
(1994) 02 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2262 of 1991

Md. Irfan Farooque and Others

APPELLANT

Vs

Director (Primary-Education) and Others

RESPONDENT

Date of Decision : 18-02-1994

Acts Referred:

Citation : (1994) 1 PLJR 692

Hon'ble Judges : S.B. Sinha, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Uma Kant Verma, for the Appellant; R.C. Ram, for the Respondent

Judgement

S.B. Sinha and G.C. Bharuka, JJ.—The question involved in this writ application is as to whether the Petitioners are entitled to. revised scale of pay of Rs. 785-1210/ - as graduate untrained teachers or to the scale of pay of Rs. 680-965/ - as intermediate untrained as has been directed to be paid by reason of the impugned order dated 28.11.1990 as contained in Annexure-8 to the writ application.

2. The Petitioner Nos. 1 to 5 admittedly are graduate untrained teachers. They were appointed as Science Teacher under Special Employment Scheme on a fixed stipend of Rs. 175/ -.

3. The Petitioner No. 6 being B.Sc. untrained was appointed on a monthly stipend of Rs. 150/ - On or about 28.9.1973, the Petitioner No. 6 passed his B.Sc examination in the year 1974. By reason of circular letter dated 27.5.1976 it was directed that all those persons who had been appointed prior to 31.3.1974 on a fixed stipend of Rs. 175/ - will get fixed salary of Rs. 296/ - per month with effect from 1.4.1975 and pursuant thereto the Petitioner Nos. 1 to 5 had been getting salary of Rs. 296/ - per month (Annexure-1). The Petitioner No. 6 had been granted a fixed salary of Rs. 296/ - per month with effect from 9.3.1977 against trained Intermediate post. The Fourth Pay Revision Committee, submitted its recommendations in terms whereof the following scales of pay had

been fixed for the teachers having different qualification:

Intermediate (Untrained) - 230 fixed 680-965

Intermediate (Trained) - 296-423 730-1,080

Graduate (Untrained) - 296 fixed 785-1210

4. Admittedly the said recommendations of the Fourth Pay Revision Committee has been accepted by the State of Bihar with effect from 1.4.1981 as is evident from Annexure-2 to the writ application. The Education Commissioner also by a letter dated 25.1.1982 directed the authorities to pay salary to the teachers as per revised scale of pay from the month of January, 1982 as is evident from Annexure-3 to the writ application.

5. Despite the same, however, the District Supdt. of Education issued revised pay scales order dated 9.2.1982 in respect of Petitioners bearing memos Nos. 895 and 954 respectively. In respect of Petitioner Nos. 1, 4 and 6 and Petitioner No. 2 respectively and by memo No. 1948 dated 2.3.1982 in respect of Petitioner Nos. 3 and 5, granting B.Sc. untrained scales of pay of Rs. 730-1080/- and put them a fixed salary of Rs. 1760/- and adding two increments. The Petitioners thereafter filed a representation on 12.2.1982 which is contained in Annexure-4 to the writ application. The Petitioners, however, have brought to the notice of this Court that different teachers having similar qualifications had been directed to be paid different scales of pay. The Petitioners however have contended that the Education Commissioner again by his letter dated 2.6.1982 as contained in Annexure-5 to the writ application inter-alia directed that un trained graduates working against Intermediate trained posts and getting a fixed salary of Rs. 296/- be given salary in the revised scale of pay of Rs. 730-1080/-.

6. The Petitioners filed a writ application in this Court being C.W.J.C. No. 905 of 1983 and by judgment dated 1.8.1983 this Court directed the Director to consider all aspects of the matter and pass an order. The said order dated 1.8.1983 is contained in Annexure-6 to the writ application. The Petitioners thereafter filed a representation on 25.4.1984 but they did not receive any response from the Director (sic) filed a supplementary affidavit on 21.11.1989.

7. It appears that the Finance Department by a letter bearing No. 8014 dated 4.9.1982 directed that the B.Sc. untrained teachers getting Rs. 296/- and working in the Intermediate trained post will get revised scale of pay of Rs. 680-965/-. The said letter dated 4.9.1982 is contained in Annexure-7 to the writ application.

8. By reason of the impugned order as contained in Annexure-8 to the writ application, the Petitioner's salary has been directed to be paid in the scale of pay of Rs. 680-965/-.

9. In this case a counter affidavit has been filed on behalf of Respondent No. 2. In the said counter affidavit, it has been stated that the short term training

course of one month purported to have been undergone by the Petitioners, has nothing to do with the fixation of the scale of pay of the Petitioners. It had further been submitted that as the Finance Department modified its earlier order dated 30.13.1981 by its letter No. 8014 dated 4.9.1982, the subsequent order of the Finance Department shall prevail.

