counsel for the petitioner it appears that the Rajasthan Education Service (Collegiate Branch) Rules 1959 (hereinafter referred to as the "1959 Rules") recognised only three categories of

lecturers namely:

1. lecturers in Degree and Postgraduate college,
2. lecturers in non-Engineering subjects in Engineering colleges,
3. lecturers in Intermediate colleges.
4. The petitioner was selected by the Commission for the post of a lecturer in Physics for teaching Intermediate classes in Degree and Postgraduate colleges and was also appointed as such by the order of the State Government dated August 7, 1957. Therefore, the petitioner was included in the category of lecturers in degree and postgraduate college, although at the time when the petitioner was initially appointed on the said post, 1960 Rules had not come into force. However, the fixation of the petitioner's salary was to be governed by the Rationalisation of Pay-scale Rules, 1956 (hereinafter referred to as the 1956 Pay-scale Rules") According to the aforesaid Rules, all lecturers, included in the Education Service of the State were divided into two broad categories, namely:

(1) lecturers in Intermediate college, to whom the pay scale of Rs. 200.400 was made applicable; and

(2) lecturers in Degree and Post-graduate colleges The last mentioned category of lecturers; was further sub divided into two categories namely:

(a) lecturers in degree and Postgraduate colleges, selected by the Commission to teach Degree and Postgraduate classes The pay scale of Rs 250-600 was made applicable to the lecturers included in this category.

(b) Remaining lecturers in Degree and Postgraduate colleges, who were placed in the Pay scale of Rs 200.400.

5. In view of these provisions contained in the 1956 Pay Scale Rules as amended, the petitioner who was selected by the Commission for the post of lecturer in Physics in Degree and Postgraduate colleges for teaching Intermediate classes, was rightly included on the category of remaining lecturers, to whom the grade of 260, 400 was made applicable. The grievance of the petitioner is that Shri Bhargava and I.S. Bhandari, who were also selected in the like manner as the petitioner for the posts of lecturers in Physics for teaching Intermediate classes in Degree and Postgraduate colleges, were subsequently allowed the bigger pay scale of Rs. 250-600 by the order of the State Government dated September 29, 1986 after they were adjudged suitable by the Commission for teaching Degree classes in Degree and Postgraduate colleges, but the petitioner was not given a similar treatment. The petitioner has made reference in the writ petition to the decision taken by the State Government and conveyed to the Accountant General Rajasthan, to the effect that, all lecturers, who were working in Degree and Postgraduate colleges prior to the introduction of the Rationalisation of Pay scales i. e. March 7, 1956, or who were appointed as such, should be allowed the pay scale of Rs. 250-600, except lecturers appointed to

teach General Knowledge, Biology, Civics and Logic etc. which are subjects taught upto Intermediate standard. However, the case of the petitioner was admittedly covered by the aforesaid, decision of the State Government. After she above mentioned decision was taken by the State Government some lecturers submitted representations on the ground that as they were actually teaching Degree classes they should be allowed the higher grade meant for Degree lecturers, namely Rs. 250-600. The State Government referred the cases of such lecturers to the Commission, who adjudged then suitability for teaching Degree-classes and those lecturers who were found suitable were allowed the higher pay scale of Rs. 250-600 by the State Government vide its order dated September 29, 1986 with effect from the date they started teaching Degree classes. According to the petitioner, thereafter, about 144 lecturers also made similar representations, including the petitioner, praying that they should also be allowed the higher grade of Rs. 250-600. The State Government also referred these representations to the Commission and it appears that the Commission was of the view that those lecturers, who were actually teaching Degree classes on an adhoc basis, though initially selected for the posts of lecturers for teaching Intermediate classes in Degree and Postgraduate colleges may be adjudged for the posts of Degree grade lecturers. However, the Commission, decided that instead of considering the cases of such lecturers piecemeal, it would be proper if the State Government referred the cases of all eligible lecturers at one time. Consequently the Director of Education appears to have sent a circular letter dated November 15, 1969 to all Principals of Degree & Postgraduate College inviting representations from those lecturers who taught Degree classes, although appointed as Intermediate lecturers (meaning thereby lecturers in Degree and Postgraduate college appointed for teaching Intermediate (sic) that a reference may be made to the Commission by the State Government for adjudging their suitability for allowing them higher grade meant for Degree lecturers. The petitioner's case is that he also submitted a representation but nothing further was done in the matter.

