
(2008) 05 GAU CK 0039

In the Gauhati High Court

Case No : Writ Petition (C) No's. 374 and 174 of 2001

Sitangshu Sekhar Das and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-05-2008

Acts Referred:

Citation : (2009) 2 GLT 685

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : R.C. Saikia, J.L. Borbhuiyan and F. Begum, for the Appellant; M.R. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. R.C. Saikia, learned Counsel appearing for the Petitioner. Also heard Mr. M.R. Pathak, learned Standing Counsel representing the Education Department.

2. The Petitioner, Sri Sitangshu Sekhar Das, in W.P.(C) No. 374/2001 was appointed as M.E. School teacher on 15.06.1981 and Petitioner Smti Suruchi Roy, in W.P.(C) No. 174/2001 was appointed as M.E. School teacher on 05.10.1980. Both were appointed as Assistant Teachers in intermediate scale of pay, although it is not in dispute that both are Arts graduate degree holders.

3. The present petition has been filed seeking appropriate directions for payment of graduate scale of pay to the Petitioner w.e.f 30.12.1993. The said pay scale is sought to be justified on the basis of the Govt. notification dated 30.12.1993 (Annexure-IV), whereby it was directed that Assistant Teachers in intermediate scale of pay with graduate qualifications of provincialised High/Higher Secondary Schools are upgraded to the posts of Assistant Teacher in graduate scale of pay. Apart from the aforesaid notification, the writ Petitioners justify their claim for graduate scale of pay, by citing the decisions of this Court rendered on 10.11.1997 in Civil Rule No. 4370/1994 Binoy Kr. Chakravarty v. State of Assam

and also on 08.08.2006, in W.P.(C) No. 6365/2000 Ruma Roy Paul v. State of Assam.

4. Mr. R.C. Saikia, learned Counsel on behalf of the Petitioners submits that although they are holding graduate qualification in arts, the Govt. has paid them only intermediate scale of pay and since there are teachers appointed in M.E. Schools on graduate scale of pay, the Petitioners are also entitled to be upgraded to the higher pay scale for rendering services as teachers of M.E. Schools. The further contentions made by the Petitioners is that the Govt. cannot permit two scales of pay for teachers of M.E. School, who are rendering the same service and since the Petitioners are graduates, not to pay the graduate scale to them is a discriminatory act which is liable to be interfered with by the Court. References to the two decisions of the Court have also been made by the learned Counsel to contend that there is no distinction between science graduate teachers and arts graduate teachers and if science graduate teachers can be given the graduate scale of pay even for rendering service in M.E. Schools, there is no justification to deny graduate scale to arts graduate teachers rendering service in M.E. Schools.

5. Mr. M.R. Pathak, learned Standing Counsel for the Education Department, on the other hand submits that the Govt. have never created any post offering graduate scale of pay to M.E. School teachers having arts graduation degree. The learned Counsel further submits that as per the Assam Education (Provincialisation) (Amendment) Rules, 2005, the qualifications prescribed for teacher of M.E. Schools is higher secondary or equivalent exams and merely because the teacher is possessing higher qualification, that itself would not entitle them to claim pay scale proportionate to their higher educational qualification.

6. The learned Standing Counsel also referred to the counter affidavit filed on 22.05.2007, on behalf of the Director of Elementary Education in W.P.(C) No. 174/2001, and submits that because of upward standardization of the mathematics and science curriculum in the M.E. Schools, the Govt. of Assam for the first time, by notification dated 16.11.1991 created 5474 posts of science graduate teachers for appointment in M.E. schools in graduate scale of pay. It is further submitted by Mr. Pathak that only against the said newly created posts, qualified persons have been appointed as science graduate teachers in the graduate scale of pay. It is averred that the 5474 posts with higher scale of pay has been created in order to attract science graduates for appointment in M.E. Schools, because of the upgradation of the science and the mathematics content in the curriculum in the M.E. Schools.

7. The learned Counsel also contends on behalf of the Education Department that graduate teachers working against intermediate scale of pay are not entitled to graduate scale of pay as they have not been appointed to posts carrying graduate pay scale.

8. With regard to the first contention raised on behalf of the Petitioner that the

Govt. notification dated 30.12.1993, would entitle them to the graduate scale of pay, I am of the view that the said notification permitting upgradation to the higher scale of pay, is applicable to graduate incumbents of only provincialised High/Higher Secondary Schools and naturally graduate teachers working in intermediate scale of pay in M.E. Schools cannot in my opinion, make a claim for upgradation, on the basis of the aforesaid notification dated 30.12.1993.

9. Now the Court is to examine the applicability of the decision of this Court in Binoy Kumar Chakravarty (supra) rendered on 10.11.1997, to justify the Petitioner's claim. It is clear that the said decision was clearly indicated to be a decision which is not to be quoted as precedent in future cases and was rendered in the peculiar facts of the said case where no return on behalf of the State was filed. Under such circumstances, I am of the view that reliance on the said decision cannot be permitted to consider the claim of higher scale to the Petitioner.

10. As regards the decision of this Court rendered on 08.08.2006 in Ruma Roy Paul (supra), I find from the said decision that it was a case where the Court had considered the claim of the Petitioner where counter affidavit on behalf of the Govt. was not filed. No distinction could be pointed out by the learned Govt. Advocate in that case of the difference between a science teacher and arts teacher and in fact it was conceded that there is no distinction between science teacher and arts teacher. Accordingly the Court took the view that once the science teachers are given the graduate scale of pay, the writ petitioners, only because she is an arts graduate, cannot be denied the benefit of graduate scale of pay.

