
(1994) 03 CAL CK 0001
In the Calcutta High Court
Case No : Civil Order No. 4656 (W) of 1991

Nitai Chandra Jana

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Citation : (1994) 1 ILR (Cal) 473

Hon'ble Judges : Asok Kumar Ganguly, J

Bench : Single Bench

Advocate : Pradipta Kumar Roy and Susanta Kumar Dutta, for the Appellant; Smritikana Mukherjee, for the Respondent

Judgement

1. The Petitioners are working as Demonstrators in different Government Colleges of West Bengal. There are two types of Demonstrators, namely, Demonstrators having been Honours/M. Sc. and/or Ph.D. Degree and Demonstrators with B. Sc. Pass Course Degree. It may be mentioned here that between Demonstrators with Pass Course Degree and Demonstrators having Honours/ M. Sc. Degree there have always been two different pay-scales. The Petitioners assent that before January 1, 1973, Demonstrators with Honours/M. Sc. Degree used to enjoy the pay-scale of Rs. 375-650 and Demonstrators with B. Sc. Pass Course Degree used to enjoy pay-scale of Rs. 300-600.

2. The basic grievances of the Petitioners are that the Librarians and Physical Instructors in the Government College were also in the pay-scale of Rs. 300-600 along with Pass Course Demonstrators, but subsequently the pay-scale of Librarians and Physical Instructors have been revised without the corresponding revision of pay of the Petitioners. The Petitioners sought to rely on certain documents in support of their case. From Annex. "A" to the petition it will appear that on the recommendation of the University Grants Commission (hereinafter called the U.G.C.), the pay of the Demonstrators amongst others were revised with effect from January 1, 1973. The pay of the Pass Graduate Demonstrators were revised from Rs. 300-600 to Rs. 500-20-700-25-900. The said revision was

also in respect of existing incumbents inasmuch as it was decided at the time of the said pay revision that no more Demonstrator in future shall be appointed. At that time 1973 the pay of the Librarians and Physical Instructors was not revised.

3. The revision of pay of Librarians and Physical Instructors was also done on recommendation of U.G.C. by Memo, dated January 24, 1980, w.e.f. January 1, 1973. As a result of the said revision of pay, the Librarians and the Physical Instructors pay became 550-25-750-EB-30-900. There has been a further revision of pay of the Demonstrators by Memo, dated February 23, 1989. This time also their revision of pay-scale was done on the recommendation of U.G.C. as is stated in para. 24 of the writ petition. As a result of such revision pay in 1989 the scale of pay of Demonstrators from 500-900 was revised to Rs. 1740-2700-EB-75-3000 (for existing incumbents only). The grievances of the writ Petitioner are that with the said revision of pay-scale in respect of Lecturer and Assistant Professor and others the teaching category, a new scheme known as Career Advancement Scheme was also introduced in the case of Lecturer and Assistant Professor. No such scheme was introduced in the case of the Petitioners. The further grievance of the Petitioner is that at the time of the said revision the pay of the Librarian and the Physical Instructor was revised to a higher scale, namely the existing scale of both the Librarian and Physical Instructor was 700-1600 and the same was revised to 2200-4000.

4. The stand taken by the Respondents Nos. 1, 2 and 3 in their affidavit-in-opposition is that they are merely implementing the recommendation of U.G.C. and the Central Government. The definite case of the Respondents is that the State Government cannot unilaterally introduce a new pay-scale for the Demonstrators without following the pay-scale recommended by the U.G.C. for the Demonstrators as in the pay revision scheme of the Government of India. Their further case is that the State Government accepted the pay revision scheme of the Government of India on the basis of specific agreement that the Government of India will render financial assistance to the State Government to the extent of 80 % of the additional expenditure involved in giving effect to the said pay revision scheme formulated by the Government of India on the basis of recommendation of U.G.C. As such, in this matter the State Government cannot unilaterally introduce a new pay revision scheme for the Demonstrators. As in the case of Pass Course Demonstrators there was no recommendation of U.G.C. for grant of Career Advancement Scheme, the State Government could not introduce the same in the case of the writ Petitioners.

