
(1998) 07 GAU CK 0019

In the Gauhati High Court

Case No : Civil Rule No's. 1534, 1535, 1536 and 1537 of 1992

L. Nalini Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

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

Citation : (2000) 1 GLT 187

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : H.N.K. Singh and Binarani Devi, for the Appellant; Th. Ibohal Singh, A.G.A., for the Respondent

Judgement

N.S. Singh, J.—In these batches of writ petition, the reliefs which had been sought and prayed for by all the Petitioners are one and the same inasmuch as, they made a prayer for a direction to the state-Respondents to afford salary of a lecturer (Higher Secondary School) or the salary proportionate to the services being rendered by them with the benefits of senior scale provisions with all arrears, salaries and also, for an interim direction to the Respondents for affording latest Revised pay scale of Graduate Teachers under the latest Revision of pay under Notification No. 2(6)/5/91-SE(S) dated the 3rd August, 1991, notified on 9.8.91 pending the disposal of the writ petitions.

2. According to the Petitioner-Smti L Nalini Devi in Civil Rule No. 1534/92, she is an MA(Pol. Science) and obtained the degree of B.T. from Gauhati University in the year 1975 and on her being qualified for the post of Lecturer in Basic Training College, Govt. of Manipur, she was appointed on the 4th of April, 1978, on ad-hoc basis to a regular vacant post of lecturer in the said college and, thereafter, her adhoc appointment was regularised without giving retrospective effect from the date of her initial appointment and since then she has been serving regularly till date, and, at the moment, the said B.T. College has been renamed or upgraded as, the District Institute of Education and Training, hereinafter referred

to as "DIET" under an independent Director namely the Director (SCERT). By virtue of the Manipur Services (Revised Pay) Rules, 1989, hereinafter referred to as Revised Pay Rules, 1989, the pay scale of a lecturer has been revised from Rs. 1640/- to 2900/- to Rs. 2250-3750/- p.m. with effect from 1.7.88. Though the Petitioner is appointed as lecturer since the year 1978, she has been denied of the pay scale proportionate or equal to the services rendered by her in the said college like her colleagues similarly situated under the Directorate of Educations). It is also asserted, that by virtue of another Govt. notification dated 3.8.91 as in Annexure A/8 to the writ petition two extra grades namely "Senior scale" and "selection grade scale" for both the cadre of graduate teachers and also the grade of lecturer (Higher Secondary School) have been introduced and the benefits of it have already been afforded to the graduate teachers as well as the lecturers. It is also the case of the said Petitioner, that sheer injustice and discrimination have been done to her as she have been denied, not to speak of the salary of a lecturer of Higher Secondary School, but even the salary of a graduate teacher and, rather, she is being given only pre-revised salary of Rs. 1350-2200/-. Likewise, Petitioners, in Civil Rule No. 1535/92 namely, Smti M Mani Devi, Smti A Subhasini Devi, Smti L Binodini Devi and Smti I Sulochana Devi, contended that they have been serving as Theory Instructors under the DIET in the Directorate of SCERT, Govt. of Manipur since a pretty long time but they have been afforded prerevised salary of Rs. 1350-2200/- not to speak of even the salary of a graduate teacher under the Directorate of Education. According to them, their cases are similarly situated with the case of Smti 1 Nalini Devi, the writ Petitioner in Civil Rule No. 1534/92.

3. In Civil Rule No. 1536/92, the writ Petitioner namely Smti R K Thaninsana Devi, urged that she was appointed as Theory Instructor in the erstwhile Basic Training Institute, Govt. of Manipur, on 15.11.72 against the regular vacant post of a Theory Instructor and she passed the related training courses sponsored by the Central Govt. in the fields relating to education and her services have been utilised by the authority concerned as a lecturer since the year 1978 under the DIET. According to her, she is to be paid the salaries not less than or equal to that of a lecturer in the Higher Secondary Schools, Govt. of Manipur, since the lecturer in the Higher Secondary School is also teaching the subjects to the students who have to pass matriculation exam, or otherwise, but, she is being given only the pre-revised salary of Rs. 1350-2200/- even not to mention of the pay of a lecturer, i.e. Rs. 1640-2900/- p.m. According to this writ Petitioner, the Respondents have violated the Fundamental Rights of the writ Petitioner and she has been denied equal pay or the salary proportionate to the services being rendered by her.

