

(2010) 05 PAT CK 0010

In the Patna High Court

Case No : CWJC No"s. 1251 of 1997 and 105 of 1998

Bharat Prasad and Others

APPELLANT

Vs

Rajendra Agricultural University, Samastipur and Others

 Binod Bihari Prasad Sinha Vs The State of Bihar and
Others

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Citation : (2013) 1 PLJR 360

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Advocate : A.B. Ojha, Sriniwas Jha and Bharat Bhushan in CWJC No. 1251 of 1997 and Chitranjan Sinha, Gajanan Arun and Gajendra Kumar Singh in CWJC No. 105 of 1998, for the Appellant; Devendra Kumar Sinha, Anil Kumar Upadhyay, Chandra Mohan Singh and Prakash Mahto, for the Respondent

Final Decision : Allowed

Judgement

Jayanandan Singh, J.—In C.W.J.C. No. 1251 of 1997, there are five petitioners before this Court and in C.W.J.C. No. 105 of 1998, there is only one petitioner. Cases of all the petitioners are identical and therefore, they have been taken up together and are being disposed of by this common order. It is not disputed that the petitioners were appointed/posted as Assistant Research Officer (in short "A.R.O.") under the respondent University on different dates. As per assignment of duty, they were assisting the University in conducting research in different fields. Subsequently, when the U.G.C. prescribed revised pay scales for University Teachers with effect from 1.1.1973, the same was adopted by the respondent University also. However, while the pay scale of the University Teachers were revised in terms of the said U.G.C. guidelines, petitioners and other A.R.Os. were deprived of the same. Therefore, they moved this Court for a direction to the respondents to treat them as University teachers and to grant U.G.C. revised pay scale to them also. It appears that on account of difference of views by the different Benches of this Court, matter ultimately travelled to a Full

Bench of this Court. After examining all aspects of the matter, the Full Bench in its authoritative pronouncement rendered in the case of Kamla Kant Roy and Others and Upendra Nath Misra and Others Vs. The State of Bihar and Others, , held that in view of definition of the word "Teacher" contained in the Act, A.R.Os. also fell in the category of Teachers, and also held that they will be covered by the recommendations of the U.G.C. for grant of revised pay scale to the Teachers of the University which was adopted by the respondent University. In view of this authoritative pronouncement, petitioners were included in the category of Teachers by the respondents and were treated as equivalent to Assistant Professors and were granted pay scale with effect from 1.4.1975. However, on the representation of the petitioners, the scale was made applicable to them with effect from 1.1.1973.

2. Subsequently, U.G.C. prescribed another scheme for revision and upgradation of pay scales of University Teachers known as "Career Advancement Scheme". This Scheme was also adopted by the respondent University and made applicable from the date of its recommendation i.e. 1.1.1986. As per the Scheme, all Assistant Professors, who had completed eight years of service as on 1.1.1986 and were found to have complied all the terms and conditions, were to be placed in the senior scale of Assistant Professors of Rs. 3000-5000 with effect from 1.1.1986 itself. Since petitioners fulfilled all the conditions for grant of such senior scale on 1.1.1986, they applied for promotion to the said senior scale of Assistant Professors under the Scheme. However, the same was not granted to them from that date and they got the scale from different dates subsequent to 1.1.1986. Consequently, they were considered for grant of senior selection grade scale of Rs. 3700-5700 also in terms of the Scheme from subsequent dates. Petitioners are aggrieved by the same and have prayed in these writ applications for directing the respondents to consider their cases for grant of scales on completion of eight years and sixteen years of service respectively after quashing of letter of the University, as contained in Annexure-1, denying them the same.

3. Case of the petitioners is that as per the Career Advancement Scheme (in short the Scheme), as prescribed by the U.G.C. and adopted by the University, all Assistant Professors had to be considered for grant of senior scale with effect from 1.1.1986 if they fulfil three conditions, i.e. (a) they had completed 8 years of regular service; (b) they participated in two Refresher Courses/Summer Institution each of approximately four weeks duration or engaged in other appropriate continuing education programme of comparable quality; and (c) on consistently satisfactory performance appraisal reports.

4. Learned counsel for the petitioners submits that the petitioners are qualified for their promotion to the senior scale on all three counts. Therefore, respondents could not deny their claim on the basis that they had acquired qualification of Assistant Professors subsequently.

5. Counter affidavit has been filed in the case by the respondent University. With the counter affidavit, notification of the University adopting the said Scheme of

U.G.C. has been annexed as Annexure-F. Learned senior counsel for the respondent University referred to paragraph 10 of the counter affidavit and submitted that squarely on the ground that the petitioners had obtained P.G. Degree in M.Sc. (Agriculture) subsequent to 1.1.1986, they were found not entitled for the said senior scale of Rs. 3000-5000 from 1.1.1986. He placed the pleadings made in paragraph 10 of the counter affidavit to show that the University has counted their eight years of qualifying service from the date petitioners acquired P.G. qualification. Counting the said eight years from the said date, petitioners were not found eligible for grant of such senior scales.

6. Learned counsel for the petitioners, in reply, submitted that the U.G.C. Scheme as adopted by the University nowhere prescribes that eight years of service had to be counted from the date of acquiring the qualification for the post of Assistant Professors as laid down by the U.G.C. He submitted that the grounds taken by the respondents in the counter affidavit in support of rejection of the claim of the petitioners is nowhere borne out or substantiated from any of the documents of the University or the U.G.C. On the other hand, he submitted that the Full Bench of this Court in paragraph-15 of the judgment in the case of Kamla Kant Roy (supra) has made it clear that the U.G.C. Scheme shall apply to all the University teachers without any further restriction or qualifications. He also pointed out that the Full Bench noticed Appendix-IV of Annexure-1 of the Scheme of the U.G.C., which allowed such teachers, who did not possess the minimum qualifications from before, to acquire the qualification within five years. The said Appendix also provided that if the required qualification was not acquired by the incumbent, his future increments had to be withheld.

