

(1997) 10 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 11338 of 1994

Khawaja Abdul Bari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-10-1997

Acts Referred:

Citation : (1998) 1 PLJR 265

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Sanjay Kumar Singh, for No. 1, for the Appellant; Ranjan Kumar, for State and Sada Nand Jha, for Private Respondent, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This case relates to dispute of seniority between the Petitioner and Respondent Nos. 5 to 8. By letter dated 31st of May, 1989. (Annexure-1) the Special Director, Secondary Education while justified the Principal of Madarsa Islamia Shamsul Huda, Patna the provisional gradation list by order dated 3rd of January, 1994 the representation of the Petitioner has been rejected.

The Petitioner has challenged the aforesaid letter dated 31st of May, 1989 (Annexure-1) and the letter dated 3rd of January, 1994 (Annexure-2), with further prayer to direct the Respondents to grant first time bound promotion to him with effect from 11th of November, 1989, and for consideration of his case for promotion to the higher post in the Bihar Education Service Class-II.

2. The brief facts of the case show that one Mardarsa Islamia Shamsul Huda, Patna, an institute under the Respondent State, is under the control of the Human Resources Development Department. In the said institute there are posts of Assistant Maulvies with separate scales of pay. At the time" of 3rd Pay Revision Committee"s recommendation the post of Assistant Maulvies had three

scales of pay namely:

Designation Scale Service

1. Assistant - Maulvi 240-396/- Lower Subordinate Service (L.S.S.)
2. Assistant - Maulvi 387-600/- Subordinate Education Service (S.E.S.), Junior Branch
3. Assistant - Maulvi 415.7.15/- Subordinate Education Service (S.E.S.), Senior Branch.

3. From the advertisements (Annexures 3/A and 3/B) it appears that two different qualifications were laid down for appointment to the post of Assistant Maulvies in the L.S.S. and S.E.S. respectively. While lower qualification of Maulvi with knowledge of Fannethzevid and Urdu writing was essential for appointment to the post of Assistant Maulvi in the L.S.S., higher qualification of Fazil with knowledge of teaching and Hadis, Fikhah, Arbi, Mantik and Falsafha with aptitude towards any of the aforesaid subjects were laid down for appointment to the post of Assistant Maulvi in the S.E.S.

4. One Advertisement was issued on 10th of August, 1978 vide Annexure-3/A for appointment of Assistant Maulvi in the L.S.S. grade (Rs. 240-396). Another advertisement was issued on 29th of September, 1978 (Annexure-3/B) for appointment of Assistant Maulvi in the junior branch scale of Rs. 387-600/-.

5. So far as the appointments of Petitioner and the contesting Respondent Nos. 5 to 8 are concerned, all of them were appointed as Assistant Maulvies, but such appointments were made in different scales of pay. It appears that there is a confusion relating to their appointment in one or other branch of the service, which I shall deal at appropriate place.

6. Relevant facts relating to Petitioner and the Respondent Nos. 5 to 8:

Petitioner, Respondent Nos. 7 and 8 the Petitioner (Khwaja Abdul Bari), Respondent No. 7 (Abid Hussain) and Respondent No. 8 (Md. Allauddin) were appointed in the institute by a common Order No. 1332 dated 8th of November, 1979 as Assistant Maulvies.

While the Respondent Nos. 7 and 8 were appointed in the lower scale of Rs. 240-396/- (scale of L.S.S.), the Petitioner was appointed as Assistant Maulvi in the higher scale of Rs. 415-745/- (scale of S.E.S.- Senior Branch). However, in the 5th column, all of them were shown to have been appointed in the junior branch, which, according to me, is an error, as there was no junior branch in the L.S.S. (with scale of Rs. 240-396/-) and the scale of Rs. 415-745/- was the scale of S.H.S.- senior branch.

The fact as stated by the Petitioner that he was appointed in the S.E.S. senior branch in the scale of Rs. 415-745/-, and the Respondent Nos. 7 and 8 were appointed in the L.S.S., in the lower scale of Rs. 240-396/-, has not been

disputed by the Respondents.

Respondent No. 5: The Respondent No. 5 (Maulana Md. Taslim) was also appointed as Assistant Maulvi in the institute. From order dated 9th of May, 1988 (Annexure-5) it appears that his initial date of appointment is 18th of October, 1975. The other order dated 12th of November, 1979 (Annexure-4) shows that the Respondent No. 5 was so appointed in the L.S.S., in the lower scale of Rs. 240-396/-.

Subsequently the Respondent No. 5 was appointed as an Assistant Maulvi in the S.E.S.- senior branch scale of Rs. 415-745/- by the order aforesaid dated 12th of November, 1979 (Annexure-4). However, it appears from the order dated 12th of November, 1979 that it was wrongly mentioned that he was appointed in the junior branch of L.S.S. (though there was no such junior branch in the L.S.S.) and it was wrongly shown that he was appointed in the same branch (junior branch), though the scale of Rs. 415-745/- was of the senior branch of S.E.S.

