

(1987) 04 SC CK 0029

In the Supreme Court Of India

Case No : Civil Appeal No. 1371 of 1980 and Writ Petitions No's. 476 of 1979 and 11271-382 of 1985

Chaman Lal and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-04-1987

Acts Referred:

Citation : AIR 1987 SC 1621 : (1987) 54 FLR 612 : (1987) 2 JT 135 : (1987) LabIC 1299 : (1987) 1 SCALE 761 : (1987) 3 SCC 113 : (1987) 2 SCR 923 : (1988) 1 SLJ 1 : (1987) 2 UJ 246

Hon'ble Judges : O. Chinnappa Reddy, J; M. M. Dutt, J

Bench : Division Bench

Advocate : Pankaj Kalra, for the Appellant; V.C. Mahajan, C.V. Subba Rao, I.S. Goel and N.S. Das Bahl for the Respondents, for the Respondent

Final Decision : Allowed

Judgement

O. Chinnappa Reddy, J.—The appellants in the Civil Appeal and the petitioners in the Writ Petitions are all 'trained Graduates', that is to say, all of them possess the B.Ed. or B.T. degree in addition to the B.A. degree. They are teachers in Government schools in the State of Haryana. They did not possess the B.Ed. or B.T. degree when they joined service initially. They acquired the B.Ed. or B.T. degree qualification subsequent to their joining service which was between the years 1953 and 1973. Some of them acquired the B.Ed. or B.T. degree qualification before September 5, 1979 and in some cases after September, 5, 1979. The importance of the date September 5, 1979 will become evident as we proceed to state the facts. It appears that in the Haryana Educational Service, there were two categories of teachers described as Masters and Basic Trained teachers. 25% of the posts of Masters were reserved for promotion from the posts of Basic Trained teachers. Masters could be promoted to higher posts. There appears to have been some dissatisfaction regarding the scales of pay for teachers and so in 1957, there was a revision of the scales of pay by an order dated July 23, 1957. All teachers, according to their qualifications, were placed in

two broad categories, category 'A' consisting of B.A/B.SC./B.Com/B.Sc (Agriculture) and B.T., and Category 'B' consisting of 4 groups of whom Group 1 was "Matrics with basic training (including JBT)". The Government order mentioned the scales of pay as:

Category 'A' : Rs. 110-8-190/10-250 with a higher start for M.A. & M.Sc. As at present. The existence percentage of posts fixed by Government for scales of Rs. 110-8-190/10-250 and Rs. 250-300 should remain unchanged at 35% and 15% respectively. Category 'B' : Lower Rs. 60-4-80/5-120 Middle Rs. 120-5-175. Upper Rs. 140-10-200. With a view to providing incentives, it has been decided that posts falling in these groups should be in the following as:

Group I: Lower Scale 85%

Middle Scale 15%

15% of teachers in this group should straightaway be promoted to the middle scale by a selection based on seniority and merits, while the rest should be given the lower scale.

What is important to be noticed here is that the scale of pay was linked to the qualification. A question was raised whether teachers who started as Basic Trained teachers and later acquired the B.Ed. or B.T. qualification, but who could not be adjusted against posts of Masters would be entitled to the grade of Rs. 110-250? Answering a query, the Secretary of the Department of Education replied, "Your presumption that teachers holding B.A., B.T./B.A., B.Ed. qualifications would henceforth be placed in Category 'A' is confirmed". The question also came to be considered judicially, first by the High Court of Punjab & Haryana and later by the Supreme Court in *State of Punjab and Another Vs. Kirpal Singh Bhatia and Others*, . The Supreme Court, affirming the judgment of the High Court of Punjab & Haryana, held as follows:

The High Court rightly referred to the letter of the Secretary of the Department dated 24th September, 1957 that teachers holding B.A., B.T./B.A., B.Ed. qualification would henceforth be placed in Category 'A'. The High Court rightly came to the conclusion that the scale of pay of Rs. 110-250 would be effective either from the date when the teachers would pass the examination of Bachelor of Teaching or its equivalent or 1st May, 1957 whichever is latter.

