

(1986) 08 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 464 of 1986

Jagpal Singh and Another

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 28-08-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1986) 15 ILR HP 570

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : A.K. Gupta, for the Appellant; P.N. Nag, General, for the Respondent

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—The petitioners, who were untrained matriculates, were appointed against the posts of J.B.T. teachers on a fixed salary of Rs. 40/- per month in 1967 and 1968 respectively. While in such employment, the petitioners improved their educational qualification inasmuch as the first petitioner passed the B.Ed. examination on July 8, 1972 and the second petitioner passed the same examination on December 2, 1972. In the year 1973, both the petitioners were directed to undergo the J.B.T. training at Kullu. In view of their having acquired the improved qualification, as aforesaid, they made a representation to the Department not to compel them to undergo the J.B.T. training. The Department accepted their representations and accorded ?exemption? taking into consideration the fact that the petitioners having acquired the qualification of B Ed., it was not necessary for them to undergo the J.B.T. training. The petitioners were thereafter allowed to continue against the J.B.T. posts in the usual pay scales admissible to the J.B.T. teachers on the extent terms and conditions.

2. Be it stated that the directions abovementioned were issued in a communication dated August 25, 1973, addressed by the Director of Education, Himachal Pradesh, to the Distric Education Officer, Sirmaur. A copy of the

communication was endorsed to the Secretary (Education) to the State Government. The learned Advocate General has placed on record a copy of the said communication, the material portion of which reads as follows :

Sub. Junior Basic Training for untrained teachers at Kulu.

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Since Shri Jagpal Singh*, who was originally appointed as an untrained Matriculate in 1968, has improved his qualification and now holds the qualification of B. Ed., it is not necessary for him to undergo J.B.T. Training. He may, however, be allowed to continue against J.B.T. post in the usual pay scale admissible to J.B.T. teachers on the present term and conditions. For the post of Trained Graduate, he will have to compete for it, along with Ors. , as and when posts are advertised by the Commission, but no hope of selection can be held out to him by this office. Shri Jagpal Singh will, therefore, have to apply to the Commission for the post of Trained Graduate when the posts of Trained Graduates are advertised by the Commission next as it will not be possible to allow him to continue against a J.B.T. post for an indefinite period. This may be brought home to Shri Jagpal Singh.

Petitioner No. 1

It is not in dispute that an identical communication was issued in the case of Sagar Kumar (Petitioner No. 2).

3. It appears that the State Government granted higher scales of pay to the various categories of teachers on the basis of their acquiring higher academic qualifications while in service. Such higher pay-scale was allowed to the trained J.B.T. teachers also. However, the petitioners were denied the benefit of the higher pay-scale on the ground that they were not qualified when initially appointed and that they had not undergone the J.B.T. training. The petitioners had thereupon instituted Civil Writ Petition No. 633 of 1985, on which an order was passed on October 1, 1985, directing that the petition be treated as a representation made to the competent authority and that the same be decided by a reasoned order to be made within the specified time-limit. The representation accordingly made was decided on May 8, 1986. The representation was rejected for the following reasons:

In this connection it is pointed out that both of you were appointed as untrained Matriculate and were selected to undergo J.B.T. Training at Kullu during the sessions 1973-75 but later an exemption to undergo J.B.T. training was granted on your request with the condition that since you have improved your qualifications and hold the qualification of B.Ed. and as such, it is not necessary for you to undergo J.B.T. training. You were, however, allowed to continue against J.B.T. posts in the usual pay scale admissible to J.B.T. Teachers on the present terms and conditions. It was made clear to you that for the post of T.G.T. you will have to compete for it along with Ors. and when posts are advertised by

the Commission but no hope of selection can be held out to you from this office.

From the above it is clear that you cannot be absorbed against the 25% quota reserved for Junior categories of teachers after improving their qualifications. Secondly, you will not get higher pay scale of T.G.T. automatically by virtue of office memo No. Fin (C)B(7) 44/77, dated 27-9-79. In the circumstances, the letter of the Finance Department cannot be read in isolation to give impetus to allow higher scale of pay to you on account of having improved the qualification. But the letter of Finance Department has to be read together with the letter of exemption.

