
(2014) 12 CAL CK 0004

In the Calcutta High Court

Case No : Writ Petition Nos. 15892, 15894, 15896, 15898, 15900, 15902, 15904, 15905, 15907, 15908, 15910, 15911, 15913, 15914, 15916, 15918, 15919, 15921, 15923, 15925, 15927, 15928, 15929, 15931, 15933, 15934, 15936, 15938 and 15940(W) of 2014

Prarthana Kumar Roy

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16

Citation : (2015) 1 CALLT 129 : (2015) LabIC 721

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Ashok Kumar Janah, Saikat Banerjee, Ina Bhattacharjee, Pampa Dhabal and Krishnadeo Das, Advocate for the Appellant; Amal Kr. Sen and Sabyasachi Mondal, Advocate for the Respondent

Judgement

Dipankar Datta, J.—This bunch of 30 (thirty) writ petitions are at the instance of part-time teachers of non-Government higher secondary schools. Each of the 30 (thirty) petitioners has laid claim to "equal pay for equal work" at par with the full-time permanent teachers appointed on the basis of the recommendations of the relevant Regional School Service Commissions (hereafter the Regional Commissions) as well as "leave" benefits.

2. In all the writ petitions, orders passed by the Commissioner of School Education, West Bengal (hereafter the Commissioner) of varying dates rejecting the claims of the petitioners are under challenge. The claim of each petitioner for "equal pay for equal work" has been rejected primarily on the ground that the source of recruitment of part-time teachers and full-time permanent teachers is not one and the same. That apart, their prayer for casual leave and medical leave was rejected on the ground that the relevant Government Order dated July 28, 2010 extending such benefit had been withdrawn.

3. Prior to November 1, 1997, recruitment of teaching staff in non-Government aided and unaided schools was regulated by the guidelines issued from time to time by the Director of School Education, West Bengal. For achieving vested interests, members of the Managing Committee of such schools started indulging in malpractices. Towards the end of the last century corruption assumed such enormous proportion that the need to eradicate it completely from the field of recruitment of teachers was seriously felt. The will of the people in this behalf was expressed by the legislature by enacting the West Bengal School Service Commission Act, 1997 (hereafter the Act), creating the West Bengal Central School Service Commission (hereafter the Central Commission) and the Regional Commissions. The Central Commission and the Regional Commissions were required to act in tandem for searching out the best talent in the State and to recommend them for ultimate appointment as teachers. The system has been in vogue for nearly two decades and although not entirely but to a large extent it has been possible to arrest corruption that was prevalent in recruitment of teachers towards the end of the eighties and major portion of the nineties of the last century.

4. Despite the Act mandating that no teacher shall be appointed except on the recommendation of the Regional Commission having jurisdiction, the need was again felt to cater to the students of schools where additional posts were created either due to increase in roll strength in schools having higher secondary section or due to up-gradation of a high school to a higher secondary school. The procedure prescribed by the Act being time consuming, the Government issued memo dated June 6, 2002 for appointment of part-time teachers on such newly created posts in the schools having higher secondary sections on part-time basis and on terms and conditions imposed therein. Nearly 1500 posts created in phases were to be filled up by part-time teachers. Relevant portions of memo dated June 6, 2002 together with the contract that the part-time teachers were required to execute, read as follows:

"No. 219-SE(HS)/6A-5/01 The 6th June, 2002.

Sub.: Creation of 900 (nine hundred) posts of part-time teachers Higher Secondary Section of Higher Secondary Schools in West Bengal.

The undersigned is directed by order of the Governor to say that the Governor has been pleased to accord sanction to the creation of 900 (nine hundred) posts of part-time teachers for the Higher Secondary Section of Higher Secondary Schools in West Bengal on a fixed pay of Rs. 2,000/- per month on contract basis as part-time teacher. The post will be filled up by the Managing Committee/ Adhoc Committee/Administrator of the Higher Secondary Institution on the following terms and conditions:-

**** ii) The period of contract should be 1 (one) year with a provision of renewal with a break.

*****"

"PROFORMA FOR APPOINTMENT OF PART-TIME TEACHER IN HIGHER SECONDARY SECTION ON CONTRACTUAL BASIS

(1) The appointment will be purely on temporary and contractual basis for 1(One) year with effect from the date of joining provided his/her service in the Institution is found satisfactory throughout this period of 1(One) year on a fixed pay of Rs. 2,000/- (Rupees Two Thousand) only per month without any allowances. His/Her service will automatically be terminated on expiry of the period of 1(One) year or, earlier, if his/her performance in the school is not found satisfactory and/or violation of condition (2) below and as provided here below.

