
(2000) 01 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 7168 of 1990

Janardan Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2000) 2 BLJR 1132 : (2000) 4 PLJR 19

Hon'ble Judges : B.P. Singh, Acting C.J.; Bharat Prasad Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bharat Prasad Sharma, J.—These cases have been filed on behalf of some of the technical supervisors and workshop superintendents working under the Rajendra Agricultural University (hereinafter referred to as the University) for a common relief. Therefore, they have been heard together and are being disposed of by a common order. Basic question that has been raised for consideration is whether technical supervisors and workshop superintendents working under the University are University teachers within the ambit and scope of Section 2(xxviii) of the Bihar Agricultural University Act, 1987 (hereinafter referred to as the "Act") and instructions framed and issued thereunder by the University? If so; whether they are entitled to the University Grants Commission's new revised scales of pay to all the University teachers of Agricultural University and other consequential benefits.

Another prayer has also been made challenging the validity of the Faculty Development Programme of the University vide minutes of the proceedings dated 24.12.1993. (Annexure 10 of C.W.J.C. 4247 of 1996) rejecting the claim of the petitioners to allow them to participate in the Faculty Development Programme which is being provided to the teachers of the University instead of providing them facility of Professional Development Programme which is being exclusively made for non-teaching members of the University.

2. Admittedly, as would appear from the University Statutes, there are four faculties in the University.-(a) Agriculture, (b) Veterinary Science, (c) Basic Science and Humanities and (d) Home Science. Apart from the posts in these faculties, a number of posts equivalent to the post of Professors and Associate Professor have been sanctioned. The existing categories of posts are Deans and Directors, Principals of Colleges and Directors, Research Institutes, Professors in Colleges and equivalent staff on the research and extension side, Assistant Professors in colleges and equivalent staff on the research and extension side and Lecturers/Assistant Lecturers/Assistant Research Officers and equivalent staff on extension side.

3. This is also not in dispute that University Grants Commission formulated a scheme of revised scale of pay of the teachers of Agricultural Colleges and Universities. The Indian Council of Agricultural Research also agreed to extend the benefit of the University Grants Commission's new revised scale to all the teachers of the Universities and accordingly, the State Government, also granted sanction and agreed to implement new revised scale to the teachers of these universities and colleges.

4. It has been pointed out on behalf of the petitioners that in spite of such a decision as aforesaid and guidelines framed by the Syndicate of the University, some of the categories of staff although recognized by the University Statute as teachers, like Assistant Research Officers, were not given the benefit of the University Grants Commission's revised scale. Therefore, considering the cases of some of the Research Officers, a Full Bench of this Court in the case of Kamla Kant Roy and Ors. v. The State of Bihar and Ors. 1985 PLJR 77 FB, declared them University teachers as defined u/s 2(xxviii) of the Act. and directed the respondent University to grant the University Grants Commission's revised scale and other consequential benefits. A reference was also made to another case which was filed on behalf of the instructors of the University bearing C.W.J.C. No. 5572 of 1994, whereby placing reliance on the aforesaid decision of the full Bench, the Court directed the Vice-Chancellor of the University to grant them similar benefit to what was granted to the Assistant Research Officers.

5. The claim of the petitioners is since they regularly used to guide the students for their technical research work under the orders of the Head of the Department, approved by the Dean of the Agricultural University on the same footing to that of scientists and teachers, therefore, they are also entitled for the same benefit which the teachers of the University are availing like the higher scale, etc. in terms of the decision of the University Grants Commission. Several certificates granted by the Chairman of different departments as well as Dean, Faculty of Agriculture Engineering have also been brought on record to show that the petitioners are doing the teaching and extension work and they had also participated at the meetings organized for the faculty Development Programmes etc. by the respondent Vice-Chancellor from time to time. It is further stated that Senior Research Assistants, Lecturers, Research Assistants are equivalent posts

to that of Assistant Research Officer, who have already been granted status of teachers and the UGC pay-scales.