4. The petitioners have thereupon instituted the present writ petition and sought the relief with regard to the grant of the higher pay scale on the basis of their having attained the higher academic qualifications. The petition is resisted on the same grounds on which the representation was rejected by the competent authority.

5. One more thing requires to be adverted to at this stage. At Annexure P-I is an office memorandum dated September 27, 1979 which deals with the question of the grant of higher pay scales in respect of different categories of teachers in the Education department vide the decision of the State Government contained in the letter dated December 13, 1958. The Office memorandum points out that the instructions contained in the letter dated December 13, 1958 were not properly understood since the intention of the Government was not therein brought out in unambiguous terms and that it had, therefore, resulted in the automatic grant of higher pay-scales to various categories of teachers in the lower grades. Then follow the following pertinent observations/directions regarding the conferment of the said benefit on eligible teachers :

In order to ensure that these unintended and large financial implications do not continue arising in future the whole matter has been reconsidered by the Government. As a result of this reconsideration the Governor of Himachal Pradesh is pleased to order that henceforth the teachers of Education Department shall not become entitled to be placed in the higher scales of pay in terms of para 3 of aforesaid letter automatically on their improving/acquiring higher qualifications during the course of their service. The masters and teachers in the Education Deptt. will be placed in the scales of pay of their respective category to which they are appointed against the sanctioned posts and mere possession/ acquisition higher qualifications prescribed for other categories of posts will not entitle them to automatically claim higher pay scales. However, in order to avoid discrimination between teachers who have already been allowed higher scales of pay on account of having improved their qualifications and those who have not yet been allowed their benefit even though they also possess higher qualifications, it is decided that all teachers in the Education Department who have improved their qualifications before the issue of the letter may be allowed the benefit of higher scale of pay on the basis of their qualifications. This benefit shall not be allowed to those who are appointed or improve their

qualifications after the issue of this letter.

(Underlining Supplied)

6. On a bare perusal of the extracted portion of the office memorandum, it is clear that the directions therein contained were to apply prospectively and, accordingly, from the date of the issue of those directions, the teachers of the Education Department were not to become automatically entitled to be placed in the higher pay-scales upon their improving/acquiring higher educational qualifications during the course of their service. However, in order to void the discrimination between the teachers who had already been allowed the higher scales of pay on account of their having improved the qualifications and those who had not yet been allowed the said benefit even though they also possess the higher qualifications, all teachers in the Education Department, who had improved their educational qualifications before September 27, 1979, were directed to be granted the benefit of the higher pay-scales on the basis of their improved qualifications.

7. Against the factual background referred to in the earlier part of the judgment, it is clearly manifest that the case of the petitioners is covered by the directions which were issued vide Annexure P-1. To recapitulate, the petitioners, though not qualified, were appointed as J.B.T. teachers against vacant posts on a fixed salary. They were directed to undergo the J.B.T. training sometime in 1973. However, since they had acquired B. Ed. qualification meanwhile, they were exempted from the requirement of undergoing the J.B.T. training in acceptance of their representation and they were allowed to continue against the J.B.T. posts in the regular pay-scale subject to certain conditions. The true legal effect of the orders accordingly issued in 1973 was to relax the requirement of their undergoing the J.B.T. training since they had meanwhile acquired a higher academic qualification in the speciality of teaching and to treat them as having been duly appointed against the J.B.T. posts in the regular pay scale. Once the exemption was accordingly granted pursuant to the acquisition of the higher educational qualification while in service and they were placed in the regular pay scale of J.B.T. teachers, there was a complete fusion of the petitioners with the regularly appointed J.B.T. teachers by their being brought into a common stream of service. They lost their birth mark on such fusion. Their genetic blemishes disappeared once they were integrated into a common class. They cannot be treated differently thereafter by reference to the consideration that they had not been initially recruited as trained J.B.T. teachers and that they had not taken the J.B.T. training even after their recruitment. The principle underlying the decision in Roshan Lal Tandon Vs. Union of India (UOI), will be attracted in the present case with the continuance of the petitioners against the J.B.T. posts after exempting them from undergoing the J.B.T. training and after their placement in the regular J.B.T. pay scale. There is no moral or legal justification for the denial of the benefit of the higher pay scale to them on the ground that although exemption was granted from undergoing the J.B.T. training and the placement

against J.B.T. posts in the regular pay scale was permitted, the petitioners still continued to constitute a different class from the regularly appointed J.B.T. teachers or from the teachers who had later on undergone the J.B.T. training successfully. Under the circumstances aforementioned, the denial to the petitioners of the higher pay scale, even though they had acquired higher educational qualification while in service prior to September 27, 1979, is wholly illegal, irrational and arbitrary.