7. For easy reference, observations of the Full Bench in this context in paragraphs 14 and 15 are quoted herebelow:-

14. Therefore, viewing the matter within the parameters of the Act and the Statutes, it is clear that the Assistant Research Officers would be conducting and guiding research or extension education and thus come squarely within the definition and in the statutes they have in terms been equated with Lecturers and categorized in Class-III of the teachers. Thus, they would come fairly and squarely within the ambit of University teachers.

15. Now, once it is so held, the consequential question is whether the Assistant Research Teachers would be University teachers entitled to the U.G.'s new revised scale of pay. To my mind the answer herein is again in the affirmative and plainly in favour of the writ petitioners. Now apart from the Act and the Statutes, reference may be made to Annexure-"1", which is the admitted and the authoritative communication of the Indian Council of Agricultural Research addressed to all Agricultural Secretaries and the State Governments declaring the fact that the Council has agreed in principle to extend the benefit of the University Grant Commission's new revised scales of pay for all University teachers subject to the conditions mentioned therein. It is clear therefrom that though at the initial stage central assistance would be available from January 1,

1973 to March 1979, the State Government would bear the entire balance of the expenditure and would not pass on the liability of any portion thereof to the Universities or the Management of Colleges. Further after April 1, 1979 the State Government would take over the entire responsibility for maintaining revised scales of pay. It is significant that this communication expressly brings within its scope all University teachers without any construction or further qualification. Now a reference to Appendix-IV of Annexure-1 would further indicate that a somewhat liberal view was taken on the grant of these grades and it was even provided that the existing lecturers in Colleges, who did not at the time of their initial recruitment even possess the minimum qualifications prescribed by the University, should be given a period of five years to attain those qualifications from the date of their placement in the revised scale. If they were unable to do so during this period they should not be allowed to earn any future increment. This again seems to make plain the intent that even this class would become entitled to the revised grades forthwith subject to the acquisition of qualifications later. Therefore, a true construction of Annexure-1 would indicate that the Indian Council of Agricultural Research had in terms adopted the grant of revised U.G.C. scales of pay to all University teachers without restriction or qualifications. What then calls for pointed notice is Annexure-2, the communication of the State Government itself to the Accountant General, Bihar. This again in terms stated that posts of staff engaged in research teaching and extension services, which would include the post of Assistant Research Officers would be included in the category of teachers if they have been recognized as posts of teachers in the University statutes. As I have already shown, the Assistant Research Officers are squarely within the ambit of University teachers under the Act and the Statute. In the last sentence of this communication the State has expressly agreed to the condition that up to the period of 31st March, 1979 it would bear twenty percent of the financial burden whilst eighty percent would have to be borne by the Indian Council of Agricultural Research but with effect from the 1st of April, 1979, the State Government shall bear the whole expenses to be incurred in this regard.

8. Learned counsel for the petitioners further referred to said Appendix-IV of the U.G.C. Scheme, which has been produced on the records of this case as Annexure-15 with the petitioners' rejoinder to the supplementary counter affidavit filed on 15.12.2008. Paragraph 12 of the said Appendix may be usefully quoted herebelow:-

12. In all those cases, in which any teacher does not possess the minimum qualifications, as prescribed by the University Statutes, would be required to attain these qualifications within 5 years from the date of placement in the revised scales. If they are unable to do so in this period, they shall not be allowed to earn future increments till they have satisfied the condition. This is in accordance with the conditions laid down by the U.G.C.

9. After hearing learned counsel for the parties, this Court finds that in Annexure-

F, the resolution of the University, there is nothing to indicate that the qualifying period of eight years service has to be counted from the date the incumbent had acquired the qualification as prescribed by the U.G.C. Learned Senior Counsel for the respondent University does not dispute that the petitioners fulfil other conditions as laid down therein. From the reading of said paragraph-12 of the Appendix of U.G.C. Scheme, as quoted above, it is clear that those teachers who did not possess minimum qualifications were required to acquire the qualification within five years, failing which their future increments had to be withheld till they satisfy the conditions. Therefore, irrespective of not having requisite qualifications for the senior scale as prescribed by the U.G.C., an incumbent had to be allowed the said scale and his future increments had only to be withheld if he did not acquire the qualification within five years thereof. Clearly, disqualification of not having requisite qualification could not be allowed to apply to deny the claim of the petitioners to the senior scale if they fulfil all other conditions for their promotion to the senior scale as per Annexure-F. Consequently, the same cannot also be a disqualification for consideration of the case for their further promotion to the selection grade scale. Pleadings in paragraph 10 of the counter affidavit itself shows that the petitioners later on had acquired the qualification of P.G. Course and thus have acquired qualification for the post of Assistant Professors as prescribed by the U.G.C. It may be pointed out that the respondents are not challenging the initial appointment of the petitioners or they being treated as teachers of the University at par with the Assistant Professors and for grant of basic scale of Assistant Professors to them as per U.G.C. revised scale.

10. In the circumstances, this Court does not find any justification in the act of the respondent-University denying promotion to the petitioners in the senior scale of Rs. 3000-5000 at par with Assistant Professors with effect from 1.1.1986 and consideration of consequential promotion to the scale of selection grade. In the result, both the writ applications are allowed. Respondents are directed to consider the case of the petitioners for grant of senior scale from 1.1.1986 strictly in terms of the resolution of the University, as contained in Annexure-F to the counter affidavit, in the light of the observations made by this Court earlier and consider their claim for grant of selection grade scale also in terms of the said resolution and all consequential benefits preferably within a period of three months from the date of receipt/production of a copy of this order.