
(2004) 03 PAT CK 0004
In the Patna High Court
Case No : L.P.A. No. 323 of 2004

Bihar State + 2 Lecturers Association and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Citation : (2004) 03 PAT CK 0004

Final Decision : Allowed

Judgement

1. The Appellants are aggrieved by the order dated 28.1.2004, passed by the learned Single Judge in CWJC No. 7224 of 1999, rejecting their claim of parity of scale with their trained counterparts.

2. Firstly, we will state the facts, which are not in dispute. Advertisement No. 1/1987 was issued in the year 1987 for appointment on the post of +2 Lecturers in the Government Schools, including the Nationalised Schools in the pay scale of Rs. 940-1660/- (Annexure 1 to the memorandum of appeal). The qualification prescribed in the advertisement for the said post was Post-Graduate Degree in IInd Class. There was no requirement of having a training for appointment to the said post.

3. Members of Appellant No. 1 -Association, including other Appellants applied and they were selected in the year 1989-90 in the same scale (Rs. 940-1660/-) for their appointment in the Nationalised Schools. The Government appointed a Fifth Pay Revision Committee and it made recommendation, which was accepted by the State Government on 18.12.1989 and the Lecturers of +2 Nationalised Schools were provided with the revised scale of pay of Rs. 1640/- to 2900/-. The scale of Rs. 1800/- to Rs. 3330/- was provided to the Lecturers or the Government Schools (the members of the Subordinate Education Service.)

4. As two different scales were provided, the matter was referred to the Pay Anomaly Removal Committee and the said anomaly was removed by the Committee and thereafter, on 8.2.1996 all the Lecturers of +2 Schools, whether

they were appointed in Nationalised Schools or in Government Schools, were provided one scale of pay of Rs. 1800/- to 3330/-. However, on 14.3.1997, the State Government, decided to provide revised scale of Rs. 1800/- to 3330/- to the Lecturers posted on the ex-cadre post in +2 Nationalised Schools and the scale of Rs. 2000-3500/- to the Lecturers posted in the Government schools. The said decision of the State Government was challenged by the Lecturers of +2 Nationalised Schools by filing CWJC No. 2445 of 1994, which was finally disposed of on 30.9.1997 and this "Court held that the Lecturers of +2 Nationalised Schools, appointed pursuant to the said advertisement, were also entitled to the same pay scale i.e. the revised scale of pay of Rs. 2000-3500/- as granted to the Lecturers belonging to the Subordinate Education Service. A copy of the said judgment has been appended as Annexure 2 to the memorandum of appeal. When the order of this Court was not complied with a contempt application being MJC No. 1160 of 1999 was filed and, thereafter, one scale of pay was provided to all the +2 Lecturers, irrespective their postings in +2 Nationalised Schools or Government Schools vide notification dated 10.6.1999.

5. While the matter was pending before this Court, the State Government with effect from 1.1.1996 decided to give central pay scale to the State employees and, accordingly, provided two scales on the basis of the said acceptance of the central pay scale. Pay scale of Rs. 5000/- to Rs. 8000/- was provided for +2 untrained Lecturers, whereas, pay scale of Rs. 6500-10500/- was provided for trained Lecturers. A copy of the said notification has been appended as Annexure 3 to the memorandum of appeal. The said notification was issued in pursuance of the resolution of the State Government dated 8.2.1999, accepting the recommendation of the Fitment Committee. Thus, two different scales were granted on the basis of training.

6. There was resentment amongst the employees, not only with regard to fixation of two different pay scales in case of t-2 Lecturers, but other employees also and to meet the said discontent and to resolve the anomaly, the State Government agreed for constitution of a Fitment Appellate Committee to be presided over by a sitting Judge of this Court and, accordingly, one man Fitment Appellate Committee was constituted vide notification dated 15.1.2000. It was agreed at the time of constitution of the one man Fitment Appellate Committee that the recommendation of the Committee would be implemented by the State Government with effect from 1.1.1996, but the material benefit would be allowed only with effect from 1.4.1997.

7. The Fitment Appellate Committee recommended the scale of Rs. 6500-10500/- to the +2 Lecturers without making any distinction on the ground of training by its recommendation. A copy of the recommendation has been annexed as Annexure "5" to the memorandum of appeal. The relevant portion is contained in paragraphs 31-49, wherein the Committee stated to the effect "However, this Committee feels that the ground that the original advertisement did not require "training" as an essential qualification is very relevant because

imposition of such conditions on a later date is clearly discriminatory and the present incumbents cannot be denied the higher scale of Rs. 6500-10500/-, even if they are untrained".

8. It further appears that the untrained +2 Lecturers were sent for training while they were in service by order dated 19.10.2000 (Annexure 6 to the memorandum of appeal), but the aforesaid order was subsequently withdrawn by order dated 22.1.2001 (Annexure 7 to the memorandum of appeal) on the ground that the training was not required for +2 Lecturers and also on the ground that the Fitment Committee has not considered the training as mandatory and granted the same pay scale to the trained and untrained teachers.