8. It is true that the principle of integration or fusion does not preclude a reasonable classification being made between persons brought into the common stream for the purposes of the conferment of certain further benefits. For example, classification made on the basis of educational qualifications for the purpose of eligibility to promotion with a view to achieving administrative efficiency has been held not to rest on any fortuitous circumstance so as to attract the inhibition of Articles 14 and 16. In the present case, however, the purported classification between teachers who had been inducted in service after having undergone the J.B.T. training or who underwent such training after the induction and those who were unqualified when inducted and were later exempted from undergoing such training on account of their having obtained a higher educational qualification in the speciality of teaching while in service, could not have been rationally made so as to deny to the latter the benefit of higher pay scale. Such a classification would not stand the judicial scrutiny also on the ground that the differentia has no just and rational relation to the object sought to be achieved, namely, to give impetus to in service teachers to improve their educational qualifications so as to better their equipment and efficiency. The Constitution having prescribed the code of equality and equal opportunity, any and every classification must be founded on a reasonable basis and must bear a rational nexus with its purported object. In other words, the classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved. Minute and microscopic classifications are ordinarily devoid of rationality and destructive of the egalitarian faith. They tend to evolve through irrational extensions and exclusions a theory of classification which may subvert, perhaps submerge, the previous guarantee of equality. Excellence must, of course, be the goal of all good government. Excellence and equality, however, are not unfriendly bed-fellows. A pragmatic approach must, therefore, be adopted in order to harmonise the requirements of public services with the aspirations of public servants. A good administrator must always regard these principles as the guiding star in the firmament of public services.

9. True it is also that a condition was imposed in the order granting exemption to the effect that for the posts of Trained Graduate Teachers the petitioners would have to compete along with Ors. in the direct recruitment quota and that they would not be eligible to be absorbed as Trained Graduate Teachers against the 25 % quota reserved for the junior categories of teachers who had improved

their qualifications. The imposition of such a condition at the time of the grant of exemption cannot operate so as to deprive the petitioners of the benefit of a higher pay scale under Annexure P-I for the simple reason that the two matters, namely, eligibility for absorption against the 25 % quota and the grant of higher pay scale on account of improved qualifications by virtue of Annexure P-I are two distinct and separate matters. Besides, if any artificial distinction on the basis of such a condition is sought to be created or sustained in respect of the J.B.T. teachers who have been otherwise integrated into a common stream for all practical purposes, the condition itself may be exposed to the risk of a challenge of voidness based on Articles 14 and 16 on the ground that it is unconscionable, unfair, unreasonable and arbitrary. The fact that the petitioners had accepted the condition cannot be pleaded as a bar because, firstly, there was no inequality of bargaining power and secondly, there can be no estoppel or waiver of fundamental rights since no individual can barter away the fundamental freedoms or rights conferred upon him by the Constitution whose provisions are conceived in the public interest and are intended to serve a public purpose.

10. For the foregoing reasons, the petitioners are entitled to succeed in the present petition. A writ will issue to the Respondent directing that the petitioners be granted the benefit of the higher scale of pay on account of their having improved their educational qualification while in service and that such higher scale of pay shall be sanctioned to them from the day they were placed in the regular pay scale of J.B.T. teachers by granting them exemption from the requirement of undergoing the J.B.T. training. The pay of the petitioners in the higher pay scale shall be fixed forthwith so that the future pay and allowances can be drawn by them accordingly on and from October 1, 1986. The arrears shall be worked out and paid to them within a period of eight weeks from today.

11. Rule made absolute accordingly with no order as to costs.