
(2004) 04 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 307 of 1998

Pranati Moda (Saha)

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2005) 1 GLR 395

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : S. Talapatra, for the Appellant; U.B. Saha and P. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—By this writ petition, the petitioner is seeking a direction from this court for allowing her to enjoy the University Grants Commission (UGC) pay scale of lecturer/sr. lecturer/lecture selection grade with effect from 5.2.1992 with actual financial benefits, for considering her absorption to the said post of lecturer as per UGC recommendation in the Government College of Education with UGC pay scale attached to the post with effect from 5.2.1992 and for setting aside the memorandum No. F.6(9-I)DYAS/CON/2000/2281-3225 dated 4.6.2001 transferring her to the West District Youth Affairs and Sports Office, College Tilla, Agartala.

2. The material facts, in brief, are that the petitioner was initially appointed as class-III staff (primary teacher) on 28.4.1964. Therefore by the order dated 11.11.1965, she was appointed to the post of Instructor (Physical Education) and was subsequently placed in the post of Graduate Physical Instructor in the pay scale of 125-200/- with effect from 24.9.1968. By the order dated 9.1.1976, the petitioner was redesignated as Junior Coach in the pay scale of Graduate Physical Instructor. The petitioner was subsequently, confirmed to the post Physical Instructor with effect from 9.11.1967 by the order dated 25.4.1974. Thereafter,

she was placed in the selection grade of Physical Instructor "Senior Coach" with effect from 9.8.1988. It would appear that by the memorandum No. F.7(151-4)DHE/87(L) dated 2.1.1992, the service of the petitioner was placed in the Government College of Education, Agartala with her existing pay scale with admissible allowances until further orders. It was stipulated in the said order that her pay and allowances would be drawn and disbursed from the Head of Government Colleges and Institutions viz. "2002-General Education, 02-Secondary Education, 306-Teachers training, 1-Salaries (non-plan)". The petitioner obtained BA degree in 1968, MA degree in Physical Education in 1976 and B.Ed in the year 1996-97 with first class. The petitioner also obtained teacher's Certificate in Physical Education in 1965, the degree of Master of Physical Education in 1980 with first class from University of Madras and Diploma in Coaching in 1974. It is the case of the petitioner that ever since she was placed in the Government College of Education, she has been performing and discharging all the duties and responsibilities of Asstt. Professor of the College in question and in recognition of her service, the Principal of the college issued a certificate dated 25.3.1996 certifying that she has been teaching Physical Education method and contest paper including teaching practical of the subject and that she was performing all the duties expected as Physical Education teacher. The Principal further certified therein that she was also teaching the above papers which was expected to be taught by a regular Asstt. Professor of a college since the college does not have any Asstt. Professor in physical education. The petitioner also claims that she has written a course material on physical education for the Tripura University which has been published by the Tripura University as the approved text book for the course of Bachelor of Education. According to the petitioner, even though she has been discharging the duties of Asstt. Professor (now. re-designated as a lecturer/selection grade) she is given the pay scale of a Senior Coach while she is entitled to the pay scale of lecturer/ senior lecturer/lecturer selection grade by following the principles of "equal pay for equal work". It is also the case of the petitioner that as early as 1994, she submitted a representation to the respondent No. 2 claiming the benefit of the pay scale of the post of lecturer/senior lecturer/ lecturer selection grade for performing of the duties and responsibilities of the aforesaid post with effect from 5.2.1992, but her claim has been denied till now. The petitioner also claims that she is entitled to be appointed to the post of lecturer/senior lecturer/ lecturer selection grade in a substantive capacity with effect from 5.2.1992. It is the specific case of the petitioner that her case is squarely covered by the judgment dated 24.9.1988 passed by this case in Civil Rule Nos. 50, 51, 52 of 1981 and Civil Rule No. 301 of 1980 and, as such, she submits that she is entitled to the same relief granted in the aforesaid cases.