4. In Civil Rule No. 1537/1992, the writ Petitioner namely, Smt Th Gita Devi also urged, that she is an MA (Pol Science) from Gauhati University and subsequently obtained a degree of BT from the said University in the year 1978 and joined the services as lecturer in Basic Training College, Govt. of Manipur, which has been subsequently renamed and upgraded as "DIET" and since then, she has been

serving as a lecturer till date. This writ Petitioner also claims the same benefits as the other writ Petitioners claimed in their respective writ petitions mentioned above and sought for an appropriate order and direction from the end of this Court in the matter.

5. The State-Respondents contested the cases of these writ Petitioners by contending inter-alia, that theory instructors and lecturers of BTI/BTC are one and the same. When one is posted at BTI, he/she is called Theory Instructor and, when one is posted at the BTC, he/she is called lecturer and theory instructor/lecturer of BTC/BTI are transferable with Asst. Graduate Teachers of the School Education Department and, accordingly, they have been paid since the establishment of BTI/BTC, similar scale of pay with that of Asst. Graduate teachers of school till R.O.P. 1990. But the difference in scale of pay between the theory instructors/lecturers BTI/BTC and Asst. Graduate Teachers arose only after coming into effect of the R.O.P 1991 and what actually happened was, that the R.O.P. 1991 did not cover the cases of the employees of BTI/BTC, now DIET, wherein the writ Petitioners are at present working. According to the Respondents, the category of students taught by the teachers is not the sole criteria for fixation of the scale of pay of teachers and what matters most in the fixation of the scale of pay the teacher in particular, is the minimum qualification (educational) required for the recruitment to the post. The minimum educational qualification required for the appointment to the post of lecturer/theory instructor of BTC is graduate, whereas, that of the post of lecturers of higher secondary school is atleast second class. Post-graduate degree with not less than 50% marks in the aggregate and, as such, the writ Petitioners cannot be paid the pay scale equal to that of lecturers of higher secondary schools since the minimum educational qualification required for recruitment to the said two posts are different.

6. Supporting the case of the writ Petitioners Mr. HNK Singh, learned senior counsel contended, that on seeing the sheer discrimination shown to the lecturers and theory instructors under DIET which is under the same roof of Education Departments) and the Secretary, Education(S) Govt. of Manipur, the Director of DIET has sorted out the ways and means to give proper redress to chronic grievance of the teachers/lecturers of the Institute and has submitted a detailed comparative statement between the ordinary graduate teachers of other schools and the theory instructors of the DIET which is higher than the former, as seen in the document marked Annexure A/12 to the writ petition. (Civil Rule No. 1534/92). According to Mr. HNK Singh, the post of graduate teachers and the post of Theory Instructors are transferable and, as such, some graduate teachers of the Education Department (S), Manipur, of other schools have now been posted to the DIET, as seen in the document marked Annexure A/11 (colly) and, even though those graduate teachers and the theory instructors are discharging the same functions, duties under the same roof of education(s), thus, theory instructors particularly, the present Petitioners concerned have been denied the benefits of senior scale of pay or selection grade of pay which is being enjoyed

by these graduate teachers. Citing the decisions of the Apex Court made in certain cases reported in Jaipal and Others Vs. State of Haryana and Others, Mr. HNK Singh contended, that in view of the decisions rendered by the Apex Court in the said cases, the state-Respondents ought to have afforded atleast the usual scale of pay of a lecturer of Higher Secondary School to the writ Petitioners. It is also submitted by the learned senior counsel that sheer injustice has been done to the writ Petitioners and they have been deprived of even the "Senior scale" and "Selection grade scales" for both the cadre of graduate teachers and that of lecturers (Higher Secondary Schools) even though the writ Petitioners have been performing the same and similar duties with those of graduate teachers/lecturers.

