
(2007) 04 GAU CK 0037
In the Gauhati High Court

Jayashree Dutta Choudhury

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Citation : (2007) 3 GLT 742

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.B. Pal, J.—Smti Jayashree Dutta Choudhury, the petitioner herein, was appointed as Classical teacher on 16.6.1978 by the Director of School Education, Govt. of Tripura, the second respondent herein, in the pay scale of Rs. 325-665/-. In a list of 68 appointees in the offer of appointment dated 25.4.1978 (Annexure-1) the petitioner's name was shown at Sl. No. 43 with her educational qualification "B.A. Sanskrit, Special Hons. in Bengali". She was initially posted at Narsingarh Higher Secondary School. Since then she has been in service without any interruption.

On 23.4.1982 the State Government, the first respondent herein, issued a memorandum (Annexure-2) granting higher pay scale of Rs. 325-775/- to the Post Graduate and Honours teachers appointed as Classical/Vernacular teachers (including Hindi Teachers and Hindi Pracharaks) with effect from the date of their appointment or the date of acquiring Honours/Post Graduate qualification, whichever is later. Though the petitioner had no Post-Graduate or Honours degree in Sanskrit, she was given the above higher pay scale with effect from the date of her appointment presumably on consideration of her Honours degree in Bengali. On 13.8.82, about four months after the memo granting higher pay scale to Post Graduate and Honours Classical teachers, the State Government issued a clarification that the higher pay scale would be admissible only to those Classical/Vernacular teachers who had Honours/Post Graduate degree in the language concerned. Such a degree in any other subject would not entitle them

to the higher pay scale of Rs. 325-775/-. Even after that clarification the petitioner, who has no Post Graduate or Honours degree in Sanskrit, was allowed to get the higher pay scale for a further period of 15 years, when on 19.7.1997 she received a copy of the letter dated 20.2.1997 of the second respondent (Annexure-3A) addressed to the Headmistress of Narsingarh High School, where she was then posted, communicating a decision that the petitioner being a Classical teacher with no Post Graduate or Honours degree in Sanskrit was not entitled to and was wrongly given the higher pay scale of Rs. 325-775/-. The Headmistress was accordingly directed to re-fix the pay of the petitioner in the lower pay scale of Rs. 325-665/- with effect from 16.6.1978 and to recover the over-payment by instalments from her salary bills.

2. Aggrieved by said decision the petitioner has approached this Court by means of the present writ petition assailing the said letter dated 20.2.1997 of the second respondent. She obtained an interim order from this Court on 28.7.1997 staying recovery from her pay bill. Thus, she has been receiving the higher pay scale meant for Post Graduate/Honours teachers for more than 28 years. She has called in question legality and correctness of the direction impugned for recovery after such a long lapse of time.

3. The respondents in their counter affidavit have admitted the facts of granting the petitioner higher scale of pay meant for Post Graduate and Honours teachers in the respective subjects only. They contended inter-alia that as she was appointed as Classical teacher in consideration of her graduation with Sanskrit as one of the subjects and did not obtain Post Graduate or Honours in Sanskrit, she could not claim the higher pay scale for her Honours in Bengali. If she had acquired Post Graduate or Honours degree in Sanskrit before or after her appointment, then only she would have been entitled to the said pay scale. It has been further contended that she was wrongly allowed to draw higher pay scale not admissible to her in view of the clarification issued by the State Government on 13.8.1982. To explain the delay in taking corrective decision it is contended that this gross irregularity came to light only in 1997 when a proposal to grant her selection grade scale of pay was brought to closer scrutiny. Immediately thereafter impugned direction have been given for re-fixation of her pay and recovery of the over payment by instalments. Thus, there being no illegality in the order impugned the respondents claimed that the writ petition deserves to be dismissed.

