
(2001) 12 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 9719 of 2001

Bharat Prasad Chourasia

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:

Bihar Nationalised Secondary Schools (Conditions of Service) Rules, 1983 — Rule 3

Citation : (2002) 1 PLJR 329

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : M.P. Shukla, in 9719, 9824, 10387, 10568 and 10626, B.P. Verma, Murli Manohar Singh, Iftekhar Mahmood, in 10383 and 10472, Ravi Shankar Sahay, in 11367, Durga Nand Jha, in 11003, P.C. Das, in 11184, Rajendra Pd. Singh, Raghwendra Sharan Pandey, Arvind Kumar Singh and Rajeev Kumar Singh, in 11058, for the Appellant; A.K. Chaudhary, Satya Varat Verma for State in C.W.J.C. Nos. 9719, 10387, 10568, 10626, 9824, 10383, 10472, 11367, 11003, 11184 and 11058 of 2001, Anil Kumar Jha in 9824 and 11184 and C.K. Gupta in 10568 for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—In addition to a single Petitioner in C.W.J.C. No. 9719 of 2001, there are altogether 43 Petitioners in the rest of the cases in this batch. The Petitioners are Assistant teachers in nationalised high schools. By the orders coming under challenge in these cases the Petitioners are told that they were allowed the first time bound promotion much in advance of the due dates in their respective cases; that the dates from which they were given the first time bound promotion is incorrect; that each of the Petitioners became entitled to the first time bound promotion from the dates which were much later than the respective dates from which the benefit of time bound promotion was given to them. Consequently, their monthly salary will be refixed and will be paid to them on the condition that they either refund the excess amounts paid to them in one lump sum or give undertaking to refund the excess amounts in certain specified

instalments.

2. Before proceeding further it is necessary to state that the decision to review the first time bound promotion allowed to the Petitioners, a number of years ago, was taken on the basis of the objections raised by the Audit team from the office of the Accountant General and the orders by which the Petitioners' salary was refixed, assigning them much later dates of promotion, were issued without giving them any notice or an opportunity of hearing. On behalf of the Petitioners, therefore, these orders were assailed on these grounds as well. But on the issue in dispute, i.e., the date on which the Petitioners lawfully became entitled to the first time bound promotion much arguments were made by both the sides. This Court, therefore, finds no difficulty in deciding the issue on its merits.

3. The relevant facts are very brief and of the simplest. None of the Petitioners at the time of appointment possessed the qualification in teachers' training. On appointment as Assistant teacher, therefore, every Petitioner was given the Graduate untrained scale of pay. Within a few years of their appointment the Petitioner passed the teachers' training examination whereupon each of them were given the higher graduate trained scale of pay from the respective 'dates of obtaining the qualification of teachers' training. Then on completion of 10 years from their respective dates of initial appointments each of the Petitioners were allowed the first time bound promotion and were given the scale next higher to the graduate trained scale of pay.

4. This, on the face of it, appears somewhat anomalous and contrary to the basic idea of time bound promotion which was a scheme intended to ameliorate stagnation in any one scale of pay.

5. As seen above, at the time of appointment all the Petitioners were given the graduate untrained scale and on obtaining the qualification of training they were given the higher graduate trained scale. It, therefore, stands to reason that the next higher scale, under time bound promotion, should have come to the Petitioners after ten years from the grant of the higher trained scale of pay and not from the respective dates of their initial appointment.

6. But on a close scrutiny and on examining the issue in the light of certain statutory provisions and some decisions/circulars of the State Government the position appears otherwise and it appears that the first time bound promotion allowed to the Petitioners, though somewhat in discord with the basic idea of time bound promotion, was in accordance with the Government decisions and circulars issued in that regard.

7. In the case of the Petitioners the first and foremost thing to be borne in mind is that with the exception of the single Petitioner in C.W.J.C. No. 9719 of 2001 (whose case will be discussed later in this judgment) all the other 43 Petitioners in the rest of the cases in this batch were appointed prior to 18.9.1972. The significance of this date lies in the fact that before 18.9.1972 a qualification in teachers' training was not an essential requirement for appointment as Assistant

teacher in a high school. The qualification of teachers" training, as an essential requirement for appointment as Assistant teacher in a high school, was introduced for the first time by Bihar High School. (Service Conditions) Rules, 1972 coming into force w.e.f. 18.9.1972. These rules were replaced by the Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. Rule 3 of the 1983 Rules defined and classified teachers in different, grades namely (Ka) Head master, (Kha) Assistant teacher (Selection Grade), (Ga) Assistant teacher (Subordinate grade) and (Gha) Assistant teacher (Junior Grade). In this case we are concerned with Assistant teachers in subordinate and junior grades which were defined in Clause Ga and Gha respectively as follows.

