
(2008) 01 OHC CK 0011
In the Orissa High Court

Smt. Mamata Baral

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2008) 105 CLT 598 : (2008) 1 OLR 473 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioner, a Craft Teacher working under the Municipal High School, Jobra in the district of Cuttack, filed this Writ Petition with the following prayer:

The Petitioner, therefore, prays that this Hon"ble Court may be graciously pleased to allow this writ application, call for necessary documents, may issue writ in the nature of mandamus in quashing specification 2(b) of the Orissa Revised Scales of Pay (Amendment) Rules, 1990 or as reflected in Annexure-7 as in resolution dated 27.7.1990;

And this Hon"ble Court may be pleased to quash the Order Dated 12.4.1996 as in Annexure-9 and may be pleased to direct the Opposite Parties to fix the scale of the Petitioner at Rs.1080-1800 w.e.f. 1.5.1989;

And may also direct the Opposite Parties to give differential amount by fixing the aforesaid scale of pay with effect from 1.5.1989 and by deducting the amount which has already been drawn by the Petitioner;

And may pass any other order/orders as would be deemed just and proper in the facts and circumstances of the case.

2. Sum and substance of the contention of the Petitioner is that Craft Teacher and Matric C.T. Assistant Teacher were previously belonging to the same cadre as

per the pre-revised scale. In 1989 the revised scale of pay was introduced. By then Petitioner and the Trained Matric Teachers under the Municipalities were getting the scale of Rs. 840-16-856-18-928-EB-20-1008-EB-22-1140-25-1240/-. According to the Scale of Pay Rules, 1989, equivalent pay was provided in the scale of Rs. 975-25-1150-EB-30-1660/-. So far Petitioner has no grievance against that fixation of pay. On 27th July, 1990 Government of Orissa in the Finance Department passed Resolution, inter alia, provided the scale of Rs.1080-30-1440-EB-30-1800/- instead of the scale Rs. 975-25-1 150-EB-30-1660/- to the Trained Matric Teachers. Thus, Petitioner claims parity in the scale of pay with the Matric C.T. Teachers on the ground of equal pay for equal work and also on the ground that ail-throughout they remained in the same cadre and therefore the aforesaid fixation of higher scale of pay for the Matric C.T. Teachers is discriminatory and violative of the provisions of Article 14, 16 and 39(d) of the Constitution of India.

3. In the separate counter affidavit filed by each of the Opposite Party members, they admit to the aforesaid factual position, but Opposite Party Nos. 1 and 2 state that the decision of the Government to provide a better scale of pay to Matric C.T. Teachers is passed on considering the nature of job which they undertake and higher basic qualification prescribed for that post, and that is being different from the qualification of Craft Teachers and their nature of job in the school.

4. Thus, the core issue which comes for consideration is as to whether the aforesaid Resolution, Annexure- 7 and the consequential order Annexure-9 are in violation of the provision in Articles 14, 16 and 39(d) of the Constitution of India, and in that respect whether the aforesaid order of the Government is discriminatory in nature.

5. Learned Counsel for the Petitioner relying on the ratio in the case of Bhagwan Sahai Carpenter and others Vs. Union of India and another, and Santosh Kumar Samantray and Ors. v. State of Orissa and Ors. 70 (1990) C.L.T. 110, argues that the aforesaid act of the State Government, which was followed by the Municipality, is violative of the aforesaid Constitutional Provision and liable to be quashed together with issue of writ of mandamus to grant parity in favour of the Petitioner so far as the scale of pay prescribed for the Matric C.T. Teachers are concerned. In the case of Bhagwan Sahai Carpenter (supra) the dispute before the Apex Court was as to whether the categories of employees who were in the skilled category before revision of scale of pay and who were put on semi-skilled category while, granting new pay scale in 1981 were to be paid scale of pay of skilled category on they being declared in October, 1984 to be belonging to the skilled category. Regard being had to such facts and dispute, their Lordships held that:

11. Considering all the facts and circumstances of the case we are unable to accept the contentions advanced on behalf of the Union of India on the ground that the employees of the different trades in the skilled grade cannot be treated

differently, i.e., by allowing higher scale of pay to employees of some of the trades from an earlier date and giving the same benefit to members of other trades in the skilled grade from a later date. This will per se be discriminatory and it will be contrary to the equity clause envisaged in Articles 14 and 16 of the Constitution as well as the fundamental right of equal pay for equal work. The Petitioners are entitled to get the benefit of the skilled grade of Rs. 260-400 from October 16, 1981 instead of October 15, 1984 as has been given to the employees of other trades in the skilled grade.

It is needless to say that the aforesaid ratio is hardly applicable in view of the distinguishable circumstances involved in this case.

6. In the case of Santosh Kumar Samantray (*supra*) the dispute was whether the Salaried Amins employed in the District Judiciaries were to get higher scale of pay than the Amins employed by the State Government in the Revenue and Settlement Departments. Their Lordships (as they then were), *inter alia*, took note of the fact that higher qualification was prescribed for entry into service of Salaried Amin together with certain differences in the nature of the duties and responsibility and accordingly held that the Salaried Amins are entitled to a different scale of pay than the Amins in the Revenue and Settlement Departments. That decision in no way supports the case of the Petitioner. On the other hand it runs at par with the reasoning given by the State Government for providing a higher scale to the Matric C.T. Teachers.

7. Learned Addl. Govt. Advocate relied on the case of *State of U.P. and Ors. v. J.P. Chaurasia and Ors.* AIR 1989 SC 19, and AIR 1989 29 (SC). In the first case, the dispute, which came up before the Apex Court was relating to claim of equality in pay by the Grade-II Bench Secretaries of Allahabad High Court. They raised several pleas, *inter alia*, with the plea of same type of work being discharged by the Grade-I and Grade-II Bench Secretaries. Their Lordships observed that persons working under the same category having merit and seniority can be considered for different scale of pay like Super Time, Selection Grade, etc. Similarly, nature of job, qualification required, etc. are relevant factors to be considered, and on consideration of such factors if distinction is made between two scale of pay for the employees working under the same Establishment, then that cannot be termed as violative of the provision in Articles 14, 16 and 39(d) of the Constitution of India. Similar view has been reiterated by their Lordships in the case of *Umesh Chandra Gupta* (*supra*).

8. Contention of the Opposite Parties about higher qualification being provided for entry into service by Matric C.T. Teachers is not denied by the Petitioner. Job of a Craft Teacher and a Trained Matriculate Teacher are obviously different from each other though both of them profess the job of teaching. But so far as education is concerned, teaching by the Matriculate C.T. Teachers is at a superior footing. Under such circumstance, in their wisdom when the State Government has provided a higher scale of pay to the teachers in the Matriculate C.T. cadre, there is no legal justification for the Petitioner as the Craft Teacher to claim

parity.

9. Thus, there is no merit in the Writ Petition and accordingly the same is dismissed. Under the given facts and circumstances, parties are directed to bear their respective cost of litigation.

R.N. Biswal, J.

10. I agree