3. It may be noticed that the writ petition was subsequently amended by the petitioner incorporating subsequent development. In the amended writ petition, it is stated by the petitioner that by the order dated 4.6.2001 issued by the Director, Youth Affairs & Sports i.e. the respondent No. 3 transferred her from

her present place of posting to the West District Youth Affairs and Sports Office, College Tilla, Agartala. It is claimed by the petitioner that the transfer order was issued with mala fide intention and for the sole purpose of frustrating her claim for absorption as lecturer/senior lecturer/lecturer selection grade in a Government College and that the transfer order was not issued in public interest inasmuch as there is no function for her in the West District Youth Affairs and Sport Office, College Tilla, Agartala. It is asserted by the petitioner that after the creation of the Directorate of Youth Affairs and Sports, her service was allocated to the Directorate of Higher Education and was under the control of the Principal, Government College of Teachers Education which is under the Directorate of Higher Education. It is contended by the petitioner that the impugned transfer order is arbitrary and illegal and is violative of the statutory provision since except for the Head of Department or appointing authority no other authority is authorised to issue such transfer order and as such the transfer order dated 4.6.2001 is liable to be quashed. The petitioner also contends that a similarly situated person like Sri Moloy Kumar Saha who was assistant teacher of Pollymongal H.S. School, Agartala was absorbed as a lecturer in Bengali in pursuance of the said judgment dated 24.9.1988 vide notification dated 17.11.1995. According to the petitioner, she has been subjected to hostile discrimination, which is violative of her fundamental rights enshrined in Article 14/16 of the Constitution of India.

4. The State respondents resisted the writ petition and filed their counter affidavit wherein it is contended, inter alia, that the case of the petitioner was carefully examined by them. Regard being had to the nature of duties and responsibilities attached to the post held by the petitioner, they came to conclusion that there was no reason to revise the pay scale of the petitioner and that mere working in a college on deputation does not entitle her to the UGC pay scale since the petitioner is not governed by the recruitment rules applicable to the college teachers. It is pointed out by the State respondents that the service of the petitioner, who was appointed elsewhere by the Director of Education, was merely utilised by the respondents in the Government College of Education and that the petitioner is governed by a separate recruitment rules. Therefore, it is unnecessary to determine her status and she has no right to claim the higher pay scale like UGC scales of pay. It is further stated by the State respondents that fixation of pay is within the exclusive domain of the Government, which normally act on the recommendation of the Pay Commission constituted by it from time to time and that the revision of pay scale of any category has cascading effect on the State exchequer and as such the equation of post or equation of pay must necessarily be left to the Government for decision. It is pointed out by the State respondents that the petitioner was transferred to the Government College of Education as Senior Coach with her existing scale of pay and that there is no post of Senior Coach in the said college and her transfer is merely an administrative affair. In the absence of the post of Senior Coach in that college, according to the State respondents, there is no question of

absorption of her service therein. It is also asserted by the State respondents that there is no relation between the Senior Coach and Assistant Professor and that her duty as Senior Coach was to perform physical activities as an expert of Physical Education. It is further pointed out by the State respondents that the Government of Tripura has not taken any decision for granting the pay scale of UGC to the Physical Instructors of the Government colleges. The State respondents vehemently denies that the case of the petitioner is covered by the judgment passed by this court referred to earlier inasmuch as the petitioners in those cases have got the requisite qualification and that the only deficiency in their case was non-selection by the Tripura Public Service Commission (TPSC) on merit. According to the State respondents in the instant case, the petitioner has no minimum qualification prescribed by the UGC and that no Physical Instructor employed in degree colleges and universities were allowed the UGC pay scales.