(2) The teaching load of the part-time teacher should normally be 10(Ten) periods per week and he/she should carry out his/her duties in the School/ Madrasah as allotted to him/her.

(3) During the vacation period also the part-time teacher will get the consolidated pay as stated above.

(4) He/She will not claim for an appointment on regular basis on expiry of his/her term.

(5) His/Her appointment is terminable with 1(One) month's notice on either side and before completion of the contractual period of 1(One) year."

5. From time to time, Government orders were issued enhancing the emoluments of the part-time teachers. One such order is dated February 25, 2009, whereby, apart from raising the emoluments of part-time teachers to Rs. 6000/- per month with effect from January 1, 2009, it was directed that there would be no further appointment of any part-time teacher (on contract basis) in non-Government higher secondary schools with effect from April 1, 2007 and the existing part-time teachers (on contract basis) may, however, continue until further orders.

6. By a subsequent Government order dated January 28, 2010, the decision of the Government to further protect the interests of the part-time contractual teachers attached to Government aided higher secondary schools was conveyed as follows:

"*****none of the part-time contractual teacher attached to Govt. aided Higher Secondary Schools he terminated or he released or have the contracts not renewed without obtaining the permission of the District Inspector of Schools (SE) concerned."

7. Close on the heels of the aforesaid order was issued Government order dated

June 9, 2010, conveying as follows:

"In continuation and partial modification of this Department's Memorandum bearing No. 274-SE(P)/PBRPSXJS/ADMN/9/04-05 dated 23-04-2010 the undersigned is directed by the order of the Governor to make the following inclusion/modification in the aforesaid G.O.:-

i) No other allowance will be admissible to the Part Time Teachers (on contract basis) attached to Non Government H.S. Schools except the enhancement @ 5% of the remuneration, at every interval of 3 years, after the enhancement done as on 01-06-2010.

ii) These persons will remain engaged till they attain 60 years of age and the State Government will bear the expenditure.

2) No new engagement of Part Time Teachers for Non Government H.S. Schools can be made after issue of this order."

8. Finally Government order dated July 28, 2010 was issued reading as follows:

"The undersigned is directed to say that after careful consideration, the Governor has now been pleased to accord sanction of 10 (ten) days casual leave and 10 (ten) days Medical Leave to the part-time contractual teachers attached to different Govt. aided/Sponsored Higher Secondary Schools under the Directorate of School Education, Govt. of West Bengal subject to the condition that they have to take equal number of classes per week as like as the duties of regular and full-time teachers."

9. These facts in the background, the petitioners had the occasion to invoke the writ jurisdiction of this Court by filing separate writ petitions claiming service benefits. All such writ petitions were disposed of by a coordinate Bench with direction upon the Commissioner to take a decision with regard to the petitioners' claims for payment of salary and allowances as are being received by permanent full-time teachers, in accordance with law and by passing a reasoned order.

10. It is in compliance with the orders passed by the co-ordinate Bench that the impugned orders have been issued by the Commissioner.

11. Appearing in support of the writ petitions, Mr. Janah, learned advocate contended that the orders passed by the Commissioner refusing the petitioners' claims are absolutely illegal, arbitrary and without any reasonable basis whatsoever. According to him, the petitioners as part-time teachers are engaged in imparting lessons to the students at par with the permanent full-time teachers appointed on the recommendations of the Regional Commissions and have been taking classes which are allotted to them by the respective headmasters. There is no qualitative and quantitative difference in discharge of duties and performance of functions by the two sets of teachers and treating the part-time teachers not at par with the permanent full-time teachers is clearly

discriminatory and violative of Article 14 of the Constitution.

