
(2004) 10 GUJ CK 0014
In the Gujarat High Court

Case No : Special Civil Application No's. 5363 and 5788 of 1987

Pankajbhai M. Bavisi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Citation : (2004) 10 GUJ CK 0014

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : B.P. Tanna and Kariel, for the Appellant; L.R. Pujari, AGP, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—The petitioners in these two petitions are the Librarians appointed in Non-Government Grant-in-Aid higher secondary schools.

2. Prior to 1st January, 1986 i.e. upto 31st December, 1985, the pay scale of Rs. 330-560 was allowed to the said librarians. The said payscale was revised to Rs. 1200-2040 with effect from 1st January, 1986. Feeling aggrieved and dissatisfied with the payscale sanctioned for the Librarians in higher secondary schools, the petitioners have preferred the present petitions. Both these petitions raise identical issues. The petitions are, therefore, disposed off by this common judgment.

3. The petitioners claim that they possess the qualification of a Degree/Certificate in Library Science. They claim parity of pay with the librarians in colleges. In the alternative, the petitioners claim parity of pay with the teachers in the higher secondary schools. Reliance is placed on the judgment of this Court in the matter of Bhoivala B.K and Ors. v. State of Gujarat and Ors. [Special Civil Application No. 872 of 1985 :: Decided on 18th April, 1986 :: Coram-Mr. Justice R.C Mankad].

4. Learned advocate Mr. Tanna has submitted that standard XI & XII of the

school are classified as Higher Secondary education. The higher secondary school was carved out by amalgamating Standard XI of the erstwhile high school and the 1st Year of the College. This pattern of education was introduced in the year 1976. He has submitted that standard XII which was earlier part of college education has now become the higher secondary school education. The librarians serving in the higher secondary schools, therefore, should be treated as College Teachers/College Librarians. He has submitted that some of the librarians in colleges have qualifications lesser than the petitioners. Nevertheless, they are paid higher payscale than the petitioners. In the alternative, he has submitted that the library is an essential part of the education. The librarians should be treated at par with the school teachers. In the matter of payscale, however, the petitioners are equated with non-teaching staff of the school and are paid accordingly. He has submitted that the petitioners have to suffer grave discrimination as the State Government has failed to workout proper equations. The grievance of the petitioners is required to be redressed by equating them with the college librarians or atleast with the school teachers. Mr. Tanna has extensively relied upon the above referred judgment of this Court.

5. The petition is contested by the State Government. Learned AGP Mr. Pujari has submitted that the payscales of the Librarians are determined pursuant to the recommendations made by the Pay Commissions. As there are horizontal and vertical equations, indulgence granted to one class of librarians shall upset the equilibrium amongst the librarians and other related cadres. He has submitted that in the facts of the present case, such an indulgence is not warranted. He has submitted that as far as college librarians are concerned, they are governed by the recommendations made by the University Grants Commission, as accepted by the State Government. According to the recommendations made by the said Commission, the Librarians in colleges are required to possess far higher qualification than the librarians in higher secondary schools. He has submitted that the librarians in colleges are required to possess a Master's Degree in Library Science or Information Science or Documentation with atleast 55% marks. Whereas, the librarians in the higher secondary schools are required to have passed SSC Examination and to possess a Diploma or a Certificate in Library Science. Considering the educational qualification required for the Librarians in higher secondary schools and the librarians in colleges, and the quantum of work required of a College Librarian and of a higher secondary school Librarian, any comparison amongst such librarians is uncalled for and is inapposite. He has submitted that in colleges, the teachers/lecturers and librarians are required to possess more or less similar qualification i.e. Master's Degree in the subject concerned. However, as far as higher secondary schools are concerned, that is not the position. As stated hereinabove, the librarians are required to have passed SSC examination and to possess a Diploma or a Certificate in Library Science. Whereas, the other teachers in the higher secondary schools were required to possess a Master's Degree in the concerned subject or were required to be trained Graduate with seven years' experience.

Under the modified rules the higher secondary school teachers are required to be Trained Post Graduates i.e. they are required to possess a Master's Degree and also a Degree in Education. Teachers in higher secondary schools are required to possess far higher qualification than that of a Librarian. Librarians, therefore, cannot claim parity with the other teachers in the higher secondary schools.