5. The State respondents also filed additional affidavit-in-reply to the amended writ petition wherein they denied that the impugned transfer order dated 4.6.2001 was issued with mala fide intention or for the purpose of frustrating the claim of the petitioner for absorption as lecturer in the Government college. It is pointed out by the State respondents therein that in the year 1979, the Directorate of Education was trifurcated into Directorate of Higher Education, Directorate of School Education and Directorate of Social Welfare & Social Education and that the Directorate of Sports and Youth Programme also came into existence subsequently. By the notification dated 28.3.1994, the Government of Tripura ordered that the services of all Physical Instructors of various designation working under the Directorate of Higher Education and the Directorate of School Education should stand transferred to the administrative control of the Directorate of Sports & Youth Programme with effect from 1.4.1994 and resultantly the petitioner is no longer a staffer an employee of the Directorate of Higher Education since then and is now a staffer an employee of the Directorate of Sports and Youth Programme. It is further pointed out by the State respondents that by the memorandum dated 16.2.1996, the respondent No. 3 declared the Head of offices and Drawing and Disbursing Officers (DDO) of various sub-divisional Youth Affairs and Sports offices and the respective Head of office and DDOs of Youth Affairs and Sports were directed to draw and disburse the salaries of Physical Instructors and Coaches and that in terms of this memorandum, the Physical Instructors and Coaches including the petitioner are drawing their salaries from the respective offices of the Directorate of Youth Affairs and Sports. In terms of this notification, according to the State respondents, the respondent No. 3 is the competent authority to issue the impugned transfer order and as such there is no infirmity in the impugned transfer order. In so far as the case of Shri Malay Kumar Saha is concerned, the State respondents pointed out that he is a subject teacher whereas the petitioner is a Physical Instructor and both cannot be compared since the duties and responsibilities of a subject teacher and a Physical Instructor are different. It is the specific case of the State respondents that the petitioner was never

appointed in the Directorate of Higher Education nor is she an employee of the Directorate of Higher Education.

6. The point for determination in this writ petition is, therefore, whether the petitioner can be given the pay scale of lecturer in the Government College of Education by virtue of her taking regular classes in Physical Education even though she was transferred to that College as a Senior Coach. As stated earlier, the petitioner has been holding the post of Senior Coach in a substantive capacity and that her service was merely placed at the disposal of the Government College of Education with her existing pay scale by the order dated 2.1.1992. It may be noticed that the qualification for the recruitment to the post of lecturer in a Government college is prescribed by the UGC, i.e. UGC Notification on Revision of Pay scales, the minimum qualification for appointment of teachers in Universities and colleges and other measures for maintenance of standards, 1988. In terms of the said notification, it is prescribed that the direct recruitment to the post of lecturer, reader and professor in the Universities and colleges shall be on the basis of merit through advertisement and selection by the duly constituted selection committee set up under statute/ordinance of the concerned University. The minimum qualification prescribed therein for the post of lecturer in Physical Education is good academic record, 55% marks at the master degree level and qualifying the national level test. It is the specific averment of the State respondents that the petitioner has no qualification for the post of lecturer and that there is no post of Senior Coach in the college of Teachers Education. These assertions made by the State respondents are not denied or disputed by the petitioner. Therefore, it goes without saying that the petitioner has no qualification for the post of lecturer. It is trite that substantially similar duties and responsibilities and inter-changeability of the post does not necessarily attract the principle of equal pay for equal work when there are other distinguishing factors like educational qualifications for appointment, mode of recruitment, status, special assignment entrusted to one category only. The Apex Court in *Sita Devi and others etc. etc. Vs. State of Haryana and others*, has held that a person claiming parity in pay scales should establish that his qualification, duties and functions are similar to those of the persons with whom he claims parity. In *Chandigarh Administration v. Anita Soon (Smt.) and Ors.* reported in 1995 Supp (3) SCC 613, the Apex Court also held that teaching assistants cannot be granted pay scales of lecturers on the ground that they teach same subjects to same/similar students as being done by the lecturers. Again, whether the duties of auxiliary nurse/mid-wife and status of nurse might overlap and in the absence of the staff nurse, auxiliary nurse/mid-wife might be required to carry out some of the functions of the staff nurse and whether the auxiliary nurse/mid-wife does not have the requisite qualification for appointment as staff nurse, the Apex Court, in *Central Hospital v. Savita S. Bodke and Ors.* held that the direction for payment of the salary of staff nurse to an auxiliary nurse/mid-wife was unjustified. In the instant case also, apart from claiming that the petitioner takes regular classes in Physical Education, the petitioner has not been

able to establish that she has the same qualification of the post of lecturer of the college concerned with whom she claims parity.