7. At the hearing, Mr. Th Ibohal Singh, learned Addl. Govt. Advocate for the state-Respondents submitted, that the fixation of pay scale of the writ Petitioners as lecturer or theory instructors cannot be said to be arbitrary or irrational merely because of their designation as lecturers/theory instructors under DIET and the writ Petitioners cannot be equated with the status of the lecturers of Higher Secondary Schools. Supporting the case of the State-Respondents, Mr. Th Ibohal Singh, learned Addl. Govt. Advocate, relied upon a decision of the Apex Court rendered in Municipal Commissioner, Calcutta Municipal Corporation and others Vs. Pijush Kanti Das and another, wherein, the Apex Court held that, "merely because of his designation as Education Officer (Unit), he would not be entitled to claim pay scale of Education Officer under Corporation." The learned Addl. Govt. Advocate also argued that the decision and judgment of concerned administrative authorities which were made bonafide, reasonably and rationally, cannot be interfered with by the court. In this regard, the learned Addl. Govt. Advocate relied upon a decision of the Apex Court reported in (1998)3 SCC 91. According to the learned Addl. Govt. Advocate, the theory instructors/lecturers under DIET are transferable with Asst. graduate teachers of the school education department and, accordingly, they have been paid similar scale of pay with that of Asst. graduate teachers of the schools till R.O.P., 1990, but the date of scale of pay between the theory instructors/lecturers and Asst. Graduate teachers arose only after the R.O.P. 1991 and the R.O.P., 1991 did not cover the cases of employees of BTC/BTI, now known as DIET. It is also submitted by the learned Addl. Govt. Advocate that the post of theory instructors/lecturers and that of graduate teachers/lecturers of Higher Secondary Schools are governed by different recruitment rules and, as such, scale of pay of the present Petitioners cannot be equated with those of lecturers/graduate teachers and they have different task/duties. No discrimination has been meted out to the writ Petitioners by the Respondents, the learned Addl. Govt. Advocate contended.

8. Now, this Court is to examine as to whether these writ Petitioners have enforceable legal rights nor not and, whether their cases deserve for consideration by the Respondents or not.

9. On perusal of the documents marked as Annexure A/11 (colly) in Civil Rule No. 1534/92. It has been revealed that, as many as 6 science graduate teachers

of the Directorate of Education were posted at the Basic Training Institute now renamed DIET as Science Instructors with immediate effect vide order No. 6/78-ED dated Imphal the 15th Feb. 1983 issued by the Director of Education(S), Govt. of Manipur. Likewise one E Indubala Devi, Asst. Graduate Teacher was also transferred and posted at BTC, Imphal as lecturer with immediate effect vide order dated 16.4.87 as in Annexure A/8(colly) in Civil Rule No. 1537/92. It is also not disputed by the parties, that post of graduate teachers and the post of theory instructors are transferable and these graduate teachers and theory instructors are discharging the same functions, duties under BTI/BTC, now known as DIET, but the writ Petitioners who are theory instructors/lecturers under DIET have been denied the benefits of "senior scale" and "selection grade scale" afforded to the graduate teachers under the related R.O.P.

10. On perusal of the available materials on record, it is also established that the pay scales of the graduate teachers were revised vide notification No. 2(6)/5/91-SC(S) dated 9.8.91 and the notification of even No. dated: 9.8.91 as under:

Graduate teachers 1) Rs. 1400-40-1800- Head Masters J.B. EB-50-2300/- Schools. 2) Senior scale of Rs. 1640-60-2120-EB- 60-2600-75-2900/- after 15 years of service in the grade. 3) Selection Grade of Rs. 2000-60-2300-EB-75-3425/- at 10% of the numbers in the Senior scale.

By virtue of the orders dated 22.9.93 to 13.10.93 and 28.1.94 passed by this Court in Civil Rule No. 593/91, Na 584/91, No. 1026/93, No.977/93 and No. 89/94, filed by 143 Graduate Teachers, the Govt. of Manipur granted selection grade scales of pay i.e. Rs. 2000-60-2300-EB-75-3425/- to those graduate teachers vide Govt. order No. 12/165/94-SC(S) dated 26.12.95, Secretariat Education Department (School Section, Govt. of Manipur) as in AnnexureA/11 (Colly) in Civil Rule No. 1534/92. Seeing the grievances of the writ Petitioners, the Director, SCERT, Govt. of Manipur, had examined the matter and highlighted the discrimination in the scales of pay between the directly appointed theory instructors/lecturers of the erstwhile BTI/BTC now upgraded as DIET and those transferred and appointed from the schools under his office letter No. 18/22/1997-SCERT/DIET dated 2.9.97 as in Annexure A/12 to Civil Rule No. 1534/92 and urged the Govt. to oviate the apparent injustice/anomaly. On further perusal of the available materials on record, particularly the job charts in respect of graduate teachers and theory instructor, I am of the view that the theory instructors have higher responsibility and their work-load is much higher than those of the graduate teachers in schools i.e. teaching both the teachers and students together while conducting the professional practice teaching, educational qualification of the target group etc. Apart from it, essential educational qualification for the post of graduate teachers prescribed under the related recruitment rules is a simple graduate, whereas, for the post of theory instructors, the essential educational qualification under the related recruitment rules is a graduate and fully trained in basic education which has been taken as a B.ED (Basic Education) or BT or equivalent degree from a recognised University

