

(2009) 07 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 2557 of 1993

Dhananjay Ramkrishna Tukakne

APPELLANT

Vs

Visvesvaraya National Institute of Technology (Deemed University) and Others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 6 BomCR 172 : (2010) 124 FLR 142 : (2009) 6 MhLj 242 : (2009) 7 SLR 617

Hon'ble Judges : S.A. Bobde, J;F.M. Reis, J

Bench : Division Bench

Advocate : A.C. Dharmadhikari, for the Appellant; A.R. Patil, for respondent Nos. 1 and 2, T. Khan and S.J. Jichkar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Reis, J.—This writ petition has been filed seeking inter alia writ, order or direction declaring that the action of respondents in not fixing the petitioner to the pay scale of Rs. 22004000 as applicable to the Lecturer is violative of Articles 14 and 16 of Constitution of India and for a direction to the respondents to pay the petitioner in the said pay scale. It is the case of the petitioner that he passed HSSC Examination in the year 1972 from the Board of Higher Secondary Education, Bhopal, Madhya Pradesh and he has also passed B.E. (Electrical Engineering) in First Division in the year 1977 from Government College of Engineering and Technology, Raipur (M.P.) and also passed M. Tech. in Design and Production of Heavy Electrical Equipment from Moulana Azad College of Technology, Bhopal. The petitioner came to be appointed by Respondent No. 1 as Senior Technical Assistant in the pay scale of Rs. 590900 (pre revised) and was confirmed as a Senior Technical Assistant on 6.9.1990. It is further his contention that he has been continuously working from the date of his appointment with excellent record and that though he was designated as a Senior Technical Assistant till he retired, he was performing his duties as a Lecturer. The

allegation of the petitioner is that he used to deliver lectures in theory classes instructing in Laboratories, assessing and evaluating the students etc. and even assisting in Research work during the course of his duties. It was further his contention that the SubCommittee of the Governing body of respondent - College, considering the representations of the petitioner, had recommended that post of Senior Technical Assistant and Lecturer are equivalent and that the pay scale of a Senior Technical Assistant should be fixed as Rs. 20003500. It was further his contention that on the basis of principle of equal pay for equal work, the said scale is applicable though the said recommendations are not being implemented. It is further his contention that the qualifications of a Lecturer and Senior Technical Assistants is equivalent and the work being done by them is identical so far as teaching experience is concerned. In support of his allegations, the petitioner has produced documents which have been attached to the petition.

2. Respondents No. 1 & 2 have filed their reply to the said petition. It was the case of the respondents that the duties of the petitioner are assisting the Research students, Scientists, Scientists Grade B and Scientists Grade C and Professors who carried out research in the Research laboratory. The contention of the petitioner that he was delivering lectures to the students of B.A. Classes was disputed by the said respondents and that the certificates produced by the petitioner disclose that the teaching undertaken by him with Scientists Grade B and Grade C and that it is a part of the duties of the Scientists which have been recruited to share 50% of the load of the teaching to the students of B.E. Classes and rest of the periods, they have to devote to the research work of which the technical assistants like the petitioners assisted them. It was further their contention that the petitioner is only a Senior Technical Assistant and he is not doing the work of a research. It was further their case that the minimum qualification for recruitment of a Senior Technical Assistant was B.E. First Class whereas the minimum qualification of the Lecturer is First Class Masters degree in Engineering and therefore, the petitioner could not have been regarded as a Lecturer in the year 1985. It is further their contention that the minimum work load of a lecturer in any Engineering college is 21 periods in a week and that the petitioner never gave such amount of lectures. The allegations of the petitioner that the higher scale was recommended by the SubCommittee was denied. It was further their case that in order to gain experience in giving lectures so as to enable the petitioner to have experience, he used to be allowed to give lectures whenever the post was vacant. It was further their case that the petitioner had in fact applied for the post of Lecturer in open selection in the year 1993 but was not selected on the ground that he was over aged. As such, the respondents prayed that the present writ petition deserve to be dismissed.

3. Heard Shri Dharmadhikari, learned Counsel for the petitioner, Shri Patil, learned Counsel for respondents No. 1 & 2, Ms. T. Khan, learned Counsel for respondent No. 3 and Shri Jichkar, learned AGP for respondent No. 6 and perused the records. The learned Counsel for the petitioner submitted before us that on the basis of material, it was evident that the petitioner was working as a

Lecturer and performing all the functions of Lecturer. It is further his contention that the documentary evidence which has been produced by the petitioner disclosed that the petitioner was working as a guide for under Graduate and Post Graduate of VRCE. They further disclosed that the petitioner taught the students, presented research papers and participated in Summer School and valued the papers of B.E. Students of the Nagpur University examination. The time tables produced disclose that in the year 1993-94 to 1995-96, the petitioner was allowed periods both in theory as well as practicals and that he was appointed examiner in University practical examination and remuneration was duly paid to the petitioner. The communications were also produced to show that the petitioner has been engaged and appointed as valuer of papers. The certificate showing that the petitioner had participated in short term training programme and also working as a examiner for Competitive Examination shows that the petitioner was working as a lecturer. The learned Counsel further contended that in view of the said documents on record though the petitioner was designated as Senior Technical Assistant he was in fact discharging the duties of Lecturer and as such by the principle of equal pay for equal work, the petitioner is entitled to the pay scale as claimed in the above petition. In support of his contention, the learned Counsel relied upon the judgment of this Court in the case of Dr. Sakhaullah Khan Vs. Visvesveraya Regional College of Engineering, Nagpur, .