5. In the writ petition reliance has been placed on a letter dated July 13, 1985, of the then Minister-in-charge, Higher Education, West Bengal, to the Secretary, West Bengal Government College Teachers' Association containing, inter alia, a decision to the effect that other demonstrators meaning thereby a pass graduate demonstrator will be given the pay-scale of Rs. 550-1470. In my view, no case for revision of pay-scale can be based on such decision given to a body of Teachers' Association by the Ministers themselves without the concurrence of the

Finance Ministry or without a Cabinet decision or without recommendation of an expert body. The said decision was an ad hoc one given on the spur of the moment possibly to satisfy the agitated members of the said Teachers' Association. But in my view, the said decision is not one which can be enforced in a Court of law. In the instant case, the Petitioners have not claimed that the University Grants Commission has any animus or bad faith towards them. Even in para. 31 of the writ petition where the recommendation of U.G.C. have been sought to be assailed of no allegation of malice in fact or bad faith has been alleged.. The said attack was in general terms and without sufficient particulars. In fact, the recommendations of U.G.C. have not been annexed to the writ application nor have they been produced before the Court. In the absence of the text of the said recommendation by U.G.C, the Court is unable to pronounce upon its validity.

6. In this case the distinction between Post-Graduate Demonstrators and Pass Graduate Demonstrators is based on one of the well-known heads of classification, viz., educational qualification. It has been repeatedly held by the Apex Court that educational qualification can form the legitimate basis for a valid classification in the matter of pay-scale and other service benefits: See *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, Therefore, prescribing two scales of pay for two different groups of Demonstrators is totally permissible in law, Normally expert bodies like Pay Commission, University Grants Commission and Public Service Commission are expected to have the requisite knowledge, experience and also the factual material at their disposal to make specific recommendations about the revision of pay-scale. It is extremely difficult and hazardous for the Court, without the necessary expertise and the basic factual materials to venture in the arena of pay fixation. "

7. But it is extremely difficult for a writ Court, having regard to the circumspect nature of its jurisdiction, to decide that the Pass Graduate Demonstrators will get the same scale of pay as of Physical Instructors or Librarians or Assistant Librarian. In this connection this Court reminds itself of observations of the Apex Court in the case of *Delhi Veterinary Association Vs. Union of India (UOI) and Others*, . In that case in para. 4 the Supreme Court was prima facie of the view that the grievances of the Petitioners were legitimate, even then the Supreme Court did not undertake the task of refixation of pay-scale and in para. 9 the Supreme Court left the matter to be decided by "the Government on the basis of the recommendations of the Fourth Pay Commission". This question of pay fixation by the writ Court has recently been examined by the Supreme Court in the case of *Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others*,

8. In para. 12 the Supreme Court has been pleased to observe

It is well-settled that equation of posts and determination of pay-scale is the primary function of the executive and not the judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation which is generally left to

expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. Courts must, however, realise that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise, have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements.

9. Thereafter, considering various factors the Supreme Court came to the following conclusions:

There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert- body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay-scale for a given post and Court's interference is absolutely necessary to undo the injustice.

10. This Court is of the view that State Government has not acted illegally by accepting the recommendation of U.G.C. the matter of fixation of pay-scale for the Pass Graduate Demonstrators. Nor has there been any case of blatant or gross injustice. However, this Court feels that there is some justification for the grievances of the writ Petitioner same as the Supreme Court felt in the case of Secretary, Finance Department v. West Bengal Registration Service Association (Supra) that "prima facie there appears substance in the grievance of the Sub-Registrars...." Even then this Court cannot, same as the Supreme Court did not issue a writ of mandamus and command the Respondents to revise the pay-scale of the Demonstrators in Government Colleges and place them in the scale of 2200-4000 with effect from January 1, 1986.

11. For the reasons aforesaid this writ petition cannot be allowed in terms of its prayers. But justice of the case will be sufficiently done if the writ petition is disposed of by the following directions.

(a) The Petitioners will make a detailed representation about their grievances to the Respondents Nos. 4 and 5 within a period of 4 weeks from date.

(b) The Respondents Nos. 4 and 5 on receipt of the said representation will consider the same and reexamine the entire issue about the revision of pay-scale of the Petitioners afresh and pass a speaking order within a period of 6 weeks from the date of receipt of the representation. A copy of such decision must be sent to one Petitioner at the address furnished by them in their representation.

(c) If the Respondent No. 5 recommends any revision of pay-scale of the Petitioner, the State Government shall immediately give effect to the same.

12. There will be no order as to costs.