
(2015) 12 CAL CK 0028
In the Calcutta High Court
Case No : WP 8722 (W) of 2012

Keshab Ankureh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2015) 12 CAL CK 0028

Hon'ble Judges : Samapti Chatterjee, J.

Bench : Single Bench

Advocate : Subir Sanyal and Sumouli Sarkar, Learned Advocates, for the Appellant; Ashim Kr. Ganguly and Pankaj Halder, Learned Advocates, for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—The petitioner has filed the present writ petition for grant of higher scale of pay of Rs. 5500-11325 as per ROPA 1998, subsequently revised to Rs. 9000-40500+ Grade pay Rs. 4700/- as per ROPA, 2009 to the petitioner as granted to the other assistant teachers in the Work Education.

2. The petitioner's case in brief is as follows:--

"On 17th March, 2001 petitioner's name was sponsored by the concerned School Service Commission for appointment to the post of Assistant Teacher in Work Education to the Nurkona High School, District-Burdwan. The requisite qualification of the said post is quoted below:--

"4-The essential qualifications for the post of Assistant Teacher for Work Education as stipulated and enumerated in the aforesaid advertisement are as follows:--Assistant Teacher for Work Education essential qualification:--

i) Bachelor degree with Post Graduate Basic Training or Bachelor degree with Work Education as Method subject at Bachelor of Education level;

Or

ii) Technical degree or diploma such as L.M.E., L.C.E.

Or

iii) Diploma in three year degree course in Home Science;

Or

iv) Bachelor of Science in Agriculture;

Or

v) School Final/Madhyamik/Higher Secondary with degree or diploma in Art and Craft recognised by the State Government/University

Or

vi) Bachelor degree along with Certificate in Tailoring/Lady Brabourne needle work (3 year course)/Diploma in other craft training recognised by the State Government."

The petitioner joined the said school with the salary of Rs. 4500-9700 and subsequently the appointment of the petitioner was approved by the respondent No. 4 on 2nd May, 2001 with effect from 27th March, 2001. The petitioner came to know that though the petitioner has been processing essential qualification for diploma in Electrical Engineering since 27th March, 2001, in spite of that he has been receiving the salary of Rs. 4500-9700 but the other assistant teachers in Work Education group who have been performing the same nature of work as the petitioner they have been provided with the salary of Rs. 4650/- per month and some others have been enjoying basic salary of Rs. 5500/- per month. Therefore, the petitioner on 6th January, 2012 made a representation before the authority for equal pay for equal work for the post of Assistant Teacher in Work Education group.

The petitioner also made representation on 19th March, 2012 through his learned Advocate since the respondent authority were sitting tight over the petitioner's representation hence, the present writ petition.

3. Mr. Subir Sanyal, learned Advocate appearing for the petitioner contended that since all the assistant teachers for the Work Education group has been directly recruited to the said post having requisite qualification, therefore, pay scale of all the assistant teachers for the Work Education should be governed with an uniform scale.

4. Mr. Sanayal further vehemently contended that for the same post of assistant teacher for Work Education group different pay scale introduced by the authority on the basis of the different qualification is highly arbitrary, illegal, discriminatory and very much violative of Article 14 of the Constitution.

5. Mr. Sanyal also strongly urged that it is the obligatory duty on the part of the respondent authority to introduce same scale of pay for the assistant teacher of Work Education in the aided secondary school under the West Bengal Board of Secondary Education who are performing same nature of work, duties and responsibilities. Therefore, difference in the qualifications of the individual teachers is immaterial and has no bearing upon the work performed by them being the assistant teachers for the Work Education group.

6. Mr. Sanyal also urged that whatever may be the qualification of the assistant teachers for Work Education ultimately all have to teach the same subject to the students and have to perform same duties and responsibilities.