While the writ petitions were pending in the High Court, the Government of Haryana issued an order directing further revision of the scales of pay of teachers working in Government schools in 1960. It was expressly stated in the order that the scales of pay were being revised consequent on the acceptance of the recommendations of the "Kothari Commission". One of the questions which the Kothari Commission had considered in great detail was the scales of pay of teachers. The Commission had strongly expressed the view that the scales of pay should be linked to educational qualifications. In paragraph 3.15 of their report, the Commission said:

3.15 Our first proposal is that the existing multiplicity of scales of pay should be reduced and that there should be three main scales of pay for school teachers:

- (1) A scale of pay for teachers who have completed the secondary course and are trained and who would form the vast bulk of teachers at the primary stage;
- (2) A scale of pay for trained graduates who would form a small proportion of teachers at the primary stage but the vast bulk of teachers at the lower secondary stage;
- (3) A scale of pay for teachers with post-graduate qualifications who would form a small proportion of teachers at the lower secondary stage, but the bulk of teachers at the higher secondary stage.

Incentives to teachers of special subjects or to teachers with additional qualifications can be given in the form of advance increments or special allowance. The scales of pay of special teachers (i.e. for drawing, craft, physical education, etc.) can also be related to these three basic scales in some suitable manner. The scales of pay for librarians should also be related to those for teachers in a suitable manner.

Again in paragraph 3.16(3), they said:

Our attention has been drawn to an anomaly which must be removed as early as possible, Several States restrict, on financial grounds, the number of posts which carry the scale of trained teachers who have completed the secondary school course. The remaining posts are usually assigned to lower scales of pay sanctioned for teachers with lower qualifications. Not infrequently, persons with lower qualifications are recruited to these posts even when qualified and trained teachers are available. This is bad enough; but what is worse, even trained and qualified teachers who are recruited against the posts are given, not the salaries of qualified and trained teachers to which they are entitled but the lower salaries meant for these posts. As the completion of secondary school course and two years of professional training are accepted as the minimum qualification for a primary teacher, this practice should be abandoned as early as possible and the principle adopted that every trained teacher who has completed the secondary school course received the scale of pay sanctioned for such teachers. This will remove an injustice now being done to a large number of teachers in service, and create an incentive for unqualified or untrained teachers to become qualified and trained.

In Paragraph 3.17(3), they said:

The scales of pay of trained graduate teachers should have a minimum of Rs. 220 rising to Rs. 400 in a period of about 20 years. There should be a selection grade which would rise to Rs. 500 and be available to about 15 per cent of the cadre.

We mentioned earlier that even in 1957, the Government of Punjab (which at

that time included Haryana) had already accepted the principle of linking pay to qualification as evident from their order dated July 23, 1957. Accepting the Kothari Commission's recommendations, they revised the scales of pay with effect from December 1, 1967 in the following manner:

Sr.Caterogory of teachers Revised Grade No. 1. J.B.T./J.S.T/J.A.V.C.&V i) Rs. 125-5-150/5-250 teachers drawing master (for 85% of the cadre) Tailoring Mistress Art & ii) Rs. 250-10(for 15% of Science Mustresses & Shastries. (for 15% of the cadre) N.B. The untrained teachers with High Secondary/ Matriculation qualifications will draw the starting of Rs. 100 per mensem and they will be integrated in the regular pay of scales only after they attain necessary provisional qualification.

i) (Rs. 220-8-300/10-400 (for 85% of the cadre) 2. Masters/Mistresses ii) Rs. 400-20-500 (Trained Graduates) (for 15% of the cadre) N.B. i) The Ist and 2nd class Graduates will be entitled to draw one advance increment in addition.

(ii) The untrained Graduates will be allowed the starting salary of Rs. 200 per mensem and will be entitled for the regular scales of pay only after attaining the prescribed professional training."

Though the 1968 order had come into force with effect from December 1, 1967, it was not suggested either before the High Court or before the Supreme Court when Kirpal Singh Bhatia's case was decided that the 1968 order had made any departure from the principle of the 1957 order that trained Graduates would be entitled to the higher scales of pay. The question however was raised in Civil Writ No. 2505 of 1972 in the High Court of Punjab and Haryana and it was decided in that case that teachers who did not originally possess the B.T./B.Ed. qualification but who acquired such qualification on various dates between 1960 and 1970 were entitled to the higher scale of pay of Rs. 220-300/400 with effect from the respective dates of their acquiring the qualification irrespective of the dates on which they were adjusted against the posts of Masters. After the judgment of the High Court was pronounced consequential orders were issued by the Government on November 20, 1973. The question arose again in Civil Writ No. 1991 of 1976 and other cases when it was disposed of by a Division Bench of the High Court of Punjab and Haryana on November 1980 with the following order:

The learned Counsel for the parties are agreed that the matter in this and writ petitions Nos. 1991 of 1976, 3829 of 1975, 4449 of 1974, 5227 of 1975, 5539 of 1975, 2247 of 1973, 7726 of 1976 and 7813 is covered by the decision of the Supreme Court reported as State of Punjab and Ors. v. Kirpal Singh Bhatia and Ors. [1975] 2 Ser L R 621 and these petitioners have to be allowed to in terms of the aforesaid judgment of the Supreme Court.