12. In support of his contention, Mr. Janah placed reliance on the following decisions of the Supreme Court:

- a) Arindam Chattopadhyay and Others Vs. State of West Bengal and Others, ;
- b) Nehru Yuva Kendra Sangathan Vs. Rajesh Mohan Shukla and Others, ;
- c) State of West Bengal and Others Vs. Pantha Chatterjee and Others, ; and
- d) Grih Kalyan Kendra Workers" Union Vs. Union of India and others,

13. Referring to that part of the observation of the Commissioner that Government order dated July 28, 2010 had been withdrawn, it was submitted by Mr. Janah that the particulars of the subsequent Government order have not been disclosed and its very existence is in question. Even assuming that the Government order dated July 28, 2010 has been withdrawn, he contended that the petitioners cannot be deprived of a benefit which hitherto before they were enjoying and such deprivation of benefit without opportunity is in clear breach of principles of natural justice.

14. Mr. Janah accordingly prayed for quashing of the orders of the Commissioner and direction upon the official respondents to treat the petitioners at par with the full-time permanent teachers and to extend to the former pay and leave benefits at par with the latter.

The writ petitions have been opposed on behalf of the official respondents by Mr. Manna, learned senior advocate, Mr. Dey, learned advocate and Mr. Sen, learned advocate.

15. According to Mr. Manna, after the enactment of the Act no teacher could be appointed except on the recommendation of the Regional Commission having jurisdiction and by appointing part-time teachers on contract basis, the policy contemplated by the Act was subverted. He also contended that the petitioners not having been appointed as teachers in terms of the Act and the rules/regulations framed thereunder, they are not entitled in law to claim parity with the teachers appointed on the recommendations of Regional Commissions.

16. It was the contention of Mr. Dey that the petitioners had consciously accepted jobs which were part-time and on contract basis; they were satisfied with such appointments and did not avail the opportunity of being appointed as full-time permanent teachers based on recommendations of the Regional Commissions by competing with other candidates in the various regional level selection tests conducted by the Central Commission. According to him, no law debarred the petitioners from participating in such tests and they having acquiesced in the system cannot now turn around and claim parity with the full-time permanent teachers.

17. According to Mr. Sen, the identity of the petitioners is distinctly different from

the identity of the teachers appointed on the recommendations of the Regional Commissions. He referred to the decisions reported in *State of Punjab and Another Vs. Surjit Singh and Others*, , and *State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai*, to contend that the petitioners cannot claim parity with the full-time permanent teachers since there is a distinct possibility of qualitative difference in the level or standard of imparting lessons to the students by the two sets of teachers. He contended that the principle of "equal pay for equal work" cannot be applied blindly and that if the recruitment rules are not followed while making appointments, parity in employment cannot be claimed. Relying on the aforesaid two decisions, Mr. Sen argued that there is no wholesale and complete identity between the two sets of teachers and merely because the petitioners as well as the full-time permanent teachers are designated as Assistant Teachers, that by itself would not be sufficient to clothe them with the right to claim "equal pay for equal work".

18. Referring to the observation of the Commissioner that Government order dated July 28, 2010 stood withdrawn, Mr. Sen placed Government order dated March 20, 2014 and submitted that the Commissioner was justified in declining casual and medical leave to the petitioners.

19. All the three learned advocates representing the official respondents contended in unison that the writ petitions should be dismissed.

20. I have heard the parties and perused the decisions that have been cited at the bar. I have also considered the mode and manner of appointment of part-time teachers vis-a-vis appointment of teachers through the machinery set up by the Act. There can be no two opinions that the sources of recruitment of the two sets of teachers (part-time and full-time) are completely different and the claim of the part-time teachers for pay parity has to be considered bearing in mind the factors that the Supreme Court in its several decisions has indicated.