Respondent No. 6: The Respondent No. 6 (S.M. Mokhtar Ahsan) was initially appointed as an Assistant Maulvi. It appears from the order dated 14th of February, 1989 (Annexure-8) that his initial date of appointment is 4th of August, 1977. The Petitioner has stated that the Respondent No. 6 was so appointed in the L.S.S., which has not been controverted by the Respondents. He was provided with the scale of Rs. 415-745/- (S.E.S.- senior branch scale) on 26th of December, 1980.

7. In the gradation list dated 14th of February, 1989, the Petitioner and the Respondent Nos. 5 to 8, all of them were shown as Assistant Maulvi in the junior branch, which, according to me, is also an error as the scale of Rs. 415-745/- was not the scale of the junior branch, either in the L.S.S. or in S.E.S.

8. According to the Petitioner, the post of Assistant Maulvies, both of junior branch and senior branch of S.E.S., merged with effect from 1st of April, 1978, by an order (letter No. 1607) dated 11th of November, 1978. According to the Petitioner, the two services, namely, L.S.S. and S.E.S. were never merged.

On the other hand, according to the Respondent Nos. 5 to 8 both the L.S.S. and S.E.S. were merged by the State Government, in the year 1976, prior to the appointments of the Petitioner, and most of the contesting Respondents having already appointed in the L.S.S. stood merged in the cadre of S.E.S., prior to the appointment of the Petitioner.

9. From the rival contentions made by the parties, I find that the two issues involved in this case, namely:

(i) Whether the L.S.S. and S.E.S., two services merged? Then since which date? and

(ii) Whether the Petitioner is senior to the contesting Respondent Nos. 5 to 8, or any one of them?

10. To decide the first issue relating to merger of L.S.S. and S.E.S., it is necessary to consider different orders/letters issued by the State Government relating to scale of pay, merger of branches, as well as, the resolutions of the Finance Department, by which Pay Revision Committee's recommendation were accepted including the Pay Anomaly Removal Committee's recommendation.

11. The parties while enclosed the relevant extracts of the resolutions, by which 3rd Pay Revision Committee and 4th Pay Revision Committee's recommendations were accepted, and extract of the recommendation of the Pay Anomaly Removal Committee and its acceptance made after 3rd Pay Revision Committee's report, they have not been enclosed the resolution relating to acceptance of 5th Pay Revision Committee's recommendation. It is for the said reason I have also gone through the reports of 3rd Pay Revision Committee, 4th Pay Revision Committee, 5th Pay Revision Committee and the respective resolutions, by which such reports were accepted by the State Government.

It is not necessary to discuss the scales of pay of L.S.S. and S.E.S. as were provided after 3rd Pay Revision Committee, which has already been discussed by me in the preceding paragraph. After 3rd Pay Revision Committee, it appears that the matter relating to scale of pay was placed before the Pay Anomaly Removal Committee which was accepted by the State Government by Finance Department's resolution dated 2nd of June, 1976 (Annexure-A). With respect to Assistant Maulvies of the Institute the scale of Rs. 387-600/- was provided to the incumbents having qualification of Fazil (equivalent to M.A.), which is the scale of pay of S.E.S.- junior branch. By subsequent letter No. 1670 dated 11th of November, 1978 (Annexure-A/1) the junior branch and senior branch of S.E.S., which were in the scale of Rs. 387-600/- and Rs. 415-745/- respectively, were merged with effect from 1.4.1978. Thus since 1.4.1978 the S.E.S. had only one scale of pay, i.e. Rs. 415-745/-.

12. While informations were sought relating to scale of pay of different posts of different departments/institutes, for placing the same before the 4th Pay Revision Committee for its recommendation, by letter dated 29th of November, 1979 the scale of pay of Assistant Maulvies of this institute were shown in two grades, i.e. Rs. 240-396/- (the scale of L.S.S.) and Rs. 415-745/- with effect from 1.4.1978, merged scale of S.E.S.

13. It appears that a corrigendum was subsequently prepared and sent to the 4th Pay Revision Committee. The said corrigendum is at page 115 of the brief, i.e. next to Annexure-A/2 attached with the counter affidavit of the Respondent Nos. 9 and 4, which was prepared and signed by Abdul Qayum, Respondent No. 9.

By the aforesaid corrigendum facts were placed in a distorted manner. It was shown that the posts of Assistant Maulvi in the scale of Rs. 240-396/- was upgraded to Rs. 387-600/- by memo dated 2nd of June, 1976 (Annexure-A), and said scale of Rs. 387-600/- was subsequently merged with the scale of Rs.

415-745/- by letter dated 11th of November, 1978 (Annexure- A/1).

According to me, the aforesaid facts stated in the corrigendum were misrepresentation of facts as by resolution dated 2nd of June, 1976 (Annexure-A) the scale of L.S.S. (Rs. 240-396) was never merged with the scale of junior branch of S.E.S. (Rs. 387-600). It was only ordered that the Assistant Maulvies, who had requisite qualification of Fazil (equivalent to M.A.) they will only be provided with the replaced scale of Rs. 387-600/-. It does not amount to merger of L.S.S. with the junior branch of S.E.S.

