

(1964) 06 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No's. 1519, 1755 and 1911 of 1963

Bhaskara Pillai

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-06-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1964) KLJ 971

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : K. Chandrasekharan, T. Chandrasekhara Menon, C. Sankara Menon, P.K. Ammini, T.S. Krishnamoorthy Iyer, P.C. Chacko, V.R. Krishna Iyer and V.M. Nayanar, for the Appellant; C.M. Kuruvila Government Pleader For State, S. Easwara Iyer, L. Gopalakrisnnan Potti, C.S. Rajan, P. Sankarankutty Nair and S.K. Brahmanandan, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J

1. These three petitions are by three "Language Teachers" in aided High Schools complaining of prejudicial treatment in the matter of promotions as first grade teachers. The petitioner in O.P. No. 1519 of 1963 is a Hindi Vidwan, appointed on June 30, 1962, a Language Teacher in the E.C.E.K. Union High School, Kuthiyathodu. He has passed the B.A. Degree examination in September, 1956, and the B.Ed. degree examination in 1960. The petitioner in O.P. No. 1755 of 1963 is a Sahithya Visarad, appointed on June 26, 1947, as a Language Teacher in the St. John's High School, Eraviperor, and continuing as such. The petitioner in O.P.No. 1911 of 1963 is a Language Teacher in the T.D. Higher Secondary School, Thuravoor, who has taken the Rashtra Bhsha Visarad Diploma in February, 1948, the Vidwan Diploma in April 1952, B.A. degree examination in September 1955, the B.Ed. degree examination in 1960 and the M.A. degree examination in Hindi in March, 1961.

2. Among the Language Teachers in the State employ are many graduates. They were treated as a class distinct from other graduate teachers and were not eligible for promotion to the post of Headmasters. While the Kerala Education Bill (subsequently become Act VI of 1959) was pending consideration before the State Legislature, the Government wanted to do away with the anomaly of differentiating between graduates in Languages and graduates in other subjects and declared by a G. O. dated November 7, 1958, that Language Teachers who are trained graduates would be promoted as Headmasters and Officers in the Education Department. To effectuate that policy, directions were issued by a G.O. dated July 1, 1959, to make an integrated list of first grade Graduate teachers and first grade Graduate Language teachers "as on July 1, 1959, taking into account the length of their continuous service in Grade 1", and to promote the senior most in such list as Headmasters. To make the parity more effective the ratio 2 : 7 maintained between first grade posts and second grade posts among the Graduate teachers was extended by a G.O. dated September 29, 1961, to Graduate Language teachers as well. By a G.O. issued on April 29, 1963, it was made clear that the said ratio 2 : 7 applies only to Graduates among the Language teachers in High Schools, and that for non-graduate teachers the ratio 1 : 9 will continue as before. All the above proceedings applied to the Language Teachers in State service only.

3. Meanwhile the Kerala Education Act and the Kerala Education Rules came into force on June 1, 1959. The said Rules (vide Chapter XXVI, Rule 2) contemplate "two grades for graduate teachers of aided schools as in the case of Government Schools", and, consistently with the policy adopted in the State Service, provide (vide Chapter XXVI, Rule 6) :

Language teachers of High Schools who have the graduate qualification or other qualification declared by Government to be equal to it shall be treated on the same footing as other graduate teachers and shall be included in the list of graduate teachers for fixing the number of first grade posts for each aided school or for all schools under a single educational agency.

(The upgrading of one-tenth of the posts among non-graduate teachers is not extended to aided schools). By a G.O. dated April 29, 1963, the ratio between first grade posts and second grade posts among graduate teachers (inclusive of graduate Language teachers) in a unit was declared as 2 : 7 as in the Government schools.

4. The complaint of the petitioners here is that, though Rule 6, Chapter XXVI, of the Kerala Education Rules provides that the Language teachers of High Schools who have a "qualification declared by Government to be equal to graduate qualification shall be treated on the same footing as other graduate teachers and shall be included in the list of graduate teachers", effect is not being given to that mandatory provision by the respondents. The petitioners assert that "Hindi Vidwan" "Rashtra Bhasha Visarad" and "Sahithya Visarad" have been declared equivalent to graduation and therefore they are entitled to be included in the list

of graduate teachers in their respective units, with benefit of the lengths of their services from the dates of their acquiring the aforesaid qualifications. The respondents contend that the aforesaid qualifications have never so far been declared by the Government as equivalent to graduate qualification and therefore the petitioners in O.P.Nos. 1519 and 1911 of 1963 can enter the list of graduate teachers counting the lengths of their services only from the date of their graduation and that the petitioner in O.P.No. 1755 of 1963 is not entitled to be in such list.

