
(2008) 05 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal No. 2519 of 2007

State of Bihar and Others

APPELLANT

Vs

Bihar State "Plus-2" Lecturers Associations and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 14, 142, 16

Citation : (2008) 05 SC CK 0101

Hon'ble Judges : Tarun Chatierjee, J;C.K. Thakker, J

Bench : Division Bench

Advocate : Gopal Singh, Anukul Raj and Rituraj Biswas, for the Appellant; K.K. Rai, S.N. Pathak, Krishnanand Pandeya and S.K. Pandey, for the Respondent

Final Decision : Disposed Of

Judgement

C.K. Thakker, J.—Leave granted.

2. This appeal by special leave arises from the judgment and Order Dated 22-3-2004 passed by the Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal No. 323 of 2004. By the said order, the Division Bench allowed the appeal filed by the Association of Untrained Lecturers and set aside the Order Dated 28-1-2004 passed by a Single Judge of that Court in Civil Writ Jurisdiction Case No. 7224 of 1999.

3. To appreciate the controversy raised in the present appeal, few relevant facts may be noted.

4. Advertisement No. 1 of 1987 was issued by the Appellants, inviting applications for appointment of 2 lecturers in secondary schools in the pay scales of Rs. 940-1660 in government schools as well as in nationalised schools. The qualification prescribed in the advertisement for the post was postgraduate degree in IInd Class. There was no requirement of having training for appointment to the said post. In 1989, members of the Respondent t Association who had postgraduate degree in IInd Class but who were untrained, were

selected and appointed as lecturers in nationalised schools in the pay scales of Rs. 940-1660. After the Vth Pay Commission, pay scales of Rs. 940-1660 were revised to Rs. 1640-2900 with effect from 1-1-1996. It appears that initially, there was difference in pay scales of 2 lecturers serving in government schools and serving in nationalised schools other than (government schools. After a decision of the High Court in Civil Writ' Jurisdiction Case No. 2445 of 1994, all 2 lecturers were granted uniform pay scales irrespective of their posting. The controversy raised in the present matter relates to difference in pay scales between lecturers who are trained and lecturers who are untrained. A Fitment Committee was appointed by the Government to consider the pay scales of trained and untrained lecturers. The J Fitment Committee considered the question and recommended different pay scales for trained and untrained lecturers. The State Government accepted the recommendation of the Fitment Committee and fixed pay scales of Rs. 5000-8000 for untrained lecturers and Rs. 6500-10,500 for trained lecturers. Government resolution was passed on 8-2-1999 and a notification was issued on 10-6-1999.

5. There was resentment amongst the employees against fixation of two different pay scales of 2 lecturers on the basis of training. A writ petition was, therefore, filed by the Association challenging classification made on the basis of training. A Fitment Appellate Committee was, therefore, constituted by the State Government presided over by a sitting Judge of the High Court by an Order Dated 15-1-2000 to go into the anomalies in pay scales of trained lecturers and untrained lecturers. The Fitment Appellate Committee submitted its report, recommending payment of uniform pay scales to trained as well as untrained lecturers observing that different pay scales to trained and untrained lecturers would be arbitrary and unreasonable. The State Government, however, maintained that there is difference between trained lecturers and untrained lecturers and difference in pay scales would not violate Article 14 of the Constitution.

6. The Learned Single Judge who heard the writ petition upheld the contention of the State Government and dismissed the petition filed by the Association holding that in making distinction between trained lecturers and untrained lecturers and in fixing different pay scales, the State Government had not violated any provision of the Constitution and the petition was liable to be dismissed. The Division Bench, however, as observed earlier, allowed the appeal, set aside the order passed by the Single Judge and directed the State authorities to grant uniform pay scales to trained and untrained lecturers. The order passed by the Division Bench is challenged by the State authorities in the present appeal by special leave.

7. On 6-1-2005, notice was issued by this Court and the party Respondents were directed to file affidavit-in-reply. Counter-affidavit as also affidavit-in-rejoinder were thereafter filed. The Court directed the Registry to place the matter for final disposal and that is how the matter is before us. We have heard Learned Counsel

for the parties.