7. Mr. Sanyal further vehemently argued that fixation of pay scale on the basis of basic qualification for the same post having the same nature of work, duties and responsibilities for the incumbents directly recruited through the same selection process is illegal, arbitrary and very much contrary to the Article 14, 16 and 21 of the Constitution of India and also very much against the principle of equal pay for equal work. In support of his contention Mr. Sanyal relied on a Supreme Court decision reported in *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, which are quoted below:--

"Para-11-It has to be borne in mind that this differentiation is not based on any intelligible ground. The group of Draughtsmen entitled to the higher scale of pay, is not selected by any process nor is it based on any merit-cum-seniority basis, but is based only on seniority-cum-fitness. There is no denial anywhere that both these types of Draughtsmen do the same work and discharge the same functions and duties. According to the recommendations of the Third Pay Commission, a Draughtsman has to get Rs. 330-10-380-EB-12-500-EB-15-560, while Senior Draughtsman, like the appellants, who have become so on promotion, will continue to get the same scale of pay and not the higher scale of pay. In other words, the promoted persons like the appellants, are without any monetary benefit to them. The pay that they would get as Senior Draughtsman, would be the same as a Draughtsman would get under the Third Pay Commission. That is, for the same work and same functions, the appellants would get less pay than the other group of Senior Draughtsmen. The explanation is that this division is based on seniority. This cannot be accepted as sufficient to meet the requirements of law. By seniority, a Senior Draughtsman will get higher pay with the increments that he earns proportionate to the number of years he is in service. Here that is not the case. It is the classification of the Senior Draughtsmen into two groups, that is responsible for the higher pay. For this classification, the Government must be able to satisfy the Court of certain other tests which are non-existent, in this case, since it is not in dispute that Senior Draughtsmen, belonging to the two Divisions, do equal and same work. In view of the total absence of any plea on the side of the respondents, that the Senior Draughtsman who are placed in the advantageous group, do not (sic) perform

work and duties more onerous or different from the work performed by the appellants, group, it will have to be held that this grouping violates Art. 14 of the Constitution.

Para-13- This Court however observed that a differential treatment in appropriate cases can be justified, when there are two grades based on reasonable grounds, and stated as follows (at p.881 of AIR):

"It is well known that there can be and there are different grades in a service, with varying qualifications for entry into a particular grade, the higher grade often being a promotional avenue for officers of the lower grade. The higher qualifications for the higher grade, which may be either academic qualifications or experience based on length of service reasonably sustain the classification of the officers into two grades with different scales of pay. The principle of equal pay for equal work would be an abstract doctrine not attracting Art. 14 if sought to be applied to them".

Para-14- With respect we agree with the conclusion arrived at in the above judgment, that where all relevant considerations are the same, persons holding identical posts and discharging similar duties should not be treated differently."

8. Before parting with the argument Mr. Sanyal submitted that the writ petition should be allowed by granting the relief as prayed for.

9. Per contra, Mr. Ashim Kumar Ganguly, learned Advocate appearing for the respondent authority contended that the petitioner was appointed as an assistant teacher in Work Education group having qualification diploma in Electric Engineering at Nurkona High School, District-Burdwan and his service was duly approved by the District Inspector of School (S.E) Burdwan in the scale of Rs. 4500-9700/- as per recommendation of West Bengal Regional School Service Commission.

10. Mr. Ganguly also vehemently urged that the petitioner after passing the higher secondary examination passed diploma examination in Electrical Engineering and that diploma examination in Electrical Engineering is not equivalent to graduate degree. Therefore, pay scale of the petitioner was fixed by the authority as per G.O No. 25-SE (B) dated 12th February, 1999 in scale of Rs. 4500-9700/- according to the Serial No. 7(I) of Annexure VI.

11. Mr. Ganguly further contended that since the petitioner has been possessing diploma in Electrical Engineering therefore the petitioner's pay scale was fixed according to the aforesaid G.O and the pay scale of the other assistant teachers in the Work Education group was fixed according to their qualification, therefore, the petitioner cannot be equated with the other assistant teachers of the said subject who are possessing higher qualification than the petitioner.

12. Mr. Ganguly also vehemently urged that since the petitioner is not in the same footings like the other assistant teachers who are possessing higher qualification than the petitioner therefore it is incorrect to suggest that the

petitioner has been discriminated than his counterpart as has been alleged in the instant petition.

13. In conclusion Mr. Ganguly submitted that there is no discrimination in respect of fixing the pay scale of the petitioner and his counterpart by the government as the petitioner is possessing diploma in Electrical Engineering which is not equivalent to the graduate degree therefore the petitioner cannot claim graduate scale being a non-graduate one holding diploma degree. Hence the petitioner has been rightly placed under the appropriate scale of pay therefore, the writ petition should be dismissed with cost since it is a frivolous one without having any merit.