4. On the other hand, the learned Counsel for the respondents disputed the contentions of the petitioner and submitted that the workload performed by a Lecturer is much more than that which was alleged to have been performed by the petitioner. It is further his contention that the petitioner never performed the work of a Lecturer but on the contrary the work done by the petitioner was in his capacity as Senior Technical Assistant and incidentally in performance of his duties, he used to give some lectures to the students. The learned Counsel further submitted that there is no sufficient material on record to come to the conclusion that principle of equal pay for equal work is applicable to the facts of present case as the material disclosed that the petitioner was not performing the functions of Lecturer. In support of his contention, he has relied upon the judgment of the Hon"ble Apex Court in the case of State of Karnataka v. C.K. Pattamashetty reported at : (2004) 6 SCC 685.

5. Having heard the learned Counsel for the parties, we find that the question as to whether the petitioner was performing the equal work to be entitled for equal pay as Lecturers are disputed questions of fact and the evidence on record would not suffice us to come to any definite conclusion in that regard. We accordingly wanted to relegate the petitioner to file alternate remedy to enable the petitioner to produce sufficient evidence to show that in fact he was performing equal work as that of the Lecturers. But, however, learned Counsel for the petitioner submitted that he was not in a position to adduce any further evidence and the only material which was available with the petitioner was one produced before us and urged that the present writ petition be decided on the basis of records which have been produced by the petitioner.

6. We have perused the record and we find that there is no conclusive evidence before us to come to the conclusion that the petitioner was performing the equal work as a Lecturer to be entitled for equal pay. In fact all the documents referred to above by the learned Counsel for the petitioner only disclose that the petitioner was incidentally giving some lectures though he was simultaneously performing the duties of a Senior Technical Assistant. The time table produced by the petitioner shows that for some academic year, there were some periods allotted to him. Apart from that merely because he was assigned the work of assessing the papers or was asked to prepare the question papers by the University, we cannot jump to the conclusion that he was performing equal work as that of a Lecturer. The definition of "Teacher" as per Nagpur University Act, 1974 reads as under:

"Teachers" means a full time Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method or Director of Physical Education, if any, in any conducted, constituent or affiliated College or recognised institution in the University, and includes any other persons, imparting instruction or guiding research, whether serving full time or part time or in an honorary capacity, who are designated to be Teacher by the Statute made on the recommendation of the Academic Council.

The above definition shows that the word Teacher inter alia includes Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method or Director of Physical Education, etc. which means that even a Technical Assistants who are demonstrators are also teachers. As such merely because the petitioner was teaching, does not mean that he is a lecturer.

7. The judgment relied upon by the learned Counsel for the petitioner is not at all applicable to the facts of the present case. In that case before this Court, the petitioner therein had produced ample evidence on record to show that he was discharging the functions and doing the work of Lecturer, after the retirement as a Professor and was discharging all the functions of the retired Professor as a Lecturer and consequently the petitioner therein was held to be entitled to the pay scale of a Lecturer from the date of the retirement of the Professor. The facts in the present case, on the contrary do not disclose that the petitioner has at any time substituted or was asked to substitute any Lecturer or to perform all the functions of a Lecturer. Apart from that the petitioner himself has stated in para 14 of the petition that the Lecturers were assigned 21 Lectures in a week, however, the petitioner was said to be allotted between 8 to 10 lectures in a week. This itself shows that the petitioner was not doing all the work of a lecturer to be entitled for equal pay. Besides that there is no evidence on record to show that the petitioner was continuously doing the work of giving lectures as alleged by him during his whole tenure with the respondents. The amount of time spent to perform functions of Senior Technical Assistant as against the time spent for giving lectures as alleged by him cannot be ascertained from evidence on record. Consequently, from the documents produced by the petitioner in the

present case, it cannot be said that there is evidence to disclose that he was performing and discharging all the functions of the lecturer. The burden to prove that he was doing equal work as a Lecturer was on the petitioner and on the basis of material on record such burden has not been discharged by the petitioner. The quantum of work may vary and it is not a matter of assumption but one of proof to establish that the duties, responsibilities and functions performed by the petitioner are those of a Lecturer. The material produced by the petitioner does not support the contention of the petitioner that he was doing equal work as a Lecturer.

8. The judgment relied upon by learned Counsel for the respondents in the case of *State of Karnataka v. C.K. Pattamashetty* (supra), is also not applicable to the facts of present case as the question for consideration therein was whether a person appointed as a Honorary visiting Professor without any financial commitment could be treated as a teacher. This is not at all the case of the respondent that the petitioner was appointed without any financial commitment.

9. The judgment of the Apex Court in the case of *Chandigarh Administration v. Smt. Anita Sood and Ors.*, was dealing with a case wherein persons were claiming that they performed same functions as were performed by the Lecturers but that they were not given the same salary and as such on the basis of claim of equal pay for equal work, they claimed the pay scale of the Lecturers post. It is observed therein that it is common knowledge that in various departments of University, different subjects are taught to the same set of students by different teachers who may be Lecturers, Assistant Professors or Professors. A teacher who is a Lecturer cannot claim that he be given the same salary as given to a Professor who teaches a different subject or the same subject to the students. The quality and standard of teaching of a Professor is a point to be of much higher standard than that of a Lecturer. Keeping in view the qualitative difference in the standard of teaching of two teachers, it cannot be claimed that they are entitled for same pay scale. A teaching assistant is entirely a different class of teacher than that of a Lecturer. In view of said judgment, the petitioner who was performing the functions of a Senior Technical Assistants cannot have the same standard of teaching as that of a Lecturer as the responsibilities of Lecturer are different from those assigned to a Senior Technical Assistant.

10. Having regard to the facts of the above case, the material on record does not support the case of the petitioner that he is entitled for equal pay for equal work as that of a Lecturer. In view of the above, there is no merit in the present writ petition and consequently the same is dismissed with no order as to costs. Rule discharged.