8. The Learned Counsel for the State contended that the Division Bench of the High Court was wholly wrong in holding that there can be no difference between trained lecturers and untrained lecturers and that difference in pay scales would be arbitrary, unreasonable and violative of Article 14 of the Constitution. It was submitted that trained and untrained lecturers form different class and such classification is rational and reasonable. Fixation of different pay scales, therefore, cannot be said to be arbitrary or irrational. It was also submitted that though the Fitment Appellate Committee recommended payment of uniform pay scales to trained and untrained lecturers, the said decision was not in consonance with law. It was submitted that the Learned Single Judge was right in dismissing the writ petition and the Division Bench ought to have confirmed that order. Regarding advertisement issued by the authorities for making appointment of 2 lecturers and nonmention about training, it was submitted that it related to eligibility for appointment and had nothing to do with pay scales. The Appellate Committee was, therefore, wrong in relying on the said fact and in recommending uniform pay scales to all lecturers. It was, therefore, submitted that the order passed by the Division Bench may be set aside by restoring the order of the Single Judge.

9. The Learned Counsel for the Association, on the other hand, supported the order passed by the Division Bench. He submitted that classification sought to be made on the basis of training is totally artificial, irrational and arbitrary. Untrained lecturers cannot be deprived of legitimate pay scales to which their counterparts (trained lecturers) were held entitled. It was because of the legitimate grievance by untrained lecturers that a Fitment Appellate Committee presided over by a sitting Judge of the High Court was constituted by the State Government. In terms of reference, it was expressly stated that the State Government will accept the recommendation of the Committee and when the said Committee recommended to grant uniform pay scales to trained and untrained lecturers, it was not open to the State Government not to accept and implement the said recommendation. The Learned Single Judge was not right in dismissing the petition filed by the Association of untrained lecturers. It was further submitted that untrained lecturers were performing similar functions and discharging similar duties. Moreover, after the report of the Appellate Committee, the State Government withdrew the order sending untrained lecturers for taking training on the ground that no such training was necessary in view of the report submitted and recommendation made by the Committee and payment of uniform pay scales to trained and untrained lecturers. It was, therefore, submitted that even the State authorities have also proceeded on the footing that there is no distinction between trained and untrained lecturers so far as pay scales are concerned. The Division Bench was, therefore, right in allowing the appeal and no grievance can be made against the direction issued by the Court.

10. Having considered the rival contentions of the parties, in our opinion, the

Division Bench was not right in holding that distinction between trained lecturers and untrained lecturers is arbitrary, irrational or otherwise objectionable.

11. Now, it is well settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. It, however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable.

12. Before more than half a century, a Constitution Bench of this Court was called upon to consider ambit and scope of Article 14 of the Constitution in a celebrated decision in *State of WE. v. Anwar Ali Sarkari*. There, constitutional validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution.

13. Dealing with the contention, S.R. Das, J. (as His Lordship then was) made the following instructive observations which were cited with approval in several subsequent cases: *The State of West Bengal Vs. Anwar Ali Sarkar*,

54. ...It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an 'abstract symmetry' in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons

similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.

(Emphasis supplied)

14. Recently, in *Confederation of Ex-Servicemen Assns. v. Union of India* (2006) 8 SCC 399: 2006 SCC (L & S) 2002, it was contended by the Petitioners that the classification between in-service and retired employees was invalid, illegal and unreasonable. Likewise, differentiation between defence personnel and civil personnel was arbitrary and irrational. The contention was, however, rejected by this Court holding that they form different class and Article 14 of the Constitution could not be said to have been violated.

15. Again, in *Arun Kumar v. Union of India* it was argued that classification between government employees and employees of companies, corporations and other public sector undertakings which can be said to be "State" within the meaning of Article 12 of the Constitution would be arbitrary, fanciful and capricious. But argument was negated by this Court observing that distinction between employees of the Central Government and the State Governments (civil servants) on the one hand and other employees i.e. employees of companies, corporations or other public sector undertakings on the other hand, is well founded and well defined.