6. Although the State Government has taken the stand that it was withdrawing its order dated September 29, 1969 yet it has to be seen as to whether the petitioner fell within the same category & was similarly situated as Shri Bhargava & others who were allowed the higher grade of the Degree lecturers i. e, 250-600 by the State Government after adjudgment of their suitability by the Commission. It was quite fair and reasonable for the State Government to take the view that those persons who were appointed as lecturers in Degree and Postgraduate colleges for teaching Intermediate classes, but who were actually teaching Degree classes in such colleges, should be allowed the higher grade admissible to Degree lecturers i.e. Rs. 250-600 if they were adjudged suitable for teaching Degree classes by the Commission, as the cases of such lecturers could not be distinguished from those who were appointed as lecturers in Degree and Postgraduate colleges for teaching Degree classes. The only distinction between the aforesaid two categories of lecturers was that the former class of lecturers

was selected by the Commission for teaching Intermediate classes in Degree and Postgraduate colleges, but the work of teaching Degree classes was taken from them while the later classes of lecturers was selected by the Commission for teaching Degree classes and they also performed the same work of teaching Degree classes. The petitioner has submitted that there was no reason not to consider his case in the same category of Degree grade lecturers and he should have been similarly got adjudged by the Commission. The petitioner has averred in the writ petition that while he was posted in the Government College, Kota he was teaching Intermediate as well as Degree classes in Physics and he based his claim of being a lecturer teaching Degree classes upon a certificate granted to him by the Principal of the Government College, Kota dated December 8, 1969. The aforesaid certificate runs as under:

Office of the Principal Government College, Kota No. 1907/CCK/

Phy/69/70 Dated 8th Dec. 1969

Certificate

This appeal is to certify that Shri B.L. Paliwal served as Lecturer in Physics in this College from 14.8.1957 to 16-7-1969 During this period he taught Intermediate as well as Degree Classes in Physics.

Sd/-Principal,

Govt. College, Kota.

From a perusal of the aforesaid certificate it does not appear that during the period from 14-8-1957 to 16-7-69 when and for how long the petitioner taught Degree classes. The aforesaid certificate does not appear to support the claim of the petitioner and it is totally insufficient to come to the conclusion that the petitioner was regularly teaching Degree classes. The preformed prescribed by the State Government for obtaining requisite information from the eligible lecturers for the purpose of forwarding their cases for adjudgment of suitability by the Commission required the concerned lecturers to state "the date from which the officer started teaching Degree classes" (a certificate of the Principal should be attached showing the period for which the officer taught, Degree classes along with the date and subject)". But from the aforesaid certificate it is not possible to conclude that the petitioner has been teaching Degree classes regularly from 14.8.1957. The petitioner has not even made any such averment in the writ petition that he taught Degree classes during a particular period or with effect from a particular date continuously and in the absence of any such averment, the petitioner's case could not be placed at par with those Degree college lecturers, who though appointed for teaching Intermediate classes, were regularly teaching Degree classes and were held entitled to get the higher Degree grade on that basis, after the adjudgment of their suitability by the Commission.