6. Mr. Pujari has submitted that there are other subjects taught in the higher secondary schools where the qualification required is to have passed SSC Examination and to possess a Diploma or Certificate in the subject concerned i.e. Physical Education/Training, Drawing, Music, etc. The librarians are, therefore, equated with such other teachers. Such equation cannot be questioned. He has denied that the Librarians are equated with the non-teaching staff, as averred in the petition. In support of his arguments, Mr. Pujari has relied upon the judgments of the Hon'ble Supreme Court in the matter of Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, of Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, and of V. Markendeya and Others Vs. State of Andhra Pradesh and Others,

7. The question of payscales of Librarians in the State Government was considered by the Gujarat State Second Pay Commission. It was noticed that the librarians possessed different qualifications and different levels of training. Based on some accepted and logical principles, it tried to examine, inter alia, (i) number and nature of the clientele served; (ii) size and nature of book collection and new acquisitions; (iii) quantity, quality and labour on services rendered; (iv) number of serials in stock and subscribed; (v) number of working days and working hours; (vi) annual budget and (vii) financial responsibilities as head of the office or otherwise. Based on the aforesaid criteria and the nature of duties involved, the said Pay Commission recommended three different pay scales for the Librarians having different levels of qualification i.e. (i) Graduate plus Degree or Diploma in Library Science; (ii) Graduate plus Certificate in Library Science; (iii) SSC plus Diploma in Library Science; and (iv) SSC plus Certificate in Library Science. For these four categories of Librarians, three different payscales were recommended i.e. Rs. 425-700; Rs. 380-640 and Rs. 330-560 respectively. It should be noted that at the relevant time, the Higher Secondary Schools were not in existence. The specific question of payscale of Librarians in higher secondary schools, therefore, was not under consideration by the said Pay Commission. The Third Pay Commission also classified the Librarians in the State Service in three different categories (a) Graduate with a Degree or Diploma in Library Science; (b) Graduate plus Certificate in Library Science; and (c) SSC plus Diploma/Certificate in Library Science. Thus, it appears that at all relevant times, more than one pay scale were operative for the librarians possessing different qualifications and different levels of training.

8. In the above referred Special Civil Application No. 872 of 1985, the petitioners-Librarians in Colleges affiliated to the Gujarat University claimed higher payscale

of Rs. 700-1600 as was made applicable to the Lecturers in the Colleges. Pursuant to the recommendations made by the University Grants Commission, as accepted by the Government of India, the Gujarat University had by its Resolution brought the librarians at par with the teachers/lecturers with effect from 1st April, 1966. Thereafter, pursuant to the recommendations made by the University Grants Commission, the requirements of the educational qualifications for the librarians, teachers, lecturers, professors, etc. and their pay scales were improved. The pay scales of the existing librarians, lecturers, teachers, professors, etc. were also improved on condition that they shall improve their qualification as per the modified requirements within specified period. As far as lecturers/teachers were concerned, the said specified period was extended from time to time. However, the benefit of such extension was not granted to the librarians. This Court considered various recommendations made by the University Grants Commission and the Experts from time to time. It was noted that the said petitioners did not possess qualification prescribed in the relevant resolution. The petitioners who did not possess the requisite qualification made a grievance that though they had been equated with the lecturers and other teachers, they were not given similar treatment in as much as they were denied the higher pay scale on the ground of lack of qualification. While in the case of the teachers and lecturers, improvement of qualification was not insisted upon i.e. the State Government continued to pay higher pay scale to the lecturers who failed to improve their qualification. The Hon"ble Court, therefore, held that, "On the same basis those librarians who were in service on December 19, 1983, should be placed in the pay-scale of Rs. 700-1600 without insisting upon their acquiring qualifications prescribed in the said resolution. At the cost of repetition it may be stated that five categories of librarians represented by the petitioners do possess qualifications prescribed by the University and it is therefore, that they are placed in pay-scale of Rs. 300-25-600 when they were first put on par with the college teachers. In so far as those librarians who were appointed after December 19, 1983, are continued they should be given five year's time to acquire prescribed qualifications. Period of five years would expire on December 18, 1988. If necessary as in the case of teachers this period may be extended by the appropriate authority. What is emphasised is that the librarians should be given the same treatment which is given to the teachers since both belong to the same class."

9. From the facts recorded in the aforesaid judgment and the materials placed on the record of this petition, it is apparent that the librarians in the colleges are required to have higher qualifications as the other teachers and the lecturers. Considering the qualifications required, the librarians in colleges were equated with teachers/lecturers. As the lecturers were granted some concession with respect to the improvement of qualification, a similar treatment was given to the librarians also. In case of the higher secondary schools, the librarians are required to possess qualification lesser than the librarians in colleges. Further, it cannot be gainsaid that the duties of the librarians in colleges would be more

strenuous than in the higher secondary schools. Considering the qualification required and the nature of duties required to be performed, the librarians in higher secondary schools cannot be compared with the librarians in colleges. The claim for parity with the college librarians made by the petitioners is ill-founded and requires to be rejected.