Ga. Sahayak Sikshak (Awar Shreni): Sahayak Pradhnadh-Yapak, Asnatakotar Betanman, Prawar Koti (15% Wale Prasiskshit Asnatak, Sarerik Prasikshat Asnatak, Acharya Awam Fazil Tatha Samkach Yogtadhari Sikshak), 18.9.72 Tak Niyukta Aprasikshat Asnatak Awam Prasikshit Asnatak Ke Betanman Main Niyukta Anay Sikshak).

Gha. Sahayak Sikshak (Kaniye Sereni)

(18.9.72 Ke Baad Niyukta Aprasikshit Snatak, Sashtri, Aalim (Prasikshit Intermediate) Prawar Koti Sahit, Prasikshit Matric (Prawar Koti Sahit) Awam Anya Yogtadhari Sikshak.

(emphasis added)

8. It is thus to be seen that untrained teachers appointed prior to 18.9.1972 (like the 43 Petitioners in this batch of cases) were included, amongst others, in the category of Assistant teachers of the subordinate grade and those appointed after that date were classified in the junior grade.

9. A year and half before the 1983 Rules came into force w.e.f. June 9, 1983, following the recommendations of the Fourth Pay Revision Committee the Government had introduced the scheme of time bound promotion by its resolution No. 3/P.R.C. 3/81/F-10770, dated 30.12.1981. In the actual implementation of the scheme difficulties arose from time to time and different departments of the Government were required to issue communications/circulars containing Government decisions addressing any particular aspect of the matter in the context of the special needs and peculiarities of that department. The department of Human Resources Development, controlling the services of the Assistant teachers of nationalised high schools also issued communications and circulars containing Government decisions from time to time.

10. In course of hearing counsel appearing for the Petitioners in this batch of cases mainly relied upon three communications/circulars, issued by the department of Human Resources Development. These are as follows:

(i) letter, dated 13.1.1986 issued by the Special Secretary to the Director, Education (Secondary Education), Bihar, Patna.

(ii) letter, dated 25.8.1986 issued by the Director, Secondary Education cum Joint Secretary to the Regional Dy. Directors of Education.

(iii) letter, dated 27.4.1986 issued by the Dy. Director, Secondary Education (Headquarters), Bihar, Patna to the Regional Dy. Director of Education, North Chhotanagpur Division, Hazaribagh.

11. It is seen above that by virtue of the inclusive definition provided in Rule 3(Ga) of the 1983 Rules, Assistant teachers of the subordinate grade were in two scales of pay; one, graduate untrained which in the year 1986, was Rs. 795-1210 and the other graduate trained scale which was Rs. 850-1360/-. In the communication, dated 13.1.1986, issued on the subject of grant of time bound promotion to the teaching and non-teaching employees of the nationalised high school, it was directed that Assistant teachers of the Subordinate grade on getting time bound promotion will be given the pay scale in the following manner:

Basic pay Implemented w.e.f. 1.4.81 First time bound promotion's scale Second time bound promotion" scale

(Kha) Awar Rs. 850-1360 Shreni Ke 1. 940-1660 Rs. 785-1210

Sahayak Rs. 940-1660 Sikshak 2. 1000-1820 Rs. 850-1360

12. In this letter, however, it was further clarified that the qualifying period for time bound promotion will commence from the date of entry in the pay scale from which promotion was to be granted and to this extent this letter was perfectly in accord with the true import of time bound promotion.

13. But, then came letter, dated 27.4.1987 which substantially altered the position. The subject of this letter is the grant of time bound promotion to the teachers of nationalised high school and in paragraphs 2 and 3 it is stated as follows:

2. Rajkiyekrit Madhiyamik Vidyalay Ke Sahayak Sikshiko Ko Kalbadh Pronnati Dene Ke Liye Vibhagiye Patrank-35 Dinak 13.1.86 Dwara Aadash Diya Ja Choka Hai. Punah Ishka Aspastikaran Bhi Vibhagiye Patrank 481 Dinak 25.8.86 Ke Dawara Diya Ja Choka Hai.

