
(1992) 05 CAL CK 0016

In the Calcutta High Court

Case No : Appeal from Original Order 392 of 1991

State of West Bengal and Others

APPELLANT

Vs

Harendra Nath Bhowmick and Others

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 96 CWN 1222

Hon'ble Judges : Bhagabati Prasad Banerjee, J; Abani Mohan Sinha, J

Bench : Division Bench

Judgement

Bhagabati Prasad Banerjee, J

1. This is an appeal against an order of judgment dated 29th of July, 1987 passed by S.R. Roy, J. in civil Rule No. 2665 (W) of 1985. The writ application was filed by the writ petitioners/opposite parties who were Laboratory Assistants and who inspite of their having been designated as Laboratory Instructors has been denied the status and pay of such posts of Instructors. The writ petitioners/opposite parties were Science Graduates of different Universities and had been appointed as Laboratory Assistants in different colleges on diverse dates as Laboratory assistants, the writ petitioners in addition to their normal duties had to perform and discharge the following duties:-

- a) to make lesson-units for practical classes:
- b) to assist the teachers and help the students in practical classes;
- c) Impart instructions to the students in practical classes:
- d) to perform demonstration work in the practical classes:
- e) to keep attendance of students in practical classes and maintain their record of works:

2. According to the writ petitioners/opposite parties the Laboratory Assistants

were all along been treated as teaching staff and pay and allowances including the government share and dearness allowances were payable to them until the issuance of the Government Order No. 288-Edn/3A/5/68 (CS) dated 21st March. 1969 issued under the signature of the Deputy Secretary to the Government of West Bengal, Education Department college (Spon) Branch intimating that with immediate effect the Laboratory Assistants of the non-Government affiliated colleges would be treated as members of non-teaching staff. The designation was prejudicial to the interest of the Graduate Laboratory Assistants as the same had a direct bearing upon payment of Dearness Allowances to them.

3. Several representations were made against the Government order dated 21st March. 1969 by which it was decided "Laboratory Assistants of non-Government Affiliated Colleges with immediate effect the member of non-teaching staffs" demanding re-designation of the Laboratory Assistants as Demonstrators, but was no effect.

4. According to the writ petitioners the graduate Laboratory Assistants would have been treated and recognised as teaching staff as they were not only connected with imparting instructions to the students of different colleges in their practical classes but also takes practical classes as and when they were called upon to do so far shortage of staff of the colleges and that as a matter of fact considering the nature of work technical skill etc. of Laboratory Graduate assistants the Principals of many colleges recommended that the Graduate Laboratory Assistants employed in different colleges should be reclassified as demonstrators and should be regarded as teaching Staff and should be paid according to the scale of Demonstrators.

5. It was further the case of the writ petitioners that the State Government refused to treat the graduate Laboratory Assistants of the sponsored Colleges and non-Government Private Colleges of West Bengal as demonstrators and as Teaching Staff, the graduate Laboratory Assistants, working in the government colleges, had been given the status and designation of demonstrators and had been accepted as Teaching Staff. According to the writ petitioners they possessed similar qualifications experience etc. as graduate Laboratory assistants working in the Government Colleges of West Bengal and that there was no reason for making such discrimination between Graduate Laboratory Assistants working in Government of West Bengal by letter dated 10th August, 1983 which informed the Directed by Public Instruction that "the undersigned is directed by order of the Governor to say that the Governor is pleased to direct that the posts of Laboratory assistant in Non-Govt. Colleges (sponsored) may henceforth be designated as laboratory instructors on condition that the incumbents of the posts of laboratory instructor will draw pay in the scale of pay prescribed for the post of Laboratory Assistants and allowances as admissible. It is also made clear that their status as non-teaching staff will remain unchanged.

In future recruitment to the posts of Laboratory Instructors in non-Govt. Colleges should be made from candidates possessing B.Sc. degree to relevant science

subject. The recruitment rules will be suitably amended.

This may be circulated to all non-Govt. Colleges immediately".

6. The learned Trial Judge on consideration of the matter held that action of the Government of West Bengal in non conferring the status of Teaching Staff upon the Laboratory Instructors was prima face arbitrary and thereby violative of the provisions of Article 14 of the Constitution and accordingly the Government Order dated 10th of August, 1983 In so far as it refused to treat the Laboratory Instructors as Teaching Staff, should be struck-down as violative of the Article 14 of the Constitution and the writ petitioners who were Laboratory Instructors should be treated as Teaching Staff for the purpose of their Pay and Allowances. The Learned Trial Judge made the rule absolute and the appellant was commanded by issue of a writ of mandamus to treat the Graduate laboratory Assistants redesignated as Teaching Staff and to pay them in accordance with the existing scale of pay prescribed for the physical Instructors with effect from August 10, 1983 with all arrears.

7. In this appeal an application was made for addition of parties of non-Graduate Instructors to get the same benefit as the Learned Trial Judge and had granted to the Graduate Demonstrators.