6. On behalf of the petitioners, who are working as workshop superintendents, it has been further stated that the workshop superintendents working in different engineering colleges, polytechnics, have already been granted the UGC pay-scale with effect from the appointed day but no such benefit has yet been extended to the petitioners who are doing the similar nature of job in the present University.

7. In the background of the facts noticed above, at the very outset, the moot question relevant for consideration is whether the technical supervisors research assistants and workshop superintendents can be declared as "teachers" for the purpose of grant of the U.G.C. scale? Therefore, it would be apt to notice what is called, the very definition of teachers as spelt out under clause (xxviii) of Section 2 of the Act. as under:

2. Definitions.--In this Act, unless the context otherwise requires--(xxviii) "Teacher" means a person appointed or recognized by a University for the purpose of imparting instruction or conducting and guiding research or extension education and include a person who may be declared by the Statutes to be a teacher. The Full Bench in the case of Kamla Kant Roy and Ors. v. The State of Bihar and Ors. (supra) having noticed that clause (xxviii) should not be interpreted narrowly to mean a person, who actually teaches in a class-room to the students face to face, explained the word "teacher" expansively in four categories-(a) a person who imparts instruction, (b) a person who conducts and guides research, (c) a person who conducts and guides extension education and (d) a person who may be declared by the statute to be a teacher.

8. On behalf of the petitioners it was contended since as would appear from different certificates and averments in the writ petition, they have been imparting instructions and also conducting and guiding extension education as also research work to the students they are also entitled to be declared as "teachers" like the Assistant Research Officers, who were granted such benefit in view of the aforesaid decision of the Full Bench.

9. On behalf of the University, counter-affidavits have been filed denying the claim of the petitioners that they are also entitled to the same benefit as was granted to the Assistant Research Officers. Because technical supervisor, field overseers, laboratory assistants, laboratory attendants, and workshop superintendents are technical staff attached with different departments to carry out instruction of the teachers and Dean etc. of the University. It was pointed out that teaching and research work as well as conduct of extension education activities in the University is really a team work in which all the persons right from Laboratory attendant up to the Director, Research as well as Deans of the Faculties are involved. Therefore, all such persons, who join such a team cannot be declared as "teachers" unless they are appointed or recognized as teachers by the University or recognized by the University statute. Simply on the basis of

certain certificates granted by the authorities they cannot be declared teachers as defined under clause (xxviii) of Section 2 of the Act.

10. Apart from the lacuna of such requirement, as would appear from the table showing eligibility, qualifications, etc. for recruitment to the post of teachers as contained in Chapter VII clause 10 of the University Statutes, minimum qualification for appointment to the post of Lecturer/Assistant Lecturer/Assistant Research Officers/Instructors/Demonstrators or other categories of technical posts of equivalent rank has been prescribed as high second class Master's Degree or the equivalent in the subject concerned. Admittedly, qualification for appointment to the technical post like technical supervisors or the workshop superintendents is B.Sc. B. Tech or Diploma, as the case may be. It was, therefore, contended on behalf of the respondent-University that the petitioners had neither been recognized by the University nor declared by the Statute as teachers nor they are working in the same rank in which the Lecturers/Assistant Lecturers/Research Officers or Instructors, etc are working. The difference is not only because of the higher duty and responsibility assigned to those in later category who are required to have higher qualification but also because of the higher scale, which they have been drawing from the day of the appointment.

11. In my view, having regard to the facts noticed above the stand of the University appears justified. Because, apart from the basic requirements, which I have already noticed from a bare reference to the University statute it appears that Assistant Research Officers were also treated and placed in the category of teachers for the purpose of election of teachers of the senate. Even the Statute 17, which deals with the requisite qualification for different posts, Lecturers/Assistant Lecturers have been categorized with Assistant Research Officers because such posts were placed in the equal rank. Therefore, in such a circumstance, the respondent University was directed to declare the Assistant-Research Officers as teachers within the meaning of Section 2(xxviii) of the Act and to grant them all consequential benefits.