7. The argument of the learned Counsel for the petitioner is that a discrimination

could not be made merely on the basis of the continuous circumstance that a particular person was not allowed to teach Degree classes although appointed in Degree colleges & other, persons similarly situated were allowed to teach Degree classes. It is urged that the time table in the college was prepared by the Principal and the lecturers, like the petitioner, could have no say in the matter. Even that may be so, but I am not prepared to accept the contention of the learned Counsel that the fact that some lecturers, who were appointed to teach Intermediate classes in Degree and Postgraduate college were teaching Degree classes regularly was a mere fortitious circumstance for the purpose of allowing them the higher pay scale admissible to lecturers teaching Degree classes in Degree & Postgraduate colleges. The fact that such lecturers were doing the same work of teaching Degree classes, as was done by others, who were selected by the Commission for teaching Degree classes, as was very important circumstances, which prevailed with the State Government to refer their cases for adjudgment of their suitability to the Commission. As a matter of fact such lecturers were similarly situated as Degree grade lecturers except that they were appointed after selection by the Commission for teaching Intermediate classes in Degree and Postgraduate colleges. In order to overcome the difficulty, which arose on account of provisions of 1956 pay scale Rules, that the higher pay scale could be allowed only to those lecturers who were selected by the Commission for teaching Degree classes, the State Government considered that the cases of such lecturers who were actually teaching degree classes in Degree and Postgraduate colleges should be referred to the Commission for adjudgment of their suitability for teaching Degree classes, so that after adjudgment by the Commission they would become lecturers selected by the Commission for teaching Degree classes and as they were already working in Degree and Postgraduate colleges, they would be entitled to get the higher pay scale of Rs. 250-600. As the petitioner failed to fulfil the requisite conditions for entering into the aforesaid category namely regularly teaching Degree classes, it cannot be said that the petitioner was similarly situated with the other persons who were regularly teaching Degree classes in Degree college. In these circumstances, the question of any discrimination between the petitioner and other lecturers like Shri Bhargava did not arise, and the State Government was perfectly justified in classifying lecturers in Degree colleges, who were appointed for teaching Intermediate classes, in two categories namely those who were regularly teaching Degree classes and the rest who were not doing so. The aforesaid classification has a reasonable nexus with the payment of higher pay scale to those lecturers who were actually teaching Degree classes and were adjudged suitable for doing so by the Commission, I am, therefore, unable to accept the contention of the learned Counsel in this respect.

8. learned Counsel also submitted that the petitioner had better merit than Shri Bhargava and others. But such questions cannot be considered or decided in the absence of the concerned persons as parties to the writ petition. The petitioner has stated in para 6 of the writ petition that he did not join the lecturers to

whom higher Pay Scale was allowed by the order of the State Government dated September 29, 1966 as parties to the writ petition as he did not desire to get their appointment as officiating lecturers quashed. All that can be said in these circumstances is that the absence of experience of teaching higher classes namely Degree classes for a long time is certainly an important circumstance to distinguish the case of the petitioner from the cases of others to whom higher pay scale was made admissible.

9. So far the respondents Nos. 2 and 3 are concerned it is on the record that the aforesaid two respondents were appointed as lecturers for teaching Intermediate classes in Degree and Post Graduate colleges by the order of the State Government dated July 19, 1957 and July 12, 1957 respectively and that the respondent No. 3 was confirmed by the order dated August 21, 1958 with effect from July 22, 1958 Thus the aforesaid two respondents were appointed as lecturers in Degree & Postgraduate colleges prior to the petitioner, who was appointed on August 7, 1957 & was confirmed by the order dated August 23, 1958 with effect from August 14, 1958 As such the respondents Nos. 2 & 3 were senior to the petitioner even in the cadre of Intermediate grade lecturers in Degree and Postgraduate colleges and, therefore, the petitioner could have no grievance against the aforesaid 2 respondents Nos. 2 and 3 if they were promoted as Vice Principals of Degree and Postgraduate colleges prior to the petitioner Learned Counsel for the petitioner was not able to show as to in what manner the petitioner was senior to the respondents Nos. 2 and 3. It has also not been urged that the respondents No. 2 and 3 were not eligible for appointment as the Vice Principal in the Degree and Postgraduate colleges. In these circumstances, the appointment of the respondents No. 2 and 3 as Vice Principals or Principals of Degree and Postgraduate colleges cannot be quashed.

10. As a result of the aforesaid discussion the writ petition has no merit and the same is, therefore, dismissed. No order as to costs.