

(2016) 04 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17535 of 2015

Ranjeet Kumar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 — Rule 15(a)(iii)

Citation : (2016) 3 BBCJ 177 : (2016) 4 BLJud 41 : (2016) 3 PLJR 566

Hon'ble Judges : Mr. I.A. Ansari, A.C.J. and Mr. Ahsanuddin Amanullah, J.

Bench : Division Bench

Advocate : Mr. Dinu Kumar, Mr. Rajesh Kumar Singh, Mr. Arbind Kumar and Mrs. Ritu Raj, Advocates, for the Appellant; Mr. Lalit Kishore, PAAG and Mr. Bishwa Bibhuti Kumar Singh, AC to PAAG, for the Respondent

Final Decision : dismissed

Judgement

Mr. Ahsanuddin Amanullah, J.— Heard Mr. Dinu Kumar, learned counsel for the petitioner and Mr. Lalit Kishore, learned Principal Additional Advocate General for the State.

2. The present writ petition has been filed by the petitioner seeking the following reliefs:

(a) For quashing the notification vide memo no. 1066 dated 08.09.2015 issued under the signature of Principal Secretary, Education Department, Government of Bihar, Patna as contained in Annexure-18 by which Rule 15(ka) (3) of Bihar Elementary Teacher (Employment and Service Condition) Rule, 2012 hereinafter referred as Rule 2012 has been amended to the extent the teacher and instructor will be paid salary as determined by the State Government and any increment, salary, allowance shall be given with the concurrence of the Finance Department and consequent amended letter dated 03.10.2015 as contained in Annexure-19 by which it has been decided to make payment of special allowance to trained Niyojit Teacher after two years of employment.

(b) Also for declaring Rule 15 of Bihar Panchayat Elementary Teacher (Employment Seva Sart) Rule, 2012 as contained in Annexure-16 and 17 which fixed pay to the employed teacher specially Block Teacher has been fixed Rs. 11,000/- per month in place of salary like other Government teacher is in conflict of Article 21(A) of the Constitution of India, Rule 23(3) of Right of Children to Free and Compulsory Education Act, 2009 hereinafter referred as Act 2009 and Rule 18(3) of Model Rules under the Right of Children to Free and Compulsory Education Act, 2009.

(c) Also for declaring the petitioner and other teachers who have been appointed as Block Teacher as per Rule 2012 in fixed pay are at par with District Cadre Teacher appointed by the State of Bihar in regard to salary and other consequential benefits."

3. After some arguments, learned counsel for the petitioner has given up his claim to be placed at par with the District Cadre Teachers in the State of Bihar and has confined his prayer to quashing of amended Letter No. 1900, dated 03.10.2015, issued pursuant to Rule 15 (a) (iii) of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 (hereinafter referred to as the "Rules"), which has been brought about by the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2015, to the extent it has prescribed payment of special allowance of Rs. 1500/- per month to trained teachers, who have not completed two years of service as on 01.07.2015 and when they complete the two years of service, they shall be entitled to payment of trained pay scale, and, in consequence thereof, the special allowance shall be stopped.

4. The petitioner was appointed as a trained Block Teacher by order, dated 21.07.2014, after due process of selection. Learned counsel submits that the said order of the State Government was pursuant to the power vested as per the Amended Rule 15(a)(iii) of the Rules, but the stipulation of payment of special allowance to him, being a trained teacher, only after completion of two years of service, is arbitrary and unreasonable, as it creates a sub-category, which is impermissible in law. It is submitted that the petitioner has been performing the same duties, as other trained teachers, cannot be discriminated only on the ground that he has not completed a certain period in service and this is in conflict with Articles 14, 16 and 38 of the Constitution of India. He submits that such discrimination is unreasonable as it does not have any nexus with the object sought to be achieved.

5. Learned counsel submits that the State, being a model employer, is duty bound to ensure parity in payment to such persons, who are carrying out the same duties and responsibilities, as it would amount to hostile discrimination and create two classes of employees at the same level. For such proposition, learned counsel has referred to, and relied upon, a Division Bench decision of the Rajasthan High Court in the case of Gopal Kumawat v. The State of Rajasthan & Ors. in D.B.Civil Writ Petition No. 2963/2007, dated 29.07.2015, wherein the

stipulation, that persons initially appointed on a two-year probation during which they were to get fixed remuneration and thereafter regular pay scale and allowances, was held to be unconstitutional.