16. In *Confederation of Ex-Servicemen* after considering leading cases on equal protection clause enshrined in Article 14 of the Constitution, speaking for a five-Judge Bench, one of us (C.K. Thakker, J.) stated:

30. In our Judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the twin test, namely, (i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and (ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.

17. A legal and valid classification may be based on educational qualifications.

18. In *State of Mysore v. P. Narasinga Rao* different pay scales were prescribed for tracers; one for matriculate tracers which was higher than the other for non-matriculate tracers which was lower. The action was held legal, lawful and not violative of Article 14 or 16 of the Constitution.

19. The Constitution Bench of this Court stated: (*P. Narasinga Rao* case)

4. ...It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The

first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule.

(emphasis supplied)

20. In *State of J and K v. Triloki Nath Khosa* this Court upheld the classification for promotion on the basis of academic and technical qualifications. It was contended on behalf of the diploma-holders that classification sought to be made by the State between "degree-holders" and "diploma-holders", was illegal and artificial and denial of promotion to diploma-holders while granting such benefit to degree-holders had violated Article 14 of the Constitution. But the argument was negated.

21. Chandrachud, J. (as His Lordship then was) stated: *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*,

34. On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to Judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to those possessing higher educational qualifications. and we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is 'purely arbitrary, oppressive or capricious' and the inequality produced in order to encounter the challenge of the Constitution must be 'actually and palpably unreasonable and arbitrary'. We need not go that far as the differences between the two classes-graduates and diploma-holders-furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

22. In *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, , different pay scales were prescribed for Pharmacists on the consideration of qualifications and experience. Whereas higher pay scales were fixed for qualified

Pharmacists, unqualified Pharmacists were paid lower pay scales. It was ruled that it was open to the Government to prescribe different pay scales for different categories of Pharmacists on the basis of qualifications and experience. The Court held that doctrine of "equal pay for equal work" should not be applied in a mechanical or casual manner.

23. In *U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others*, , this Court held that educational qualification can be a criterion for differentiation in pay scales. Possession of higher qualification can be treated as a valid base for 8 classification of two categories of employees, even if no such requirement is prescribed at the time of recruitment. If such a distinction is drawn, no complaint can be made that it would violate Article 14 of the Constitution or would be contrary to Article 39(d) of the Constitution.

24. It is true that "equal pay for equal work" is a doctrine well established in service jurisprudence and is also a concomitant of Article 14 of the Constitution. But as observed by this Court in *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., equal pay would depend upon not only on the nature or volume of work but also on quality of work as regards reliability and responsibility as well and different pay scales may be prescribed on the basis of such reliability and responsibility.

25. It was contended on behalf of untrained lecturers' association before the High Court as well as before us that trained lecturers and untrained lecturers were performing similar functions and discharging similar duties. It was, therefore, not open to the State authorities to pay different pay scales to them. The Learned Single Judge negated the contention observing and, in our opinion, rightly, that training was one of the most important factors for determining pay scales. A distinction between trained and untrained lecturers for the purpose of prescribing pay scales is, therefore, valid and reasonable. Importance of training, in our Judgment, cannot be ignored or underestimated. Unfortunately, the Division Bench set aside the order passed by the Learned Single Judge upholding the argument of untrained lecturers' association and by granting them pay scales prescribed for trained lecturers.

26. Now, let us consider few decisions of this Court on the need and necessity of training.

27. In *Andhra Kesari Educational Society Vs. Director of School Education and Others*, this Court emphasised the need and importance of trained teachers in schools. Speaking for the Court, Jagannatha Shetty, J., made the following illuminating observations:

20. Before parting with the case, we should like to add a word more. Though teaching is the last choice in the job market, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the 'engine' of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to

be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefitter. He must keep himself abreast of everchanging conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is, therefore, needless to state that teachers should be subjected to rigorous training with rigid scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the university must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration.

(emphasis supplied)

28. In *Ram Sukh and Others Vs. State of Rajasthan and Others*, untrained teachers were removed from service on the availability of trained teachers. The action was challenged on the ground that the Petitioners were also teachers and their services could not be terminated only on the ground that trained teachers were available. It was also urged that even if such training is necessary, untrained teachers should be given an opportunity to undergo such training. This Court, however, rejected the contention, observing that a Court of law cannot direct the Government to continue untrained teachers in service till they are trained.