10. It has further been stated that the scale of pay of Rs. 785-1210/- for B.Sc., untrained teachers were meant for the Government High School and not for the Middle School and therefore, the Finance Department had issued the aforementioned letter dated 4.9.1982.

11. From a letter dated 2.6.1982 issued by the Commissioner of Education Bihar as contained in Annexure-5 to the writ application, it appears that in view of the fact that intermediate trained and graduate untrained teachers have been appointed against the metric trained teachers and it is not possible for the State to grant the scale of pay of Rs. 785 to 1210 to the untrained graduate and Rs. 680 to 965 to the trained Intermediates. According to the State unless a fresh order is issued no salary should be paid on the scale of pay purported to have been recommended by the Fourth Pay Revision Committee.

12. From a perusal of Clause 5 of the aforementioned letter, however, it appears that if an untrained graduate had been acting against the vacant post of Intermediate trained teachers: and has been getting the scale of pay of Rs. 296/-, he will be entitled to a basic salary of Rs. 730-1080. By Anr. letter dated 4.9.1982 as contained "in Annexure-7 to the writ application the Finance Department of the State of Bihar upon direction of the State conveyed its decisions that so far as the untrained teachers who were appointed under Special Employment Scheme and posted in the nationalised Elementary Schools against the vacant posts in Intermediate scale of pay of Rs. 296 to 423 shall be paid the salary of Rs. 680 to 965 whereas those posted against Metric Science teacher would be getting a scale of pay of Rs. 565 to 735/-.

13. By reason of the said letter the resolution No. 10770 dated 30.12.1981 issued by the Finance Department has been treated to have been amended.

14. The learned Counsel appearing on behalf of the Petitioner submitted that in view of the fact that the Finance Department of the State has accepted the recommendations of the Fourth Pay Revision Committee by a resolution dated 30th December, 1981; the revised resolution of the State as contained in Annexure-7 to the writ application cannot be given a retrospective effect. The learned Counsel submitted that in this view of the matter, the amended rule will have no application in the facts and circumstances of the case.

15. From a perusal of the impugned order as contained in Annexure-8 to the writ application, it appears that in the year 1975 posts of 2,500 Intermediate trained and 7,700 of Metric trained teachers were created. It has been pointed out that the Fixed salaries of Rs. 296 which was to be paid was of I.A. trained teachers and thus all those persons who were having the qualification of B.Sc. untrained

would be deemed to have been appointed against I.A. trained teachers and the revised scale of pay in relation to them has been fixed by the Fourth Pay Revision Committee as Rs. 680 to 965/ -. A lot of confusion exists with regard to stands taken by the State of Bihar from time to time, but there appears to be some substance that the State of Bihar could never intend to pay same scale of pay to the teachers posted in the High Schools. The State in its counter affidavit clearly stated that the scale of pay as mentioned by the Education Department meant for the Govt. High School and not for the Middle School. This is also evident from the circular letter dated 14th January, 1981 as contained in Annexure-A to the counter affidavit.

In paragraph 17 of the counter affidavit, it has been stated as follows:

That 32 B.Sc. trained posts were allotted to Darbhanga District, after creation of 1150 such posts in the State after (sic) having creation of such posts the District Education Establishment Committee headed by the District Magistrate, Darbhanga had to distribute the units to the Middle Schools which was done in its meeting held on 5.5.1982 and after such units distribution the approval of such units distribution was obtained from the Regional Deputy Director of Education, Darbhanga on 15.6.1982. After such approval having received from the Regional Deputy Direct for Gradation lists of Science teachers of Middle Schools in the districts was prepared and thereafter in the subsequent meeting of the District Establishment Committee held in 1985, the Gradation list was prepared after due consideration (sic) the Petitioners alongwith other were given direct appointment to B.Sc. trained posts and since then the Petitioners after observing the formalities were given B.Sc., trained scale since 7.11.1985 and they are getting the same scale as such.

But it is evident from the impugned order that the Director Secondary Education did not decide the matter, upon taking into consideration the aforesaid rival contention of the parties

16. We are, of the view that the Director must be in possession of all the relevant records, which would reflect the true intention of the State.

We are further of the view that if any mistake has been committed by the Director in not placing the Petitioners in such scale of pay to which they are entitled in terms of the policy decision of the State as also the recommendations of the Pay Revision Committees, the same should be rectified.

17. In this view of the matter, in our opinion, the matter should be considered afresh by the Director.

18. This application is, therefore, disposed of with the aforesaid observations and directions, but in the facts and circumstances of the case, there shall be no order of stay.