12. On behalf of the petitioners, however, a reference was made to a decision of the apex Court in the case of State of Bihar and Others Vs. Bihar State Workshop Superintendents Federation and Others, Om Prakash and Jagrup Singh, , whereby the workshop superintendents of various engineering colleges or Government polytechnics were declared as teachers for the purpose of the grant of the UGC scale of pay. In that case, it was brought to the notice of the Court that lecturers, who were in lower pay-scale-to the workshop superintendents later became entitled to higher pay-scales prescribed by the UGC. It was also pointed out that workshop superintendents working both under the Bihar College of Engineering, Patna and R.I.T., Jamshedpur, were granted UGC pay-scale prescribed for Associate Professor. That apart, the All India Council of Technical Education as well as other authorities had also treated the post of workshop superintendents as teaching posts and had fixed in the pay-scale equivalent to Assistant Professor. Therefore, in view of the aforesaid circumstances, the Court

allowed the claim of the workshop superintendent for grant of UGC scale and other consequential benefits. But, in the present case, as noticed above, neither the All India Council of Technical Education nor the respondent University has supported the claim of the workshop superintendents for grant of UGC scale. Therefore, unless the post of a teacher is recognized by the Statute of the respondent University, it would not be proper for this Court to grant such a relief.

13. A reference was also made on behalf of the petitioners to another case of P.S. Ramamohana Rao Vs. A.P. Agricultural University and Another, . In my view, from a bare reference to the facts of the present case, it would appear that petitioners cannot derive any benefit from the ratio of that case. In that case, a question arose for consideration whether Director of Physical Education having multifarious duties can come within the definition of a teacher to avail the benefit of the pay-scale as prescribed by University Grants Commission. The Court having found that a Physical Director had multifarious duties to impart students various skills and techniques of the games and sports both indoor and outdoor, therefore, held that he used to teach them the techniques and skills of the games. That apart, even the University Grants Commission had itself requested the Registrar of the Agricultural University, for upgrading the scales of the Physical Director and had referred to the minimum qualifications of a Physical Director which was prescribed for the teachers with a further request that the teachers of physical education should also be included among the teaching staff of the colleges and University for the purpose of revision of salary etc. Even the Ministry of Scientific Research and Cultural Affairs, Government of India on the recommendation of the AICTE had requested the State Government to include the Workshop Superintendents in the category of teachers. Therefore, in these backgrounds, the post of Physical Director was declared as teaching post and was held entitled for the consequential benefits. Obviously, therefore, the ratio of the aforesaid case is not applicable to the present one.

14. Petitioners further contended since they have been performing the duties of teachers which would also appear from the certificates granted by different authorities, including the Dean of the University, they are entitled for equal pay for equal work to that of Lecturers/Assistant Professors etc. in Terms of Clause (d) of Article 39 of the Constitution which provides equal pay for equal work. If such a rule is not interpreted strictly, there will always be a chance of unreasonable classification in terms of Article 14 of the Constitution. Reliance in this regard was also placed to some of the decisions of the apex Court in the cases of State of U.P. and Ors. v. J.P. Chaurasia and Ors. AIR 1989 SC 19, State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, and Union of India and Ors. v. Makhan Chandra Roy AIR 1937 SC 2391.

15. In my view, from a bare reference to the averments made in the counter-affidavit filed on behalf of the respondent University and other materials, which I have already noticed, it is evident that petitioners have neither been assigned the duties and responsibility of a teacher nor they are doing the same or similar

nature of job as assigned to the Lecturers, Professors, etc. Therefore, simply on the basis of certain certificates obtained from some of the authorities of the Universities, they cannot be declared as teacher as required u/s 2(xxviii) of the Act unless and until they are recognized under the University Statutes and are assigned With similar job and responsibilities. Therefore, the ratio laid down in the abovementioned cases are not applicable to these cases.

16. On behalf of the petitioners of C.W.J.C. No. 764 of 1998, apart from what has been stated above, it was further contended that they had also applied originally for the post of lecturers of the University at the time when advertisements were made. But, instead of giving them appointment to the post of Assistant Professors, they were appointed as technical supervisors, (Home Science), by letter dated 9.6.1989 and 5.7.1989, respectively, since the posts in the general category were not vacant.