29. Referring to *Andhra Kesari Educational Society* the Court stated: (*Ram Sukh case*)

7. These observations are equally relevant to primary school teachers with whom we are concerned. The primary school teachers are of utmost importance in developing a child's personality in the formative years. It is not just enough to teach the child alphabets and figures, but much more is required to understand child psychology and aptitudes. They need a different approach altogether. Only trained teachers could lead them properly. The untrained teachers can never be proper substitute to trained teachers. We are, therefore, unable to give any relief to the Petitioners.

(emphasis supplied)

30. In *L. Muthukumar and Another Vs. The State of Tamil Nadu and Others*, this Court stated that mere passing of a public examination is not enough. It must be coupled with proper training in a recognised educational institution.

31. Quoting with approval observations from earlier cases, this Court said: (*L. Muthukumar case*, SCC p. 626, para 14)

14. ...We are of the considered opinion that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a

recognised training institute satisfying the prescribed norms, otherwise the standard of education and careers of children will be jeopardised. In most civilised and advanced countries, the job of a teacher in a primary school is considered an important and crucial one because moulding of young minds begins in primary schools. Allowing ill-trained teachers coming out of derecognised or unrecognised institutes or licensing them to teach children of an impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of a building a great nation, teachers and educational institutions also play a vital role. In cases like these, interest of individuals cannot be placed above or preferred to the larger public interest.

(emphasis supplied)

32. In our Judgment, the law appears to be well settled. There is a clear distinction between a trained teacher (lecturer) and an untrained teacher (lecturer). Such a distinction is legal, valid, rational and reasonable. Trained lecturers and untrained lecturers, therefore, can neither be said to be similarly circumstanced nor they form one and the same class. The classification is reasonable and is based on intelligible differentia which distinguishes one class (trained) included therein from the other class (untrained) which is left out. Such classification or differentia has a rational nexus or reasonable relation to the object intended to be achieved viz. imparting education to students. It, therefore, cannot be successfully contended that different pay scales cannot be fixed for trained lecturers on one hand and untrained lecturers on the other hand. Prescribing different pay scales, under the circumstances, cannot be held illegal, improper or unreasonable infringing Article 14 of the Constitution.

33. It was also argued both before the Single Judge and also before the Division Bench of the High Court that the Appellate Fitment Committee recommended uniform pay scales to trained and untrained lecturers. The submission was based on the ground that when advertisement for appointment of 2 lecturers was issued, only requirement insisted upon was that a candidate must have postgraduate degree in IInd Class. There was no reference as to training by the candidates. The Learned Single Judge held that the requirement mentioned in the advertisement related to "eligibility" and it had no relevance to pay scales. The Division Bench, however, was of the opinion that in absence of anything regarding training by candidates, no different pay scales could be provided by the authorities. To us, the Learned Single Judge was wholly right in holding that the educational qualification specified in the advertisement was limited to eligibility of candidates to be appointed and it had nothing to do with fixing of pay scales.

34. It was also urged before the High Court that an Expert Committee was appointed by the State Government which had taken a decision and normally such a decision is not interfered with either by the executive or by the judiciary.

35. So far as the principle is concerned, there can be no two opinions about it. In the instant case, however, the Division Bench was wrong in invoking the said doctrine for granting uniform pay scales to trained and untrained lecturers. We have already noted that a Fitment Committee was appointed by the State Government which was an "Expert Committee". That Committee made clear distinction between trained lecturers and untrained t lecturers. '

36. The Fitment Committee, in its report stated:

We recommend that for trained graduate teachers the system that is available in the Kendriya Vidyalaya Sangathan or in the National Capital Territory of Delhi Administration should be followed. The system of giving promotions based on higher educational qualification has to be stopped and the pattern in the Centre whereby direct recruitment is done both at the level of trained graduate and postgraduate trained teachers will have to be adopted. The Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 which has come in force from 1-1-1986 requires to be amended and brought in line with what is prevailing in the Centre. In the Kendriya Vidyalaya Sangathan according to an Order Dated 29-4-1997 promotion quota from PRT to TGT and TGT to PGT has been increased from 33.3% to 50%. This system or the pattern in the Delhi Administration has to be adopted in Bihar if Central scales are to become applicable.