3. Jahan Tak 18.9.72 Ke Purwa Niyukti Aprsikshit Sikshako Ka Prashna Hai We Bhi Awar Shereni Ke Sishak Mane Gaya Hai. Aiysh Sikshako Ko Do Vetanman Mil Rahe Hai., Jo Aprasikshit Hai Unhe 730-1080 Aur Jo Prasikshit Ho Gaye Hain Unhe 850-1360 Rupiyee. Kalbadh Pronnati Dene Ke Liye Inki Sewa Ke Ganna Aprasikshit Sikshak Ke Roop Mein Unki Niyukti Tithi Se Kl Gai Hai. Waise Aprasikshit Sikshak Jo Ab Prasikshit Ho Gaye Hain Unki Sewa Kl Ganna Bhi 18.9.72 Ke Purwa Aprasikshit Sikshak Ke Roop Mein Unki Niyukti Tithi Se Mani Gai Hai.

(emphasis added)

14. The contents of paragraph 3 leave no room for doubt that even in case of

such of the Assistant teachers in the subordinate grade who were in the graduate trained scale of pay, the qualifying period for time bound promotion will be computed from the date of their initial appointment as graduate untrained teachers and seen in the light of this communication no exception can be taken to the promotions granted to the 43 Petitioners, all of whom were appointed before 18.9.1972.

15. This Court is not unconscious that the direction given in paragraph 3 of the letter dated 27.4.87 is not fully in accord with true import of time bound promotion as indicated in paragraph 11 (vii) of the Government resolution, dated 30.12.1981 and it is in fact somewhat in deviation from the basic idea of time bound promotion. But the fact remains that such was the Government decision in the department of education and such a direction was issued by the Dy. Director, Secondary Education (Headquarters). And time bound promotions given to the Petitioners appear to be completely in accord with this direction.

16. It may be noted here that in course of hearing of these cases when the letter dated 27.4.1987 was first brought to the notice of the Court, the State Counsel was asked to take a stand with reference to this letter. The State Counsel at that time was not in a position to effectively meet that letter and on his request, therefore, the hearing of the cases was adjourned. He then filed a counter affidavit on 27.11.2001 specially with reference to the letter, dated 27.4.1987 issued by the Education Department. In the counter affidavit this letter is not disowned nor is it said that the letter was issued unauthorisedly or that the direction contained therein was contrary to or in derogation of the scheme of time bound promotion. On the other hand it is stated that the Petitioners were given time bound promotion on a wrong interpretation of the letter, dated 27.4.1987 (paragraphs 8 and 10 of the counter affidavit).

17. Now, this Court is unable to follow this line of argument. The contents of the letter, dated 27.4.1987 are unambiguous, plain and clear and are capable of only one meaning. The letter plainly says that for those untrained teachers who later become trained, the qualifying period for promotion will be counted from the date of their initial appointment.

Waise Aprasikshit Sikshak Jo Ab Prasikshit ho Gaye Hain Unki Sewa ki Ganna Bhi 18.9.72 Ke Purwa Aprasikshit Sikshak Ke Roop Main Unki Tithi Se Mani Gai Hai.

18. To my mind this leaves no room for doubt that the dates with effect from which the Petitioners were given promotion were completely in accordance with the direction contained in this letter.

19. Furthermore it is to be noted that all the Petitioners having been appointed prior to 18.9.1972 are now at the end of their career and at this stage it will be quite unfair, unreasonable and inequitable to turn back and say that time bound promotions granted to them were irregular, to fix much later dates for their promotion and on that basis to recover from them the differential amounts.

20. For the reasons discussed above, I am unable to uphold the impugned orders in all the writ petitions excepting C.W.J.C. No. 9719 of 2001. The orders coming under challenge in these writ petitions are accordingly set aside.