9. In spite of the aforesaid recommendation of the Fitment Appellate Committee and representations having been filed, the +2 untrained Lecturers were not given the scale of Rs. 6500-10500/- and, thereafter, they filed the writ application, which has been dismissed by the learned Single Judge. The learned Single Judge has come to the conclusion that the qualification is one of the most important factors for determining the pay scale and as such if the State Government has classified the +2 Lecturers in two categories on the basis of the qualification i.e. trained and untrained, the same cannot be said to be arbitrary so as to warrant interference by this Court. The learned Single Judge made the aforesaid observation though he noticed the fact that neither in the advertisement nor at the relevant time, there was any statutory rule providing that the training was essential requirement for appointment to the post of +2 Lecturer in the Nationalised School the State of Bihar.

10. learned Counsel for the Appellants submitted that in terms of the advertisement, the Post-Graduate qualification in IInd Class was the only requirement for appointment to the post of +2 Lecturer in the Nationalised Schools and the Government Schools and the training was not a necessary qualification for the said post. Trained and untrained Lecturers both were appointed in the same pay scale of Rs. 940-1660/- and they are performing same duties and responsibilities as the trained Lecturers and, accordingly, they are entitled to the same revised pay scale, which is being paid to the trained +2 Lecturers specially when the Fitment Appellate Committee has recommended for the same scale, which was constituted by the State Government with a clear term in the agreement that its recommendation would be binding on the parties.

11. learned Counsel for the State, on the other hand, submitted that the qualification is one of the important requirements. for fixation of pay scale and the State Government has rightly not accepted the report of the Fitment Appellate Committee and has maintained the two different scales, one for the untrained +2 Lecturers i.e. the scale of Rs. 5000-8000/- and the other for the trained +2 Lecturers i.e. the scale of Rs. 6500/- to Rs. 10,500/-.

12. Fixation of pay is the function of the Executive and it is normally based on the conclusions arrived at by the Expert Committee constituted for the said

purpose. The pay is fixed after taking into relevant considerations and the power of judicial review is very limited and the Court will interfere only when the fixation of pay is either based on irrelevant consideration, or arbitrary, or violative of any statutory provision. The public service consists of different grades and cadres. Different pay scales are provided for different cadres and grades. The pay scale is fixed after taking into consideration the duties and responsibilities and that determination, as stated above, is made on the basis of the recommendation made by the Pay Revision Committee. While fixing the pay scale, the Expert Body of the Government has to take into consideration several considerations, namely, the qualification, mode of recruitment, duty and responsibility, chances of promotion and many other considerations. Recently the Supreme Court in the case of the State Bank of India and Others Vs. K.P. Subbaiah and Others, held in paragraph 23 the factors, which are taken into consideration for fixing the pay structure, which runs as follows:

Ordinarily, a pay structure is evolved keeping in mind several factors, for example (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualifications required, (v) avenue of promotion, (iv) the nature of duties and responsibilities, (vii) the horizontal and vertical relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, and (x) the employer's capacity to pay etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause unavoidable ripples in other cadres as well.

13. In this case, as stated above, the State Government constituted a Fifth Pay Revision Committee, which made recommendations and provided two scales on the basis of training and non-training. A dispute was raised by the employees and the matter was referred to the Fitment Appellate Committee presided over by a sitting Judge of this Court and as stated above, vide Annexure 5, the said Committee has recommended the same scale to the +2 Lecturers, whether trained or untrained, on the ground that there was no such qualification at the initial point of entry and as such at subsequent stage untrained Lecturers cannot be put in a different pay scale than the scale provided to the trained Lecturers, specially when their pre-revised scale was the same. The grievance of these Appellants in this case is only with regard to parity of scale with +2 Lecturers, having a training, apart from Post-Graduate qualification.

14. Admitted fact is that the requirement of training, apart from other educational qualification, was provided in 2001 by enacting a Regulation being National Council for Teacher Education (Determination of Qualification for Recruitment of Teachers) Regulation, 2001, framed by the National Council for Teacher Education. At the relevant time, as stated above, neither there was any Rule or any Regulation requiring training as a condition precedent for appointment to the post of +2 Lecturer, nor such term was incorporated in the advertisement.

15. Thus, the appointments of trained and untrained +2 Lecturers were made in

terms of the said advertisement and their pre-revised scale was the same. They are discharging similar duties and it is not the case of the Respondent-State that the duties of the trained +2 Lecturers are more onerous and different from that of the untrained +2 Lecturers. Taking into view these aspects of the matter, we are of the considered opinion that there was no justification for the State Government not to accept the recommendation of the Fitment Appellate Committee. The Appellant No. 1 Association's members and Appellants No. 2 to 5 are entitled to the parity in the revised scale as that of the trained +2 Lecturers. The decision of the State Government to ignore their claim with regard to parity of scale is arbitrary, discriminatory and is not based on any rational or reasonable consideration. In other words, there is no occasion to make any distinction between the two classes of Lecturers on the basis of the training qualification. In holding that on the basis of the qualification two different scales would be provided as, in our view, at this stage such classification cannot be made in view of taking into consideration the mode of appointment, duty and responsibility and other relevant consideration, which were taken note of by the Fitment Appellate Committee constituted by the State Government.

16. In the result, this appeal is allowed, the order passed by the learned Single Judge is set aside and the members of Appellant No. 1. Association and Appellants No. 2 to 5 are held to be entitled to the same scale i.e. Rs. 6500/- to Rs. 10,500/- as has been given to the trained +2 Lecturers.