37. The Fitment Appellate Committee agreed with the above observations and observed:

This Committee agrees with the views of the Fitment Committee. There is enough deterioration in education standards in this State. No further downslide is to be tolerated.

38. The Appellate Committee, however, strongly relied upon one and only one circumstance that since in the advertisement nothing was mentioned about training, different pay scales could not be prescribed by the State for trained and untrained lecturers.

39. In para 31.49, the Appellate Committee stated:

The Fitment Committee's mandate was to establish equivalence with Central posts and recommend scales accordingly. In the case of postgraduate 2 lecturers a clear equivalence was available with the post of postgraduate teachers in the Central schools. Therefore, this is a case where there can be very little doubt about the exacters of the equivalence. The argument that in Delhi they also teach IX and X standard is very tenuous. Moreover, if training is necessary for such teachers in Delhi which by all standards has a better academic record than their counterpart in Bihar, then it is all the more necessary for teachers in Bihar. The Fitment Committee has gone by Central equivalence where the scale of Rs. 6500-10,500 is provided to trained teachers only. The Committee, therefore, could not have recommended this scale for untrained teachers. However, this Committee feels that the ground that the original advertisement did not require

'training' as an essential qualification is very relevant because imposition of such condition on a later date is clearly discriminatory and the present incumbents cannot be denied the higher scale of Rs. 6500-10,500, even if they are untrained.

40. We are afraid the approach of the Fitment Appellate Committee was not in consonance with law. If there is distinction between trained and untrained lecturers and if such classification is reasonable and rational, there is nothing wrong in prescribing different pay scales for trained lecturers and untrained lecturers and there was no reason for the Appellate Committee to differ from the view taken by the Fitment Committee and by the State Government. The advertisement could be read, as ruled by a Single Judge as an eligibility criterion and nothing more than that. By reading the advertisement in that manner, the purpose could have been achieved by appointing and by retaining untrained lecturers in-service as also by fulfilling the object of fixing different pay scales for trained and untrained lecturers. Unfortunately, the Division Bench failed to reconcile the advertisement and fixation of pay scales by properly appreciating the views expressed by the Fitment Committee and accepted by the State Government.

41. The above discussion would normally result into the appeal being allowed by setting aside the order passed by the Division Bench and by restoring the order of the Learned Single Judge upholding the action of the State Government. In the facts and circumstances of the case, however, we are not persuaded to set aside the order of the Division Bench in exercise of discretionary jurisdiction of this Court under Article 136 read with Article 142 of the Constitution mainly because of two reasons.

42. Firstly, when the Appellate Fitment Committee was appointed by the State Government presided over by a sitting Judge of the High Court of Patna and the matter was referred to as regards anomaly in pay scales to trained and untrained lecturers, the reference expressly mentioned that the State Government will accept the recommendation of the Committee and the Committee recommended payment of uniform pay scales to trained as well as untrained teachers.

43. Secondly, it was stated in the affidavit-in-reply filed by the untrained lecturers' association (the writ Petitioners) that after the report of the Fitment Appellate Committee, the State Government on 22-1-2001 withdrew its earlier Order Dated 19-10-2000 for sending untrained lecturers (in-service candidates) for taking training on the ground that no such training was mandatory in view of report of the Committee and when uniform pay scales were to be given to trained as well as untrained lecturers.

44. For the reasons aforesaid, though we are firmly of the view that the Division Bench of the High Court of Judicature at Patna was not right in holding that there is no distinction between trained lecturers on the one hand and untrained lecturers on the other hand and no different pay scales can be prescribed for trained and untrained lecturers and such fixation of pay scales would violate

Article 14 of the Constitution, and though we hold that the (Learned Single Judge was Right in upholding the classification between trained and untrained lecturers as rational, reasonable and intelligible, in the facts and circumstances of the case, we do not intend to interfere with the final direction issued by the Division Bench in the light of two circumstances referred to above. Appeal is accordingly disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.