Further by resolution dated 11th of November, 1978 (Annexure-A/1) while junior branch and senior branch of S.E.S. were merged, there was no such merger made of L.S.S. with the S.E.S. Therefore, according to me, the Assistant Maulvies, who had the requisite qualification of Fazil and were in the scale of Rs. 240-396/- can claim the benefits of higher scale of Rs. 387-600/- on the basis of resolution dated 2nd of June, 1976 (Annexure-A) and not all the Assistant Maulvies of L.S.S. Further, such persons, on upgradation of pay do not automatically stood merged with the cadre of S.E.S., in absence of specific order of merger of their services/posts in S.E.S.

14. From the report of the recommendations of the 4th Pay Revision Committee it appears that because of the aforesaid corrigendum the Assistant Maulvies of the institute were provided with a common replaced scale of Rs. 850-1360/-, which was accepted by the State Government by its resolution dated 30th of December, 1981. However, even in the resolution dated 30th of December, 1981 the L.S.S. and S.E.S. were shown to be two different services, and were provided with separate scales of pay. The 5th Pay Revisions Committee's recommendation, as accepted by the State Government by Finance Department's resolution dated 18th of December, 1989, also shows that two different scales of pay have been provided to the members of the L.S.S. and S.E.S.

15. From the aforesaid descriptions, it is clear that the L.S.S. and S.E.S., two services are still separate and no merger of aforesaid services has been made till date.

However, as the Assistant Maulvies of the institute have been provided with common replaced scale since 1st of April, 1981 (after the 4th Pay Revision Committee's report), they will continue to receive such scale, irrespective of their appointment in one or other service, namely, L.S.S. or S.E.S.

16. For the reasons stated above, I reject the submission as made by the counsel for the Respondents that the posts of L.S.S. (in the scale of Rs. 240-396) were merged with the post of junior branch of S.E.S. (scale of Rs. 387-600) by the resolution dated 2nd of June, 1976 (Annexure-A) and/or subsequently merged with senior branch of S.E.S. (in the scale of Rs. 415-745), with effect from 1.4.1978, as I hold above that the aforesaid services, namely, L.S.S. and S.E.S. never merged, though a person was provided with one or other, higher scale of

pay.

17. The aforesaid fact will also be evident from the fact that while the advertisement dated 10th of August, 1978 (Annexure-3/A) was issued, the posts of Assistant Maulvi of L.S.S. were advertised, but by the subsequent advertisement dated 29th of September, 1978 (Annexure-3/B) the post of Assistant Maulvies of junior branch of S.E.S. were advertised. Thereafter, when common order of appointment of Petitioner and Respondent Nos. 7 and 8 was issued, while the Petitioner was appointed in the senior branch scale of S.E.S. (Rs. 415-745), the Respondent Nos. 7 and 8 were appointed in the lower scale of L.S.S. (Rs. 240-396).

Further, if the Respondents' contention of merger is accepted then, there was no occasion for appointment of Respondent No. 5 as direct recruit in the senior branch scale of S.E.S., by letter dated 12th of September, 1979 (Annexure-4), wherein he was shown to be a member of L.S.S. From the aforesaid discussions, it is clear that while there is no order of merger, by which the Respondent Nos. 6, 7 and 8 can be stated to be merged in the S.E.S., the order of appointment of Petitioner dated 8th of November, 1979, and the Respondent No. 5 dated 12th of November, 1979, show that they were appointed in the S.E.S.- senior branch scale of Rs. 415-745/-.

18. In any case, even if it is presumed that the Respondent Nos. 5 to 8 were brought in the S.E.S., they cannot claim seniority over the Petitioner for the following reasons:

(i) The Respondent No. 5, was appointed in the scale of Rs. 415-745/- by order dated 12th of November, 1979, i.e. after the appointment of the Petitioner made on 8th of November, 1979.

(ii) While the Petitioner was appointed in the higher scale of Rs. 415-745/-, both the Respondent Nos. 7 and 8 were appointed in the lower scale of Rs. 240-396/-, by the same common order dated 8th of November, 1979; and

(iii) The Respondent No. 6 was provided with the scale of Rs. 415-745/- on 26th of December, 1980, i.e., after the appointment of the Petitioner in the said scale of Rs. 415-745/-, made on 8th of November, 1979.

19. Accordingly, I set aside the impugned order and the gradation list dated 31st of May, 1989 (Annexure-1) and the letter of rejection dated 3rd of January, 1994 (Annexure-2). I further declare that the Petitioner is senior to the Respondent Nos. 5 to 8 and thus entitled for all the consequential benefits to which he is entitled, as has been provided to the juniors, namely, Respondent Nos. 5 to 8. If, the Petitioner is entitled for any consequential benefit, appropriate order to that effect be issued. Other benefits, if any, be provided within a period of three months from the date of receipt/production of a copy of this judgment. It will be open to the Petitioner to bring to the notice of the authorities the consequential benefits, to which he is entitled, if any benefit has been granted to Respondent

Nos. 5 to 8 or any one of them, but not provided to the Petitioner.

20. The writ petition is allowed with the aforesaid observation and direction.

21. However, on the facts and in the circumstances of the case, there will be no order as to costs.