21. Coming now to C.W.J.C. No. 9719 of 2001, the position appears to be quite different in so far as the single Petitioner to that case is concerned. And this is for the simple reason that he was appointed as an Assistant teacher after 18.9.1972. The basic facts concerning the Petitioner in C.W.J.C. No. 9719 of 2001 are simple and can be stated as follows. He was appointed as an Assistant teacher in a nationalised high school on 1.5.1973. At that time he was simply a graduate and was accordingly given the graduate untrained scale of pay. He obtained the qualification of teachers' training on 9.6.1980 and was allowed the higher graduate trained scale of pay from that date. He was later given the first time bound promotion (vide order dated 29.8.1991) w.e.f. 1.5.1983, that is to say, after ten years from the date of his appointment.

22. Now it is to be seen that within the meaning of Clause (Gha) of Rule 3 of the 1983 Rules this Petitioner was an Assistant teacher not of the Subordinate grade but of the Junior grade. Thus, on getting the graduate trained scale of pay w.e.f. 9.6.1980 he clearly got promotion not only to a higher scale of pay but also to a higher grade in the cadre of Assistant teachers. Having thus obtained the personal promotion he could not claim time bound promotion with effect from the date of his initial appointment. Any time bound promotion would come to him only after ten years from the date he was granted promotion in the graduate trained scale of pay and to the subordinate grade of Assistant teachers.

23. It may be noted here that Dr. M.P. Shukla, learned Counsel appearing on behalf of this Petitioner relied upon a number of circulars and government decisions to justify the promotion granted to him after ten years from the date of his appointment. It is not required to refer to all the communications, circulars, Government decisions etc. referred to by Mr. Shukla as I do not see their relevance. What, however, is required to be noticed is Government resolution dated 16.7.1986 because much reliance was placed on it in support of the Petitioner's case. But before referring to this resolution it will be necessary to advert to the earlier resolution, dated 30.12.1981 by which the scheme of time bound promotion was introduced for the first time. In Sub-paragraph vii of paragraph 11 of this resolution it was stated as follows:

(vii) Since the aforesaid scheme is meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been able to get the first or the second promotion as the case may be. In other words, the benefit of the time-bound system should be extended to those who are stagnating in the same pay scale of which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even upgradation. This should require issue of specific orders in case of every

employee which should obviously be done only after a careful examination of his service records.

24. It is thus clear that originally such of the employees who were elevated to a higher pay scale even though as a result of promotion, merger or upgradation were kept out of the scheme of time bound promotion. Later on by resolution, dated 16.7.1985 (heavily relied upon by Dr. Shukla, counsel for the Petitioner) this condition was relaxed and it was provided that the grant of higher pay scale by virtue of amalgamation or upgradation of posts will not stand in the way of grant of time bound promotion to an individual employee. But this resolution does not refer to individual cases of grant of higher promotion as sought to be contended by Dr. Shukla. The resolution dated 16.7.1985 clearly applies to an entire cadre or a group of employees. For example, if a post is granted a higher scale of pay on the basis of the recommendations of the Pay Revision Committee or by virtue of an order passed by this Court or due to merger or upgradation of posts the individual employees holding that post cannot be denied time bound promotion on that ground. This resolution, however, does not apply to individual cases of promotion as the case of the present Petitioner. In the case of the present Petitioner, it is seen that the grant of graduate trained scale of pay to him was not only a case of promotion to a higher scale of pay but it was also a case of promotion to a higher grade in the cadre. I have, therefore, no doubt in my mind that this Petitioner qualified for the first time bound promotion only after ten years from the grant of the graduate trained scale of pay and not on completion of ten years from his initial appointment. This writ petition must, therefore, fail on that issue. But so far the direction for recovery of the sum of differential salary is concerned, that clearly appears to be unjustified and unsustainable. There was no fraud or malpractice on the part of the Petitioner, there was no misrepresentation of facts on his part. The grant of time bound promotion to him after ten years from the date of his initial appointment was clearly an error in which the department was as much a party as the Petitioner himself. I, therefore, see no reason to allow recovery of the differential amount. The impugned order, therefore, in so far as it directs for recovery of the differential amount is set aside. The departmental authorities will be, however free to redetermine the Petitioner's salary on the basis of the changed date of his time bound promotion.

25. In the result, all the writ Petitions in this batch save and except C.W.J.C. No. 9719 of 2001 succeed and are allowed. C.W.J.C. No. 9719 of 2001 fails and it is accordingly dismissed. There will be, however, no order as to costs.