21. It would be useful to note what the Supreme Court observed in the decisions cited by Mr. Sen.

22. The Court ruled in *Ramesh Chandra Bajpai (supra)* that:

"15. *** the doctrine of "equal pay for equal work" could be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The Court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

23. In *Surjit Singh (supra)*, the Supreme Court upon consideration of various earlier decisions laid down that:

"24. It is no longer in doubt or dispute that grant of the benefit on the doctrine of

"equal pay for equal work" depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity. ***"

24. Apart from the decisions cited by Mr. Sen, the decisions reported in *Union of India and Others Vs. Shri Ram Gopal Agarwal and Others*, ; *Official Liquidator Vs. Dayanand and Others*, ; *Haryana State Electricity Board and Another Vs. Gulshan Lal and Others*, ; *State of West Bengal and Another Vs. West Bengal Minimum Wages Inspectors Association and Others*, ; and *Union of India (UOI) and Others Vs. Jagdish Pandey and Others*, are authorities for the proposition that source and mode of recruitment is one of several factors to be considered for application of the principle of "equal pay for equal work" and that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales; before entertaining and accepting the claim based on the principle of "equal pay for equal work", the Court must consider the factors including, inter alia, source and mode of recruitment/appointment, reliability and responsibility. The decisions cited by Mr. Sen in effect echo the view expressed in *Dayanand (supra)*, a decision delivered by a three-judge bench of the Supreme Court.

25. Although as part-time teachers the petitioners have been engaged in imparting lessons to the students, which is also the job of full-time teachers, the former are not entitled to claim pay at par with the latter because they have been appointed on the basis of executive instructions issued by the State and not in accordance with the recruitment rules governing the field i.e. the Act and the rules/regulations framed thereunder. It is true that a dividing line cannot be drawn with mathematical precision for branding a part-time teacher unreliable and irresponsible and a full-time teacher reliable and responsible. It might well happen that the output of a part-time teacher is more compared to a full-time teacher employed in the same school or that a part-time teacher is better accepted by the students than a full-time teacher, yet, the broad factors cannot be overlooked in reaching a decision as to whether the claim for "equal pay for equal work" is justified or not. The difference in the source and mode of recruitment/appointment is clearly decisive. Part-time teachers like the petitioners, if they apply for recruitment through the machinery set up by the Act, would be entitled to additional marks for experience [see Section C, Part C of Schedule II appended to the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007]. The petitioners by not treading the path of securing appointment through the Regional Commissions have demonstrated their utter lack of conviction, courage and enterprise to compete with other eligible candidates. In the circumstances, I have no option but to uphold the orders of the Commissioner to the extent the Commissioner declined the prayer of the petitioners for "equal pay for equal work".

26. The decisions cited by Mr. Janah on "equal pay for equal work" have been

perused and I shall now proceed to observe as to why the ratio laid down therein do not come to the rescue of the petitioners.

27. In *Arindam Chattopadhyay (supra)*, the issue was whether the appellants, who were Assistant Child Development Project Officers (ACDPOs) and acting as Child Development Project Officers (CDPOs) in the Integrated Child Development Services (ICDS) since July 7, 1999 were entitled to be paid salary in the pay scale prescribed for the post of CDPO. The State admitted that the appellants had been discharging the duties of CDPOs but it was averred in the counter affidavit that there was no recruitment rule exclusively for the post of CDPO. The Supreme Court was of the view that since the appellants were working continuously for many years as full-fledged CDPOs, they ought not to be refused the higher pay scale which a CDPO would otherwise be entitled to, for the failure of the Government to fill up the post of CDPOs by framing recruitment rules. It is in such circumstances that the appellants were held entitled to the pay meant for the CDPOs. The facts of the present case are not at all similar and, therefore, the decision in *Arindam Chattopadhyay (supra)* has no application.

28. It is, indeed, true that in *Rajesh Mohan Shukla (supra)* the Supreme Court directed "equal pay for equal work" despite noticing that there was a difference in the source of recruitment of youth coordinators coming on deputation and absorbed as such and those who were directly recruited. The Supreme Court proceeded to grant relief on returning a finding that the respondents had been working for more than two decades discharging the same functions and duties as the other group, and looking to the nature of duties there was no reason to treat them differently. I am inclined to the view that this decision was rendered in the peculiar fact situation before the Court and in the absence of consideration of the various factors which the Supreme Court itself has carved out, which ought to be borne in mind while considering a claim for "equal pay for equal work", such decision cannot be accepted as a binding precedent under Article 141 of the Constitution.