11. Unlike the situation in the case of Binoy Kr. Chakravarty and Ruma Roy Paul, a counter affidavit in the present case has been filed by the Education Department. The averments in the counter has been strongly relied upon by the Respondents in the two writ petitions which are being considered by the Court.

12. A clear distinction is made out in the State's counter affidavit, between science graduates and arts graduates and why the Govt. took the decision to create posts with higher pay scale to attract candidates with B.Sc. qualification for being appointed as science graduate teachers in M.E. Schools are clearly indicated. It is seen that specific numbers of posts (5474) were created with higher pay scale for giving appointment to science graduate degree holders to bring about a qualitative improvement in the teaching of mathematics and science for M.E. School students as the curriculum of mathematics and science was also upgraded and it is for this reason, the Govt. specifically created posts of science graduate teachers. The science graduate teachers have also been incorporated in the service Rules as a separate category of teachers with B.Sc. qualification for teaching science and mathematics in the M.E. Schools in addition to the assistant teachers in the intermediate scale of pay where the qualification prescribed in the Rules for appointment is only higher secondary or equivalent.

13. The service Rules itself visualize two categories of teachers, one drawing intermediate scale of pay with lower educational qualifications and another one of science graduate teachers drawing graduate scale of pay with B.Sc. qualifications, to take care of different curriculum needs of the students of M.E. Schools and since there is a clearly discernible division, it cannot be said that as there are teachers in M.E. Schools drawing graduate scale of pay, all graduate teachers who are drawing intermediate scale of pay, would on that basis, be also entitled to claim the graduate scale of pay.

14. The Petitioners although graduates, have been appointed to posts which carry intermediate scale of pay and they cannot automatically claim the graduate scale of pay unless such benefit is conferred by the Govt. But unlike the Govt. notification dated 30.12.1993, which was applied generally to all teachers in the provincialised High/Higher Secondary Schools in the State, the Education Department has created only specific numbers of post for appointment as science graduate teacher in graduate scale of pay and these posts are not meant to take care of claims of higher pay scale for intermediate scale appointees. The Petitioners have not been appointed against any of the 5474 posts with graduate scale of pay but were appointed much earlier when posts with graduate scale did not exist in M.E. Schools in the State.

15. When the Govt. created specific numbers of post with higher pay scale and teachers are appointed on the basis of recruitment carried out specifically for the said created posts, arts graduate teachers working in the lower scale of pay cannot, in the opinion of this Court, claim the higher pay scale, against those posts as it would mean permitting the intermediate teachers to function as graduate teachers although arts graduate teacher posts have not been created by the Govt. for accommodating the claims of the existing intermediate teachers. Conferring of such financial benefit without there being posts available, would mean huge outflow of Govt. fund and considering the very large number of arts graduate intermediate scale M.E. teachers who would put forward such a claim, it would not be justified for a Court to direct payment of higher pay scale to the intermediate M.E. School teachers.

16. The 5474 posts of science graduate teachers in M.E. Schools have been created with a specific intent and objective and the Petitioners who are arts graduate cannot justify their entitlement to graduate scale of pay on the basis of aforesaid science graduate teachers posts which have been created on 16.11.1991. The newly created posts are meant to be filled up with science graduate degree holders in order to improve the science and mathematics teaching in M.E. Schools and there is no basis for treating the Petitioners who are arts graduate to be entitled to the graduate scale of pay only because such higher pay scale has been provided to science graduate teachers of M.E. Schools.

17. This Court while examining the claim of Binoy Kr. Chakravarty and Ruma Roy Paul, did not have the benefit of taking into account the stand of the Govt., which benefit is however available to this Court as counter affidavit in W.P.(C) No.

174/2001 has been filed, which is also being relied on in W.P.(C) No. 344/2001. The relief to the Petitioners in those cases were granted only because the Courts was not provided with any reason to distinguish teachers with science graduate qualification and arts graduate qualification.

But in the present case, the stand of the Education Department is clearly indicated through the counter affidavit filed and from the averments and the submissions made, it is not possible for this Court to take a view that the writ Petitioners being arts graduates are entitled to the benefit of graduate scale of pay which is meant only for science graduate teachers. The science graduate teachers are, of entirely different category, created with specific purpose and intent and no discrimination can be said to result to the Petitioners as the Petitioners cannot be held to be equal to the science graduate teachers, in the context of the present litigation.

18. It must also be borne in mind that matters like creation of graduate scale posts to upgrade the service of intermediate teachers is a matter of policy of the State. Such policy decisions are to be taken by the State having due regard to relevant parameters like objective to be achieved, the necessity for upgradation, the financial resources of the State and so forth. These, are not really arenas, where Court's interventions are normally justified. When it is clearly noticed that two groups i.e. Intermediate teachers and science Graduate teachers form two distinct groups-the later having been created with a specific objective connected with betterment of students, I am of the opinion that the claims of the writ Petitioners which is primarily based on an allegation of discrimination, is not acceptable.

19. In view of the above, these writ petitions are held to be without merit and the same are accordingly dismissed.