6. Learned Principal Additional Advocate General submits that the action of the State is within the parameters of the Constitution and other legal provisions and cannot be faulted. He submits that the challenge to the provisions of paying special allowance of Rs. 1500/- to trained teachers along with salary in the untrained scale for the initial two years of the employment, where after they become entitled to the salary in the trained scale and stoppage of special allowance, is a uniform stipulation and not discriminatory as it does not create any sub-class within a class of employees for the simple reason that all persons, whether trained or untrained, initially for a period of two years of their service, shall be getting pay scale of untrained teachers with special allowance of Rs. 1000/- per month and Rs. 1500/- per month to untrained and trained teachers respectively, is reasonable and cannot be said to be arbitrary, since the trained teachers do get a higher special allowance than the untrained teachers and later on, after two years of service, they are entitled to the regular pay scale of trained teachers. Thus, no discrimination or distinction is made between any person entering in service as a fresh recruit for the next two years. It is submitted that even the obvious and justified distinction of having a higher pay for trained teachers has been maintained inasmuch as special allowance for such trained teachers, compare to the untrained teachers, is higher for the said initial two years of employment.

7. Learned counsel further submits that the original cadre of teachers, prior to the new recruitment policy, is a dying cadre and no recruitment is being made to the same and that the recruitments are, now, only under the new recruitment rules and payment also is being made to such newly recruited teachers, whether trained or untrained. Learned counsel submits that the petitioner also does not have a case of arbitrariness since the terms and conditions of his service have not been altered to his disadvantage after his entering into service; rather, it has been made more lucrative and even the scale has been enhanced, but the actual implementation of the enhancement and the modalities thereof have only been regulated to be implemented in a phased manner keeping in mind the number of years put in by a person. It is further submitted that the policy is uniform since the payment of new scale of trained teachers has been made admissible to persons, who have already completed two years on 01.07.2015 irrespective of their date of employment, which means that persons, who may have put in even more than two years of service, also cannot claim payment prior to 01.07.2015, which is a type of cut off date for having completed two years of service, prior to which, no benefit can be claimed and, further, persons who have not completed two years of service also cannot derive the same benefit till they too complete two years of service and, thus, clearly a parity has been struck between all employees, which cannot be termed as unreasonable, arbitrary or without any basis.

8. It is submitted that the Government has taken a policy decision after due deliberation, which does not reflect any infirmity or lack of application of mind. As far as the judgment in the case of Gopal Kumawat (supra) is concerned, he submits that the order is clearly distinguishable in the present case inasmuch as it was a case, where for the initial two years of probation, persons were not being paid the regular salary and other emoluments to the post and only after completion of two years, the same was made admissible, which has been struck down as being violative of Articles 14, 16, 21, 23 and 38 of the Constitution of India, whereas in the present case, all initial recruits are being paid a common pay scale with special allowance depending on the fact whether he or she is trained or untrained and, upon completion of two years of service, the special allowance has been replaced with the scale of pay admissible with grade pay of untrained or trained teachers, as the case may be, in place of such special allowance.

9. Learned counsel submits that the argument of learned counsel for the petitioner of a class being created within a class is also erroneous for the reason that even untrained teachers are discharging the same nature of duty i.e., teaching and only on the ground of extra qualification, higher payment is made to such persons and, thus, in the present case, for the initial recruits, who have to perform the same duty of teaching, the basic pay scale, in the untrained scale, is payable in a uniform manner and, depending on the qualification, the special allowance is of Rs. 1000/- per month to untrained, whereas Rs. 1500/- per month to trained teachers and after two years of service, automatically both the groups moved into the regular pay scale admissible for such untrained or trained teachers in place of special allowance. Similarly, payment of both grade pay has also been made applicable upon completion of two years of service either by 01.07.2015 or later as the case may be, which also is reasonable and not discriminatory, being made applicable in the case of both existing as well as future recruits.

10. Having considered the rival contentions, this Court is not persuaded by the arguments advanced on behalf of the petitioner. The petitioner, having been appointed in the year 2014 and the fresh pay scale having been prescribed in the year 2015, subject a rider with regard to completion of two years of service for payment of new scale along with grade pay and till such time payment in the untrained pay scale with special allowance of Rs. 15,00/- cannot be termed to be arbitrary, unreasonable or discriminatory, as the same has been made applicable to both working as well as fresh recruits. The same also not being less than what the petitioner, at the time of his employment, was receiving cannot be said to be barred by any law. We are also not satisfied that any constitutional provision has been breached so as to warrant interference in the matter. Learned Principal Additional Advocate General has also rightly pointed out the distinction between the facts and circumstances of the present case are different from the ones in Gopal Kumawat (supra).

11. For the reasons aforesaid, we do not find any merit in the writ petition and accordingly, the same stands dismissed.

12. I.A. Ansari, A.C.J.—I agree.