
(2006) 02 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 61 of 1996

Sirajur Islam Chowdhury (Md.)	Vs	APPELLANT
State of Tripura and Others		RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) GLT 146 Supp

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

A.B. Pal, J.—Heard Mr. S. Talapatra, learned Sr. counsel assisted by Mr. B. Banerjee, learned Counsel for the Petitioner and Mr. P. Dutta, learned Counsel for the Respondents.

2. The short question for consideration in this writ petition is whether the Petitioner being a classical teacher is entitled to the pay scale with effect from the date of acquiring graduation and post graduation degree.

3. The background facts as projected in the writ petition are that the Petitioner was appointed as classical teacher on 9.3.76 under the State Respondents and later he obtained graduation on 18.8.82. On 31.12.90, he obtained master degree in Arabic. After obtaining graduation on 18.8.82, he made his claim for the higher pay scale of Rs. 560-1300/- which was the unrevised pay scale of graduate teachers at the relevant time. His representations did not find any favour. Similar claim for higher pay scale was advanced by him after obtaining master degree which also met the same fate. On 23.4.82, the State Respondents issued a memorandum providing the policy of the State Government that the pay scales of the teachers would be against the posts held by them not against their

qualifications. The claim of the Petitioner for graduate teacher's scale of pay was rejected on the ground that he obtained the graduate degree only on 18.8.82 after the aforementioned memorandum dated 23.4.82. As regards the other claim of higher pay scale after obtaining master degree, the memorandum dated 7.12.92 issued by the State Respondents regulated the same which provided that though the benefit of higher pay scale would be given with effect from 1.1.88 or the date of publication of the result, whichever was later, the pay would be notionally fixed under provision of F.R. 22 (a)(i) upto 31.12.91 with actual benefit from 1.1.92. The Petitioner has called in question the validity of the above two memoranda which have deprived him from the benefits of the pay scale of graduate teachers and post graduate teachers with effect from the date of publication of the results which was a discriminatory treatment inasmuch as persons acquiring similar qualification before 23-4-82 were granted the graduate teacher's scale of pay with effect from the date of publication of the results irrespective of availability of any post in the said scale of pay. Similarly, the memorandum dated 7.12.92 is also discriminatory inasmuch as the financial benefit upto 31.12.91 was denied to the teachers who obtained such qualification on or after 1.1.88. In support of the claim of higher pay scales with effect from date of publication of result the Petitioner has placed reliance on the decision of this Court in Civil Rule Nos. 64 to 76 of 1980 which was followed in Civil Rule No. 244 of 1980. The prayer of the Petitioner is for an appropriate direction to the State Respondents to give him the graduate teacher's scale of pay Rs. 560-1300/- (revised pay Rs. 1300-3220/-) with effect from 18.8.82 and post graduate teacher's pay scale of Rs. 1450-3710/- (revised) with effect from 31.12.90 with actual financial benefits.

4. The State Respondents contended, inter alia, that though admittedly the teachers were granted pay scale against their qualifications, but later the State Government changed the policy as it was creating an anomalous situation. In the impugned memorandum dated 23.4.82, the decision of the State Government was rendered making it clear that the teachers would get pay scales of the post to which they were appointed and not the pay scales of the post to which they were eligible to be appointed on the basis of their educational qualification. The relevant part of the said memorandum reads as follows:

Persons possessing higher qualification than the required minimum prescribed for the posts held by them shall not get the higher scale of pay to which they might be eligible for appointment on the basis of their educational qualification, as such appointment will depend on the availability of posts and also on the selection of the candidate for that post by the competent authority.

5. As the Petitioner obtained the degree of graduation after the cut off date of 23.4.82, he was not eligible to the higher scale of pay meant for the graduate teachers with effect from the publication of the results before that date. His entitlement to the higher scale of pay would only arise when he could be accommodated against a post of graduate teacher. It has been admitted that the

Petitioner is entitled to the higher scale of pay of Rs. 1300-3220/- with effect from 1.1.88 and then Rs. 1450-3710/- with effect from 31.12.90 for possessing post graduate degree in classical subject in pursuance of the memorandum issued on 7.12.92.

6. Having heard the learned Counsel for the parties, it would appear that there is no dispute with regard to the factual position as recorded above. The judgment dated 21.12.88 passed by a Division Bench of this Court in Civil Rule Nos. 64 to 76 of 1980 which is taken to be the sheet anchor by the Petitioner dealt with a different factual situation. In that case, the memorandum dated 7.3.81 in which it was stated that the revised pay scale would be notional upto 31.12.80 and actual financial benefit could be given with effect from 1.1.81 was called in question. As three similarly situated persons were granted the benefits, the question of discrimination was adverted to in the light of the provision of Articles 14 and 16 of the Constitution. In that view of the matter, it was ordered that the Petitioners were entitled to get entire arrear of pay with effect from the date of obtaining graduation. The said decision was followed in civil Rule No. 244 of 1980. In the above noted two cases no such memorandum regarding change of policy of the State Government as contained in memorandum dated 23.4.82 was before this Court and, therefore, the factual situation being different the decisions in those two cases have no relevance in the case on hand. I am unable to accept the submission advanced that the memorandum dated 23.4.82 is discriminatory and not sustainable in law. In my considered view, the State Government is always at liberty to modify its policy as has been done by issuing the above memorandum. The reasons for such change are also very much sound for the reasons that the pay scales are always attached to posts and availability of vacancies against such posts carrying a particular scale of pay is sine qua non for granting scale of pay of that post. If a person becomes graduate, the question of granting him the graduate teacher's scale of pay would certainly depend on availability of such posts with the pay scale attached thereto. Therefore, the memorandum in question suffers from no illegality.

7. The office memorandum dated 7.12.92 is an amendment of the Revision of Pay Rules, 1988 and, therefore, has a statutory force. The provision relating to school teachers and similar other employees including classical teachers who acquired higher academic qualification in the respective trade on or after 23.4.82 reads as follows:

- (i) "They shall be granted higher pay scales according to their qualification w.e.f. 1.1.88 or the date of publication of result, whichever is later;
- (ii) The benefit shall be admissible only for those incumbents who acquired higher qualification upto the period of 31.12.91 (date of publication of result);
- (iii) Pay shall be notionally field under the provision of F.R.22(a)(i) upto 31.12.91 with actual financial benefit from 1.1.92.

8. In every such Revision of Pay rules, it is legally permissible to provide a cut off

date for the purpose of granting revised scale of pay and also benefit of arrears. The difference in the pay scales of two group of employees having same qualification resulting from such provisions cannot be said to be discriminatory as such classification is not violative of the equality clause. Thus, the classification made in the above memorandum with regard to the scale of pay and the date of their effect is reasonable classification and cannot be said to have violated the provisions of Articles 14 and 16 of the Constitution.

9. For the reasons aforementioned, this writ petition is found to be devoid of any merit and accordingly the same is dismissed leaving the parties to bear their own cost.