by the Govt. Over and above this, the post of graduate teachers and that of theory instructors are transferable. In my considered view, atleast the state-Respondents ought to have afforded the existing scale of pay of the graduate teachers to the writ Petitioners. The existing scale of pay of graduate teachers is termed as hereunder:

Existing scales of pay : Graduate teacher (1) Starting a scale of pay-Rs-1400-2300/- p.m. (2) Senior scale of pay- Rs. 1640-2900/- p.m. (after 15 years regular service in the grade) (3) Selection grade scaleRs.2000-3500/- p.m. of pay (after 12 years of Senior scale).

11. On perusal of the joint counter affidavit of the State-Respondent Nos. 1, 2, 3 and 4 and also the available materials on record, I am of the view that the state-Respondents had completely ignored the cases of the writ Petitioners while making fixation of scale of pay of the writ Petitioners inasmuch as, the R.O.P. 1991 did not cover the cases, of employees of BTI/BTC, now known as DIET but it is urged by the Respondents that Govt. has constituted a sub-committee chaired by a Cabinet Minister to look into the cases of pay anomalies in all departments. This stand and statement of the state-Respondents was made in their joint counter affidavit which was filed on 19.8.93 and till date, no decisive action has been made by the state-Respondents to the prejudice of the writ Petitioners. During the pendency of this case, on 8.8.97 Mr. HNK Singh, learned Counsel for the Petitioners informed the court, that former Secretary Education(S) Govt. of Manipur, has considered and recommended the case of the writ Petitioners for removal of the pay anomaly after obtaining the concurrent from the Finance Department However, on that date, the learned senior counsel contended, that the present Secretary Education (S) has taken another view to the prejudice of the writ Petitioners and he made a prayer for making the records available before this Court as the relevant records are very much important in this case. Considering these submissions made by the learned Counsel for the parties, this Court directed the Additional Govt. Advocate to produce the relevant records pertaining to the recommendation made by the former Secretary Education (S) in favour of the Petitioners on 12.8.97 before the court. But, no related record was ever produced before this Court by the learned Addl. Govt. Advocate.

12. On the basis of the plea and stand of the State-Respondents made in their joint counter affidavit, the writ Petitioners have a legitimate expectation of being treated in a certain way by the Respondents in view of the statement of the state-Respondents that the Govt. has constituted a sub-committee chaired by a Cabinet Minister to look into the cases of pay anomalies in all department. This stand was taken by the State-Respondents in the year 1993, now it is 1998, and nothing has come up in the matter from the end of the State-Respondents in the matter. In my considered, view, the state-Respondents had failed to give due weight upon its undertakings and stand as discussed above. It is also, now well settled, that legitimate expectation becomes an enforceable right in case of

failure of the state or its instrumentality to give due weight of it. In this regard, I hereby recall the decision of the Apex Court rendered in Food Corporation of India v. Kamdhenu Cattle Feed Industries reported in (1993) 1 SCC 77 .In U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., the Apex Court held thus:

In situations where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the courts have evolved the principles of legitimate expectation. The expression which is said to have originated from the judgment of Lord Denning in Schmidt V. Secy of State for Home Affairs is now well established in public law. In attorney General of Hong Kong V. Ng Yuen Shiu Privy Council applied this principle where expectations were "based upon some statement or undertaking by or on behalf of, the public authority" and observed

Accordingly "legitimate expectations" in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment.

13. It is true that equation of posts and equation of pay are matters primarily for the executive-Govt. and the expert bodies like the pay commission and not for the courts, and the court generally do not interfere, but the persons holding identical posts or discharging the same duties may not be treated differently in the matter of their pay merely because they belong to different departments.

14. In Randhir Singh Vs. Union of India (UOI) and Others, Chinnappa Reddy, J. speaking for the Bench of three learned Judges said (at pp.881-882 of AIR):

We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the pay commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature in the same...Construing Article 14 and 16 in the light of the preamble and Article 39(d), we are of the View that the principle "equal pay for equal work" is deducible from those Articles and may be properly applied to case of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.