5. The petitioners are not able to point out any specific proceedings of the Government declaring the aforesaid qualifications as "equal" to graduate qualification. They rely on the prescription of those diplomas along with a Bachelor Degree as the minimum qualification for appointment as Language teachers in High Schools. I do not accept the contention that the prescription of several qualifications for eligibility for appointment to a post amounts to a declaration of equality of all those qualifications. It is trite knowledge that invitations for applications for appointment show the opportunity as available to persons of different qualifications. A Professorship may be advertised as available to candidates holding Ph.D. degree, M.Sc. degree or B. Sc. degree in the first class. Though persons holding any of those three qualifications may be eligible to apply or being appointed to the post, such a notification can never be taken to put the degree of Bachelor of Science as equivalent to Philosophiae Doctor.

6. Much reliance was placed by counsel on the proceedings of the Government of Travancore-Cochin, Education, Health Etc. Department, dated November 28, 1952, which run thus:

5. The revised scale has not been so far given to non-graduate language teachers pending decision on the question of "qualifications equivalent to graduation...But Government consider that it would be hard to postpone the fixation of salaries according to the new rule to the Pandits of the Private Secondary Schools. They also consider that the claim of Pandits now working in High Schools as permanent employees should receive special considerations as was shown in (he case of permanent Pandits of the Government High Schools. To avoid hardship qualifications such as Sahithyavisarada, Vidwan, R.B. Visarad, Vidwan Hindi and Arabic Munshi have been recognised as equivalent qualification for the present in regard to Pandits of Government High Schools. The same principle is extended to Private Schools also in regrd to all the Pandits appointed before 1-9-1950 in High School classes provided the appointments have been approved or can be approved by the Department....

(This passage seems to use the terms "non-graduate language teachers" and "Pandits" as synonyms.)

The Government feels in the above passage "that it would be hard to postpone the fixation of salaries to the Pandits" (non-graduate language teachers) "pending decision on the question of qualifications equivalent to graduation" and

that to avoid such hardship it recognises Sahityavisarada, R.B. Visarad, and Hindi Vidwan as equivalent qualification "for the present". I think "recognition" of certain qualifications as equal for a particular purpose—here, for purposes of fixation of pay—is one thing; declaration of equality of qualifications as such is another. It is made express in the above passage that while the latter is kept pending the former is being made by the Government as a temporary measure (indicated by the words "for the present") to avoid a particular hardship.

7. When the State of Punjab, at the time of its taking over certain schools run by local authorities, declared

All the incumbents of the Local Body schools to be provincialised with effect from the 1st of October, 1957 will be given the same grades of pay and other allowances as are given to their counter-parts already in government employ.

but later on discriminated them for purposes of promotions to higher grade, the Supreme Court held neither Article 14 nor Article 16 of the Constitution violated thereby, and observed:

Notwithstanding the paragraph quoted earlier conferring on the "provincialised" teachers "the same grade of pay and allowances as are allowed to their counter-parts already in government service" there is no specific provision or term in the government order expressly pointing to an intention to integrate it with the existing state service. On the other hand the very specification that the grades of pay and allowances of the provincialised teachers would be the same as of the others is, to say the least, more consistent with the absence of an intention to integrate, for if integration were intended, they would have the same pay and allowances by virtue thereof and no separate provision therefore would be necessary." State of Punjab Vs. Joginder Singh, .

Equality of pay and allowances and the interchangeability by transfers of the personnel of the newly absorbed service with those in the original State Service were held in that decision not to make a unification of the two services. The case here is weaker for the petitioners. Though holders of "qualifications such as Sahityavisarada, R.B. Visarad and Vidwan Hindi" were given pay equal to that of graduates "the decision on the question of qualifications equivalent to graduation" was held over at the same time.

8. Apart from the proceedings dated November 28, 1952, and the prescription of qualifications for appointments, nothing is relied on before me as tantamount to a declaration by the Government of the concerned qualifications, Vidwan, Rashtra Bhasha Visarad and Sahityavisarad being equivalent to graduate qualification. It must then follow that the claim of the petitioners to be counted among Graduate Language teachers by virtue of their acquisition of the qualifications, Vidwan, Rashtra Bhasha Visarad or Sahitya visarad, cannot be accepted.

9. Counsel for the petitioner in O.P.No. 1755 of 1963 pointed out that in the G.O. dated April 29, 1963, the Government has referred to graduate teachers and

graduate Language teachers only as entitled to upgrading in the ratio 2:7, and contented that that is likely to be construed to exclude Language teachers holding a qualification declared by Government as equivalent to graduation. To me that apprehension appears baseless. R. 6, Chapter XXVI of the Kerala Education Rules, is cited in that G.O. as providing "that Language teachers who have the graduate qualification or other qualification declared by Government to be equal to it shall be treated on the same footing as other graduate teachers and shall be included in the list of graduate teachers for fixing the number of first grade posts"; and that citation makes it clear beyond doubt that the Government has used the expression "graduate Language teachers", in juxtaposition with "graduate teachers", in the later parts of the G.O. as referring to all Language teachers having the graduate qualification or other qualification, if any, declared equal to it. Very probably the matter has not been so put in the G.O. because no such declaration has so far been made by the Government. In the result, these petitions fail and are dismissed with costs to the State.