4. Mr. S. Talapatra, learned Senior counsel for the petitioner tried to canvas one important aspect of the case in favour of granting the petitioner the higher pay scale meant for Post Graduate and Honours teachers. No doubt, she was appointed a Classical teacher, but her educational qualification was B.A. with Sanskrit and special Honours in Bengali at the time of her appointment. She was thus an Honours graduate, though not in Sanskrit. The memorandum dated 23.4.82 granting the higher pay scale of Rs. 325-775/- to the Classical/Vernacular teachers did not specifically state that such qualification must be in a

particular subject only which obviously called for a clarification few months later. His strong submission is that as the higher pay scale was admissible to Classical/ Vernacular teachers, the petitioner having Honours degree in Bengali was consciously given the higher pay scale presumably treating her as Classical as well as Vernacular teacher. Even after the clarification she was allowed to draw the said higher pay scale which would only confirm the presumption that a conscious decision granting her higher pay scale in consideration of her Honours degree in Bengali was taken by the appropriate authority. It would be unfair and inequitable to suddenly reverse the decision by the successors in office of the respondents and direct recovery of a huge amount from her pay after about 19 years. The amount would be far more at the time of disposal of this case, the period of her receiving the higher pay scale being about 29 years. Thus, the impugned order of recovery would hit her hard and violate the principle of natural justice, Mr. Talapatra submits.

5. Mr. S. Chakraborty, learned State counsel on the other hand would strongly argue that the order of clarification dated 13.8.1982 set at rest any confusion about the Classical teachers who are entitled to the higher pay-scale. As the petitioner being appointed Classical teacher should teach Sanskrit only, she must have Honours or Post Graduate degree in that subject only for claiming higher pay-scale. As the Post Graduate and Honours qualification of Classical teachers in any other subject would be of no benefit, the clarification had to be issued making it clear that the Post Graduate and Honours teachers in the respective subjects only would be entitled to the higher scale of pay. Evidently, the petitioner was wrongly allowed to draw the higher pay scale which unfortunately came to be noticed only after a period of more than 15 years. Mr. Chakraborty argues that no wrong should be allowed to escape and flourish after detection whatever may be the time gap. Viewed from that angle there is nothing wrong in the order of recovery of over payment which unduly fattened the coffers. According to Mr. Chakraborty, in spite of the delay if the wrong detected is not rectified it would be a bad precedent forcing to silently accept every such wrong.

6. While considering the rival contentions set out above, one significant aspect of the offer of appointment deserves to be noticed. The said offer was for appointment of 68 Classical teachers, the name of the petitioner appearing at Sl. No. 43. The educational qualification of each of the appointees has been indicated below the name. A closer scrutiny of the said offer memo would further show below the names of all the appointees, except that of the petitioner (Sl. No. 43) and one Dilip Kumar Das (Sl. No. 56), the educational qualification invariably is "B.A. Honours in Sanskrit" or "M.A. in Sanskrit" or "B.A. Sanskrit" or "B.A. with Sanskrit". Only below the name of the petitioner the qualification written is "B.A. Sanskrit, Special Honours in Bengali". Again, below the name of Sri Dilip Kr. Das (Sl. No. 56) the qualification written is "B.A. with Pali". It is, thus, to be understood from the above that the Classical teachers were intended to teach the subject mentioned below their names i.e., "Sanskrit" or "Pali". No doubt, the petitioner having "B.A. with Sanskrit" was appointed Classical teacher to teach

Sanskrit. Whether she was also required to teach Bengali is a question gaining relevance for the reason that below her name both "Sanskrit" and "Special Honours in Bengali" were written in the offer of appointment. If a view is taken that she was required to teach both "Sanskrit" and "Bengali" then she has to be treated a "Classical" as well as "Vernacular" teacher. The offer memo has not defined or clarified the term "Classical teacher". The meaning of the word "Classical" given in the Concise Oxford English Dictionary (eleventh edition) reads: "relating to ancient Greek or Latin literature, art or culture". Indisputably, "Sanskrit" and "Pali" are two ancient languages in India and, therefore, the term "classical" must refer to them. Though the petitioner was appointed "Classical teacher" indicating her qualification as "B.A. with Sanskrit and special Honours in Bengali", unlike other appointees whose qualification indicated below their names is either with Sanskrit or Pali, a view from a broader angle can safely be taken that the petitioner was intended to teach Bengali language also.