8. Mr. Jatin Ghosh, Learned Advocate appearing on behalf of the applicants who were of non-Graduate Instructors to get the benefit similar to that of Graduate Instructors: The writ petition was filed by the Graduate Instructors and that before the Learned Trial Judge the question was whether the Graduate Laboratory Instructors should be treated as Teaching Staff or not and that within the scope and ambit of the writ application as well as within the scope and ambit of this appeal the application for addition of parties by no-Graduate Laboratory Instructors could not be entertained and accordingly the same stand dismissed without prejudice to the rights and contentions of those applicants. If the said application for addition of parties was allowed in that even this court had to travel beyond records and the pleadings of the parties and to decide the question which were not before the Learned Trial Judge and which was beyond the scope of the appeal.

9. Mr. Mansur Habibullah, the Learned Advocate appearing on behalf of the appellants contended that the Learned trial Judge was wrong in holding that the Laboratory Assistants should be treated as Teaching Staff inasmuch as it is within the exclusive domain of the State Government to decide the matter and that the court cannot make any such equation of past.

10. The provisions of several Universities Act have been referred to and namely. Banaras Hindu University Act, 1915, Delhi University Act. 1922, Calcutta University (Amendment) Ordinance, 1981, Burdwan University Act, 1959, North-Eastern Hill University Act, 1955 where the word "Teacher" has been clearly defined to include as Instructor.

11. On the question of fact it was found that the Graduate Laboratory Assistants had been discharged teaching functions besides guiding the students in the Laboratory work. It was also appears that persons with similar academic qualifications and experience were also appointed in Government Colleges as Demonstrators, who were treated as Teaching Staff for all practical purposes. Physical Instructors, are also been treated as Teaching Staff.

12. By the order dated 10th of August, 1983, the Government has directed hat the post of Laboratory Assistants in non-Government Colleges (sponsored and non-sponsored) was designated as Laboratory Instructors on condition that the incumbent of the said post of Laboratory Instructors would draw and pay in the scale of pay prescribed in the Laboratory Assistants and allowances are admissible and that their status as non-Teaching Staff would remain unchanged. When the Government agreed to treat the Laboratory Assistants as "Laboratory Instructors" there was no reason to refuse to give the pay and allowances of the teaching staff. This is on the face of arbitrary as under different Universities Act the Teacher was defined to means and includes as" Instructor". Thus, if an "Instructor" is a Teacher" there is no reason why such an Instructor should not be treated as Teaching Staff for the purpose of pay and allowances. Further, when the Government Colleges the Demonstrators and Physical Instructors were treated as Teaching Staff for all practical purposes.

13. For not treating the Demonstrators and Instructors in non-Government Colleges as Teacher is arbitrary and violative of Articles 14 and 16 of the Constitution inasmuch as there Was no basis for making such classification and that when it is clearly evident that the said posts were equal in all respect and the incumbent of the post discharged same function and responsibility. It may be mentioned that the Minister-in-Charge of Higher Education, Government of West Bengal by their letter dated 6.4.1983 addressed to the President, West Bengal College & University Teachers"Associations stated that the government expressed its inability to accept the designation of Graduate Laboratory Assistants and Demonstrators as they should create difficulties with the U.G.C. and it was further stated that if the said Association agreed the Government can redesignated them as Science Tutors. In reply to the said letter the General Secretary of the said Association informed the Ministry-in-Charge of the Higher Education that they were ready and willing to accept the proposal. By the order dated 10th August, 1983 the State Government has partly accepted the position. They were given the designation but not the status and the pay. The Legislature has defined Teacher" means and includes as Instructors the Government cannot designated them Instructor but without any status and pay like that of a Teacher, this is on the basis of arbitrary and discriminatory.

14. Our attentions were drawn to Notification issued by the Government of Bengal Education Department dated 6th of March, 1946 wherein the government decided that term teacher would include Demonstrators and Laboratory Assistants. We are of the view that quotation of post is entirely a matter by the

Government but the Government after treating the posts as same and equating the posts cannot give a designation without the benefits following such designation. Withholding a part of the benefits of such designation is on the face of it arbitrary illegal and void. In this case the Court had not treated two posts as same or equal but the government had decided that as the posts were equal and had given the designation without the benefit of such designation.

15. The Learned Trial Judge has simply help that if an Instructor as a Teacher there is no reason why he should not be treated as Teaching Staff for the purpose of their pay and allowances and the Learned Trial Judge had held that the Government order dated 10th of August, 1983 in so far as declines to treat the Laboratory Instructors as Teaching Staff, should be struck down as violative of Article 14 of the Constitution and the Laboratory Instructors should be treated as Teaching Staff for the purposes of the pay and allowances. We do not find any reason to interfere with the decision of the Learned Trial Judge and accordingly the appeal is disposed of without any order as to costs.

16. The order of the Learned Trial Judge should be implemented within three months from today. On the prayer of Mr. Habibullah, learned Advocate for the appellant, let the operation of this judgment remain stayed for four weeks from today.

Let a xerox copy of this Judgment be given to the learned Advocates for the parties on usual terms and conditions.

Abani Mohan Sinha, J.

I agree.