14. Considering the submissions advanced by the learned Counsels and also perusing the records and the decision cited above by Mr. Sanyal (supra) I find that from the essential qualification of the assistant teachers of the Work Education subject is that "technical degree or diploma such as L.M.E. and L.C.E" also an essential qualification for the said post and the petitioner is possessing diploma in Engineering i.e. L.M.E", therefore, it cannot be suggested that petitioner is holding lower qualification than his counterparts, resulting him to place under scale of Rs. 4500-9700/- where as the other assistant teachers of the work education in similar aided school placed in scale of Rs. 4650/- per month while others also receiving basic scale of Rs. 5500/-.

15. It is also not clear from the arguments advanced by Mr. Ganguly that how and what manner the petitioner has been placed in a lower scale of pay being the assistant teacher of Work Education where as other assistant teachers of the Work Education Group of the aided school have received either scale of Rs. 4650/- or Rs. 5500/- for the same nature of work as has been discharged by the petitioner as Work Education Teacher. Therefore, in my considered view a teacher cannot be deprived of the equal pay from his counterpart when admittedly both are discharging equal nature of work and responsibilities as an assistant teacher for Work Education.

16. I also find that all the assistant teachers of the Work Education subject have been directly recruited to the said post on the basis of an examination based on the same process of selection having the same set of question papers and therefore they have been appointed to the same post of assistant teacher for Work Education. But at the time of fixation of scale the petitioner's scale has been fixed in a lower scale of pay than his counterparts which is highly arbitrary, illegal, discriminator and very much contrary to Article 14 and 16 of the Constitution of India and also very much against the Article 21 and Article 39D of the Constitution of India.

17. It is expected that the Government should act fairly at the time of fixation of scale of pay of the said teachers of Work Education but in the present case it is found that Government has been arbitrarily and illegally and discriminatorily by adopting unfair means has fixed the petitioner's pay scale at Rs. 4500/- where as the scale of other Work Education teachers of the aided school have been

fixed either in scale of Rs. 4650/- or Rs. 5500/- which is wholly illegal, discriminatory and very much against the principle of equal pay for equal work. It is admitted fact that the different qualifications holder of the teachers have been accommodated for the same post of assistant teacher for Work Education, though all assistant teachers of Work Education have been discharging same nature of work as teacher in Work Education. Therefore, it is established that all such different qualifications have been treated to be equal and sufficient for the purpose of the said post of assistant teacher for Work Education.

18. It is also cannot be ignored that pursuant to the same recruitment process for the post of assistant teacher for Work Education after fulfilling all the essential qualifications, all the teachers for Work Education though having different qualifications stand on the same footings and belong to the same class and class of teacher for Work Education, therefore, fixation of different pay for the assistant teachers for Work Education is very much illegal, arbitrary and at the same time hits by equal pay for equal work.

19. I also considered the fact that all the assistant teachers for work education in the aided secondary schools under the West Bengal Board of Secondary Education perform the same work, duties and responsibilities. The difference in the qualifications of the individual teachers is immaterial and has no bearing upon the work performed by them, since whatever may be their qualifications, ultimately they have to teach same subject to the students and have to perform same duties and responsibilities as an Assistant Teacher of Work Education subject.

20. Therefore, in my considered view introduction of different fixation of pay scale on the basis of different qualifications for the same post having the same nature of duties and responsibilities for the incumbents directly recruited through the same selection process is illegal, arbitrary and wholly discriminatory.

21. It is also cannot be ignored that the object sought to be achieved in the instant case is to have proper and effective imparting of education in the subject of work education by appointing suitable candidates and such object can be achieved by appointing a candidate having any of the essential qualifications. Therefore, fixation of different pay on qualification basis is illegal, arbitrary and discriminatory.

22. Therefore, I have no hesitation to hold that the provisions of ROPA 1998 and ROPA 2009 fixing different pay scales for the assistant teachers for Work Education performing the same nature of work, duties and responsibilities is wholly illegal, patently arbitrary and very much contrary to Article 14 and 39D of the Constitution of India.

23. Therefore, I direct the respondent authorities to grant the same pay scale of Rs. 5500-11325/- as per ROPA 1998, subsequently revised to Rs. 9000-40500 + Grade Pay of Rs. 4700/- as per ROPA 2009 to the petitioner as granted to his counterparts/other assistant teachers in the Work Education group within a

period of 10 (ten) weeks from the date of communication of this order and thereafter also take steps to pay all arrears salaries of the petitioner from the date of his jointing till date accordingly.

24. With these aforesaid directions this writ petition is allowed.

25. No order as to costs.

26. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties after fulfilling all the formalities.