7. There is another important aspect of the matter to be focussed in this context. It is not in dispute that the petitioner was allowed the pay scale of Post Graduate/Honours teachers from the very date of her appointment. Even after the clarification was issued by the State Government on 13.8.1982 that "Classical/Vernacular teachers" (including Hindi Teachers/Hindi Pracharaks) must possess Honours/Post Graduate degree in the language concerned to make them eligible for higher scale of Rs. 325-775/- she was allowed to draw the higher pay scale for another period of 15 years before the impugned decision of the second respondent was communicated to her by letter dated 20.2.1997. In the quest to find whether it was a bonafide error or a conscious decision, the words "language concerned" in the above clarification pose for a meaning. If "language concerned" refers to the subjects mentioned below the names of the appointees, the petitioner having below her name both "Sanskrit" and "Bengali" can claim the higher pay scale by virtue of her Honours degree in Bengali. Viewed from this angle, it cannot be said that the clarification dated 13.8.1982 disentitled her from the pay scale of Post Graduate/Honours teachers.

8. Again, the language employed in the "order impugned" calls for a closer scrutiny. In first para of the letter dated 20.2.1997 (An-nexure-3A) addressed to the Headmistress of Narsingarh High School the factual position stands focused which reads: "While holding the post as such it is seen from a recording made on 28.8.82 that she was allowed the higher pay scale of Rs. 325-775/- w.e.f. 16.6.78 for possessing higher educational qualification (i.e., Spl. Hons. in Bengali subject) in pursuance of the Education Department's Memo. No. F. 2(11-24)-DSE/80 (ii) dated 23.4.82". It is evident from the above that after the clarification dated 13.8.1982 about admissibility of the higher pay scale to teachers with Post Graduate and Honours degree in "language concerned" only, the competent authority separately considered the case of the petitioner on 28.8.1982 and recorded the decision to allow her the higher pay scale of Rs. 325-775/- w.e.f. 16.6.19/8 considering her special Honours in Bengali. It is also to be noticed here that the above higher pay scale granted by memorandum

dated 23.4.1982 was meant for Classical and Vernacular teachers.

Thus, three important positions namely, (i) her qualification of Special Honours in Bengali with Sanskrit in B. A. as mentioned in the offer of appointment; (ii) the words "language concerned" in the clarification dated 13.8.1982 which can only refer to the "language" mentioned below the name of the appointees in the offer memo (the languages mentioned below her name are "Sanskrit" and "Bengali"); and (iii) after the clarification dated 13.8.1982 a conscious decision was taken on 28.8.1982 to grant her Post Graduate/Honours teacher's scale of pay in consideration of her special Honours in Bengali; have emerged from the above which have clouded validity of the impugned order of re-fixation and recovery.

9. Mr. Talapatra advanced a strong submission that it would be unjust and inequitable if after such long lapse of time the petitioner is suddenly deprived of the benefits accrued and consciously given to her in recognition of her Honours degree in Bengali. Seeking support for the submission he had placed reliance on a decision of the Apex Court in *Union of India and Others Vs. Kishorilal Bablani*, . The observation made in para 7 of the said judgment reads:

We do not think that it would be fair to the respondent to take away the benefit which he has secured on the basis of the contentions which are accepted as justified. We, therefore, maintain the relief which has been granted to the respondent. But obviously after this lapse of time such relief cannot be granted to anybody else.

In the case in hand the facts and circumstances noticed above would leave no doubt that though the petitioner was appointed Classical teacher showing her qualification as "B.A. with Sanskrit and special Honours in Bengali" she was allowed to draw the higher pay scale following a conscious decision taken on 28.8.1982 by the authority concerned 15 days after the clarification regarding admissibility of the said pay scale was issued on 13.8.1982. This being the position, in my considered view it is not open to the successor in office of the respondents to reverse the decision of their predecessor in office after such a long period, at the prejudice, detriment and huge financial loss to the petitioner for absolutely no fault on her part.

10. For the reasons and discussions aforementioned this writ petition having enough merit is allowed setting aside and quashing the decision dated 20.2.1997 (Annexure-3 A) impugned, whereby direction for re-fixation of her pay in the lower pay-scale and recovery of over payment has been given. It is however, made clear that the decision rendered herein in favour of the petitioner shall not be generalized and understood as a decision in rem. The facts and circumstances of the present case alone giving rise to the controversy have been adverted to for arriving at the decision. There is nothing wrong in the clarification regarding admissibility of the higher pay scale issued on 13.8.1982. No cost.