7. I have also carefully gone through the judgment dated 24.9.1998 of this court cited by the petitioner. In that case, it appears that the petitioners who were assistant teachers, claimed to be appointed as lecturers in degree college between 1971 and 1973. It was contended by the State respondents that the petitioners not having been selected in the post in question by the TPSC, no claim for the pay scale meant for selected candidates could be made by the petitioners. On examination of the aforesaid judgment, the petitioners in that cases were apparently qualified to be appointed as lecturer, but were not selected for the post in question by the TPSC since a specific finding was made by this court in that case that some other lecturer who were also not recommended by the TPSC were apparently paid salary in the higher pay scale, it was under the aforesaid circumstances, that this court directed the respondent to pay to the petitioner the same pay scale applicable to other lecturers in degree colleges. There is, thus, no doubt that the facts in that case is distinguishable and can have no application to the facts of the present case.

8. Mr. U.B. Saha, learned Sr. GA for the State respondents draws my attention to the judgment dated 31.7.2002 passed by this court in C.R. 119 of 1996 (Seuli Roy v. State of Ors.) to show that the facts of the present case are similar to the facts of that case. The facts of Seuli Roy's case (supra) are that she was also initially appointed as a substitute assistant teacher and on completion of certificate course of Physical Education, she was appointed as a physical instructor in 1971 and was posted to Women's College, Government of Tripura by the order dated 7.3.1975 issued by the Director of Education. She also completed her graduation in Arts in 1974 and obtained her Master degree in Bengali in 1980. She also obtained post graduate diploma course in Physical Education. She obtained National Institute of Sports Certificate in 1982. Subsequently, it was also her claim that she had been undertaking various activities of programmes and performance in that college and also it is the duties and functions of Physical Instructor of that college. She accordingly claimed that she was entitled to be paid the pay scale of UGC. This court after carefully examining the pleadings of both the parties recorded the following findings:-

(I) The petitioner has never been appointed against any vacant post of Physical Instructor of any college, rather, she was substantially a Physical Instructor of school;

(II) She has not acquired the qualification prescribed by the UGC for appointment to the post of Physical Instructor in colleges and that her services as Physical Instructor has been simply in a college;

(III) She is not the graduate in Physical Education and as such acquiring of post graduate diploma or certificate in Physical Education does not arise;

On the basis of the aforesaid findings, this court took the view that the.

petitioner was not entitled to the same scale of pay of lecturer of a Government college and to dismiss the writ petition. To my mind, there is no materials to distinguish the instant case from Seuli Roy's case (supra). I am in respectful agreement with the view taken by this court in the said case.

9. On the question of absorption of the service of the petitioner, the contention of the petitioner also must meet the fate. The sine qua non for absorption of the service in the Government college of Teachers Education in the post of lecturer is the acquisition of minimum qualification for the post of lecturer/senior lecturer/lecturer selection grade. On the basis of my above findings that the petitioner has no requisite qualification for the post of lecturer as prescribed by the UGC, the question of absorbing her to the post of lecturer in that college does not and cannot arise. As noticed earlier, the recruitment to the post of lecturer is to be made by advertisement and on merit to be selected by the selection board constituted under the statutes/ordinances applicable to the various colleges/universities. Even assuming that the petitioner is qualified to be appointed as lecturer, giving appointment to her as a lecturer by way of absorption will be in contravention of the recruitment rules and will deprive eligible candidates of their rights to be considered for the post in question. In that view of the matter, the petitioner is not entitled to be absorbed to the post of lecturer in the said college.

10. In so far as the impugned order is concerned, the undisputable facts remain that the petitioner is under the administrative control of the Director of Youth Affairs and Sports and is drawing her salary and other entitlements from the office of the said Directorate. It may be noted that the notification dated 28.3.1994 issued by the State respondents ordering that the services of all Physical Instructors of various designation working under the Directorate of School Education shall stand transferred to the administrative control of the Directorate of Sports and Youth Programme with effect from 1.4.1994 is not challenged by the petitioner. It is also not the case of the petitioner that the condition prescribed therein for transferring and posting of Physical Instructor from one Directorate to another or otherwise has been violated in issuing the impugned transfer order. That being the position, I do not find any infirmity in the impugned transfer order and, as such, no interference is called for thereby.

11. For what has been stated above, this writ petition is devoid of merits and is hereby dismissed. However, parties are directed to bear their own cost. The interim order dated 25.6.2001 stands vacated.