17. It was pointed out that as would appear from the letter of the Indian Council of Research, dated 8.1.1985, the Registrar of the respondent-University was requested to provide admission to the students sponsored by the University against the seats allotted to ICAR, M.Sc. Programme. Accordingly, petitioner No. 1 got admission in M.Sc. Programme against Food & Nutrition Subject whereas petitioner No. 2 got the admission for Home Management with ah understanding that on being found successful, they would be appointed to the post of Assistant Professor-cum-Junior Scientist. But in spite of such understanding, petitioners Were not appointed as Assistant Professor although they were declared successful. Reference in this regard was made to a copy of certain letters attached with the writ application in respect of such claims.

18. In my view, having regard to the fact that admittedly at the initial stage in the year 1989, these petitioners got their appointment to the post of technical supervisors without any objection, at the later stage they cannot be allowed to raise such objections. That apart, from a bare reference to the averments made in the writ application as well as counter-affidavits, it would appear, that these petitioners had although appeared at the selection test for appointment to the post of Assistant Professor but they could not get such appointment because of the poor performance at the test. Hence, they readily agreed to get appointment to a lower post of Technical Supervisors. As such in my view, at this stage, the petitioners cannot be entitled to make such a claim for the post of Assistant Professor on this ground. Because undisputedly, such posts are required to be filled up by due selection process after advertisement etc.

19. Although the main points raised on behalf of the respondents have already been dealt with above but still it is relevant to notice some further submissions advanced by learned Counsel for the University. Besides distinguishing the Full Bench judgment of this Court in the case of Kamlakant Roy (*supra*), on the basis of judgments of the Apex Court reported in the case of State of U.P. v. J.P. Chaurasia AIR 1989 SC 19 Union of India v. Makhan Chandra Roy AIR 1997 SC 2321 and State of Madhya Pradesh and Another Vs. Pramod Bhartiya and

Others, , he submitted that the petitioners' prayer to grant them same scale of pay as is being given to recognized teachers of the University cannot be allowed because the nature of responsibilities upon the two classes of persons is quite different and treating them equal for the purposes of pay would actually be violative of Article 14 of the Constitution of India which prohibits treating of unequals as equals. Grant of such prayer will also invalidate relevant parts of the statutes. They have joined their present service and posts with lower pay-scales with open eyes and now they are trying to obtain scales of pay of higher posts or posts with higher responsibilities in an indirect manner when as per law such teaching posts with higher scales of pay can be filled up only by direct recruitment on consideration of merit. The aforesaid submissions appear to have substance.

20. An alternative submission was also made on behalf of the petitioners to grant them same pay-scale with the technical supervisors working in the Birsa Agricultural University are getting. It was contended that in the State of Bihar, there are only two agricultural Universities one the Bihar Agricultural University and other the Birsa Agricultural University. Employees, including teaching and non-teaching working under both the Universities are performing same and similar type of duties. Even the funds in order to meet necessary requirements and payment of salary etc. to both the Universities are being granted by the State Government. But the technical supervisors working under Birsa University are being paid the scale of Rs. 2,000-3,800 whereas technical supervisors of the present University are paid a lower scale, which is completely against the spirit of Articles 14 and 16 of the Constitution of India. On the other hand, learned Counsel for the respondent University contended that the present University being an autonomous body will not be required to grant the same benefit which is being granted to the technical supervisors of Birsa Agricultural University. That apart, service condition of the employees including that of the technical supervisors of this University are governed under the statutes framed by the respondent-University. Therefore, unless and until, a decision is taken by the authorities of the university, like senate, syndicate and duly approved by the State Government, it would not be possible for the respondents to grant the petitioners same scale as being paid to the technical supervisors of Birsa Agricultural University.

21. In the aforesaid facts and circumstances, I find no merit in these writ petitions and they are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Shiva Kirti Singh, J.

I agree.