The learned Advocate General, Haryana states that the benefit which flowed because of the Judgment of the Supreme Court in Kirpal Singh Bhatia's case (supra) has been given to the petitioners in all these petitions. Mr. J.L. Gupta learned Counsel for the petitioners, shows ignorance about this fact. Whatever

be the circumstances, the petitioners are allowed in view of the judgment of the Supreme Court in Kirpal Singh Bhatia's case (supra) with no order as to costs.

It is thus seen that from 1957 to 1980 whenever the question arose, it was always accepted that teachers who acquired the B.T. or B.Ed. qualification would be entitled to the higher scale of pay as soon as they acquired the qualification irrespective of the dates when they were adjusted against the posts of Masters. The adjustment against the posts of Masters was relevant for the purpose of seniority in the posts of Masters and for the further purpose of promotion from that post. So far as the scale of pay was concerned, irrespective of adjustment against the post of Master, a teacher was always held to be entitled to the higher scale of pay from the date of the acquisition of the B.T. or B.Ed. qualification.

2. On September 5, 1979, the Government of Haryana issued an order in the following words:

Sanction of the Governor of Haryana is hereby accorded w.e.f. 5.9.1979 of the grant of Masters grade to unadjusted J.B.T. teachers who have passed B.A.B.Ed., subject to the following conditions:-

- (i) That the expenditure involved would be met from the savings of the current year revised sanctioned estimates.
- (ii) That these teachers will not be allowed any seniority in the cadre of masters.
- (iii) That it will not form a precedent for future.
- (iv) That the award of Master's grade to the concerned teachers would be personal to them.

This order of the Government is now sought to be interpreted and it has been so interpreted by the High Court of Punjab and Haryana in the judgment under appeal that those teachers who had acquired the B.T. or B.Ed. qualification subsequent to December 1, 1967 (the date on which the 1968 order came into force) and before September 5, 1979 would be entitled to the higher grade but with effect from September 5, 1979 only and that those who acquired the qualification subsequent to September 5, 1979 would not be entitled to the higher grade. According to the judgment of the High Court under Appeal, the 1968 order did away with the principle of the 1957 order that teachers acquiring B.T. or B.Ed. qualification should get the higher grade and that a concession was shown in 1979 enabling the teachers who acquired the B.T. or B.Ed. qualifications between 1968 and 1979 to get the higher scale from 1979. In our opinion this is plainly to ignore all the events that took place between 1957 and 1980. The principle that pay should be linked to qualification was accepted by the Punjab Government in 1957 and when Kirpal Singh Bhatia's case was argued in the High Court and in the Supreme Court there was not the slightest whisper that the principle had been departed from in the 1968 order. In fact the 1968 order expressly stated that the Government had accepted the Kothari Commission's report in regard to scale of pay was the linking of pay to qualification. That was

apparently the reason why no such argument was advanced in Kirpal Singh Bhatia's case. Even subsequently when several writ petitions were disposed of by the High Court of Punjab and Haryana and when the Government issued consequential orders, it was never suggested that the 1968 order was a retraction from the principle of qualification linked pay. The 1968 order must be read in the light of the 1957 order and the report of the Kethari Commission which was accepted. If so read there can be no doubt that the Government never intended to retract from the principle that teachers acquiring the B.T. or B.Ed. would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. The 1979 order was indeed superfluous. There was no need for any special sanction for the grant of Master's grade to unadjusted JBT teachers who had passed B.A., B.Ed. That was already the position which obtained both as a result of the 1957 and 1958 orders and the several judgments of the Court. We do not think that the Punjab and Haryana High Court was justified in departing from the rule in the judgment under appeal. The rule had been well established and consistently acted upon. Nor was it open to the Government to act upon the principle in some cases and depart from it in other cases. In the result we allow the appeal and the Writ Petitions and direct the respondents to give the higher grade admissible to Masters to all the teachers who have acquired the B.T./B.Ed. qualification with effect from the respective dates of their acquiring the qualification. The appellants and the petitioners are entitled to their costs.