29. The Supreme Court while deciding the civil appeal in *Pantha Chatterjee (supra)* considered the materials on record and returned a finding that the part-time Border Wing Home Guards (BWHGs) cannot be treated as volunteers engaged in casual nature of work so as to be termed as part-time staff of the Government and the so-called part-time BWHGs could not be treated differently from the permanent staff of the BWHG and are to be accorded parity with them. This finding was returned in the wake of the submission of the State that the Home Guards "is a voluntary organisation" and that the part-time BWHGs are entitled to honorarium only and they are to be paid as and when their services are required and utilized. The Supreme Court considered the claim of the part-time BWHGs that they were rendering service in pitiable conditions and paid nominal emoluments despite the fact that they were being deployed for considerable periods of time. The decision has more to do with the status of the employees rather than "equal pay for equal work" and is, therefore,

distinguishable.

30. In Grih Kalyan Kendra Workers" Union (supra), the claim of the workmen for "equal pay for equal work" was disallowed. However, paragraphs 6 and 7 were cited for emphasizing that although "equal pay for equal work" is not a fundamental right but had assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. There is no dispute with regard to this proposition but as has been observed above, the source and mode of recruitment/appointment of the petitioners being different, that is a real impediment in extending to them pay at par with full-time permanent teachers.

31. However, while being unable to accept the petitioners" claims for "equal pay for equal work", I am also of the view that the petitioners as part-time teachers are entitled to limited success on these writ petitions. Their claims for extension of casual leave and medical leave were spurned by the Commissioner by committing an error in appreciating the issue in the proper perspective.

32. It is true that the Government order dated July 28, 2010 has been withdrawn by the Government order dated March 20, 2014. However, the terms of the latter Government order are relevant and hence quoted below:

"No. 271 -SE(S)/FA-O/2M-260/2013 Date: 20.03.2014

Sub: Regarding sanction of leave in respect of contractual part time teachers attached to non-Govt. Higher Secondary Schools engaged under Order No. 219-SE(HS).....dt. 06.06.2002.

The undersigned is directed to state that the Governor is pleased to withdraw the G.O. No. 1176-SE(S)/1S-37/09 dt. 28.07.2010.

The Governor is also pleased to accord sanction of 1 Often) days casual leave and 1 Often) days medical leave to the part time contractual teachers along with other benefits as extended in Memo Nos. 219-SE(HS) dt. 06.06.2002, 188-SE(HS) dt. 28.12.2007, 100-SE(S) dt. 28.01.2010, 274-SE(P) dt. 23.04.2010 and 375-SE(P) dt. 09.06.2010."

33. A comparative study of Government orders dated July 28, 2010 and March 20, 2014 would reveal that in terms of the former order, the part-time teachers could avail of casual leave and medical leave subject to the condition that "they have to take equal number of classes per week as like as the duties of regular and full-time teachers". The Government orders referred to in the second paragraph of the Government order dated March 20, 2014 have not been brought to my notice. However, taking a holistic view of the matter, it does seem to be clear that casual leave and medical leave of 10 days each are entitled to be availed by the part-time contractual teachers along with other benefits, without being conditioned with the rider of taking equal number of classes per week as

the regular and full-time teachers (which was the requirement in terms of the Government order dated July 28, 2010). To my mind, the Commissioner erred in holding that the petitioners, who are part-time contractual teachers, are not entitled to sanction of 10 days casual leave and 10 days medical leave. That part of the impugned orders declining casual and medical leave to the petitioners is, thus, set aside. It is made clear that the petitioners shall be entitled to such amount of leave every year as are made available to them in terms of the Government order dated March 20, 2014.

34. The writ petitions are partly allowed to the extent mentioned above. However, in the circumstances, the parties shall bear their own costs.

Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of all the writ petitions barring W.P. 15892(W) of 2014.

Urgent photostat certified copy of this judgment and order, if applied for, shall be furnished to the applicant at an early date.