10. As to the grievance that the petitioners are compared with the non-teaching staff of the school, I must say that the said grievance is imaginary. The petitioners have not brought any material on the records to show that the petitioners are equated with the non-teaching staff of the school. On the contrary, the State Government has shown that the petitioners are equated with the other school teachers who possess similar qualification of SSC and a Diploma or Certificate in the concerned subject.

11. As to the claim for parity with the other school teachers made by the petitioners, the aforesaid judgment shall lend no support. In the said judgment, this Court did hold that the college librarians were entitled to parity with the teachers/lecturers. That was the recommendation by the University Grants Commission and the experts. Besides, the qualifications required to be possessed by the college librarians are as high as the qualification required to be possessed by the other teachers or lecturers. In the present case, there is a vast difference in qualification required to be possessed by the librarians and by the other school teachers. As recorded hereinabove, the higher secondary school teachers are required to possess a Master's Degree in the concerned subject and also a Degree in Education. Whereas, the librarians are required to pass SSC Examination and to possess a Diploma or a Certificate in Library Science. The librarians are not required to be trained in Education i.e. they are not required to possess a degree in Education. Considering the educational requirement for appointment as librarians and as other school teachers, their cannot be any comparison between the librarians and the other school teachers. Instead, as shown by the State Government, the librarians are considered at par with the teachers in other subjects like Music, Physical Training, Drawing etc., as this class of teachers are required to have passed SSC examination and to possess a Diploma/Certificate in the concerned subject. The classification and the equation of the librarians is thus made on the rationale and on acceptable principles. The same does not call for interference.

12. As held by the Hon''ble Supreme Court in the matter of The Secretary, Finance Department & Ors. {Supra}, "equation of posts and determination of pay-scales 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...Courts must, however, realize 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. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to coordinate with other departments, etc.... We have referred to these matters in some details only to emphasis that several factors have to be kept in view while evolving a pay structure and the horizontal and vertical relativities have to be carefully balanced keeping in mind the hierarchial arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well." In the matters of Mewa Ram Kanojia {Supra} and of V. Markendeya and Ors. {Supra}, the Hon"ble Supreme Court has upheld the different payscales on the basis of educational qualifications and has termed the same as permissible classification.

13. As discussed hereinabove, I am of the opinion that the petitioners cannot be said to be similarly situated as the college librarians or the other higher secondary school teachers. The parity claimed by the petitioners is, therefore, misconceived and requires to be rejected.

14. One grievance that learned advocate Mr. Tanna has expressed is that some of the petitioners do possess higher qualifications. Some of them possess qualifications higher than the college Librarians also. It may be a matter of dissatisfaction. However, merely because the concerned librarian possesses qualification higher than what is required under the relevant rules, such librarian cannot claim higher payscale as a matter of course. For determination of payscale, minimum qualification required to be possessed for appointment to the post in question is relevant. If a person having higher qualification applies for appointment to such post, gets selected and appointed; such person also would receive the same pay as it is admissible to the post in question. Unless there is a specific provision for higher payscale for the employees possessing higher qualification, such employees cannot claim higher payscale as a matter of right. Similarly, a librarian possessing higher qualification, if appointed in a higher secondary school, would be placed in the payscale that is applicable to the higher secondary school librarians. Hence, such of the petitioners who possess higher qualification cannot claim payscale higher than what is sanctioned under the relevant rules, on the ground that they possess the qualification higher than the minimum prescribed under the rules.

15. In the matter of G.K Pathak v. State of Gujarat [Special Civil Application No. 1 of 1996 :: Decided by me on 17th September, 1997], a similar claim was made by the Translators serving in the High Court of Gujarat. The petitioners claimed

parity of pay on the basis of Master's Degree possessed by them. It was held that, "I am afraid the petitioners' claim for higher scale of pay cannot be accepted merely because they possess a higher qualification. The pay scales are ordinarily determined on the basis of the minimum qualification required for appointment to the post. If a person possesses a higher qualification and is preferred, in absence of any rules to that effect, he cannot claim a higher pay scale." Similarly, in the present case also, the petitioners' claim for higher pay scale on the basis of higher qualification possessed by individual petitioner cannot be accepted.

16. No other contention is raised before me. The petitions are dismissed. Rule nisi issued in each petition is discharged. Parties shall bear their own cost.

17. The registry shall maintain copy of this judgment in each petition.