15. What is more important and crucial is, whether the concerned employees discharge similar duties, functions and responsibilities while making the fixation of pay scale of the employees concerned. It is also well settled, that while

exercising the power of judicial review, the courts do not sit as an appellate authority and cannot substitute its opinion to the decision arrived/made by the competent authority unless there has been infirmity in the decision making process. This is an enshrined principle under public law. In another case, between Grih Kalyan Kendra Workers" Union Vs. Union of India and others, the Apex Court held thus:

While considering the principle of equal pay for equal work it is not necessary to find out similarity by mathematics formula but there must be a reasonable similarity in the nature of work, performance of duties the qualification and the quality of work performed by them. It is permissible to have classification in services based on hierarchy of posts, pay scale, value of work and responsibility and experience. The classification must, however, have a reasonable relation to the object sought to be achieved.

Art. 39(d) contained in part IV of the constitution ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Though Article 39 is included in the Chapter of Directive principle of State policy, but is fundamental in nature. The purpose of the article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The doctrine of equal work equal pay would apply on the premise of similar work, but it does not mean that there should be complete identity in all respects. If the two classes of persons do same work under the same employer, with similar responsibility, under similar working conditions the doctrine of "Equal work equal pay" would apply and it would not be open to the State to discriminate one class with the other in paying salary. The State is under a constitutional obligation to ensure that equal pay is paid for equal work. Also, it is too late in the day to disregard the doctrine of equal pay for equal work on the ground of one employment being temporary and the other being permanent in nature. A temporary or casual employee performing the same duties and functions is entitled to the same pay as paid to a permanent employee. So also the difference in mode of selection will not affect the application of the doctrine of "equal pay for equal work" if both the classes of persons perform similar functions and duties under the same employer.

16. These observations find its place in a case between Jaipal and Others Vs. State of Haryana and Others,

17. In another case between Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, the Apex Court held, that teachers of added private schools whose pay scales and other emoluments must be in parity with teachers of Govt. Schools.

18. It is an admitted position, that mode of selection of graduate teachers and that of theory instructors/lecturers are different at they are governed by different recruitment rules. However, the post of graduate teachers and theory instructors are transferable and some of the graduate teachers of other schools have now

been posted to DIET and they are working with the writ Petitioners and discharging the same duties and functions but the writ Petitioners have not been afforded even the existing scale of pay of graduate teachers to them, not to speak of the scale of pay of lecturers of Higher Secondary Schools. Apart from it, the Govt. of Manipur issued an order in the form of clarification bearing No. 4/172/90-SC(S) dated Imphal the 20th July, 1992 Education Department Secretariat, Govt. of Manipur, as in Annexure A/9 to Civil Rule No. 1534/92, ordering that the pay scale of all graduate teachers who have been transferred and posted from different schools to SCERT as theory instructor of BTI/BTC, now converted as DIET will be governed by the revision (No. 2(6)/5/91-SC(S) dated 9.8.91 and 29.8.91. In other words, those graduate teachers serving under DIET alongwith the present writ Petitioners have been afforded existing pay scales of graduate teachers as discussed above. As highlighted above, I am of the view that the difference in mode of selection will not affect the application of the doctrine of "Equal pay for equal work" if both the classes of employees perform similar functions and duties under the same department. This Court would note that discrimination has been meted out to the writ Petitioners by the state-Respondents in the matter of fixation of scale of pay of the writ Petitioners.

19. Considering all these existing facts and circumstances of the case and also applying all the established principles of law as discussed above, I am of the view that writ Petitioners have enforceable legal right and, atleast they are entitled the existing scales of pay of graduate teachers mentioned above according to their seniority position namely, they shall be entitled senior scale of pay of Rs. 1640-2900/- p.m. after 15 years regular service in the grade and then selection grade scale of pay of Rs. 2000-3500/- p.m. (after 12 years of senior scale), and, they shall be further entitled to such revised scales notionally from 1.1.86. It is made clear, that the state-Respondents/competent authorities are directed to make payment of arrear salaries to the writ Petitioners within a period of 3 months from the date of receipt of this judgment and order.

20. For the reasons, discussions, observations and directions made above, this writ petition is disposed of. No cost.