

(2006) 07 CAL CK 0042
In the Calcutta High Court
Case No : F.M.A. No. 239 of 2002

State of West Bengal

APPELLANT

Vs

Anil Chakraborty and Others

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 39

Citation : (2006) 3 CALLT 535 : 111 CWN 768

Hon'ble Judges : Vikash Shridhar Sirpurkar, C.J.;Nadira Patherya, J

Bench : Division Bench

Advocate : B.R. Bhattacharyya, Saikat Banerjee and S. Mukhopadhyay, for the Appellant;Ashok Banerjee and S.K. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Vikash Shridhar Sirpurkar, C.J.—This appeal is directed against the Judgment of the learned single Judge of this Court whereby while allowing the writ petition filed by the original writ petitioners the learned single Judge directed that the petitioners would be entitled to the same scale of pay which has been granted to the graduate laboratory instructors of non-government colleges by the Circular dated 26th December. 1994. This relief was given notionally with effect from 1st August. 1987 and effectively from 26th December. 1994. The learned single Judge directed the arrears involved in the difference of pay scale with effect from 26th December, 1994 and to be paid to the writ petitioners within the period of six months.

2. This appeal has been filed on behalf of the State of West Bengal represented by its Secretary, Higher Education Department, Deputy Secretary, Government of West Bengal. Education Department and Director of Public Instructions, Government of West Bengal, who were respondent Nos. 1, 2 and 3 in the writ petition.

3. The said writ petition was filed by as many as 26 laboratory instructors from

various non-government colleges and they had claimed therein a declaration that they were entitled to the same status and same pay scale as graduate laboratory instructors. The second relief prayed for was benefit of pay scale provided in the notification No. 931 Edn.(CS)/SS-16/89 dated 26th December, 1994. By that notification the Government had provided that the scale of pay in respect of all the graduate laboratory instructors of non-government colleges would be revised to Rs. 1390-45-1615-55-2055-65-2445-75-2970 with effect from 1st August. 1987. It was also declared that the graduate laboratory instructor of non-government colleges shall continue to enjoy teaching status as given to them in G.O. No. 1039-Edn(CS) dated 27th July, 1988. The 26 petitioners who were admittedly non-graduate laboratory instructors sought in the writ petition for the same relief and declaration on the ground of equal pay for equal work. According to them the said decision on the part of the State of West Bengal was arbitrary and discriminatory and they could not be deprived of the increased pay scale merely because they were under-graduate since they were doing identical work with the graduate laboratory instructors.

4. Following history would be necessary to understand the controversy. The petitioners had joined the colleges in the posts of laboratory assistants. All of them are undergraduates. By G.O. No. 1502-Edn(CS) dated 10th August, 1983 the Governor of West Bengal directed that the post of laboratory assistant in non-government colleges (sponsored and non-sponsored) would be re-designated as laboratory instructors on condition that the incumbents on these posts would draw the scale of pay prescribed for the post of laboratory assistant with admissible allowances. It was also clarified further that their status as non-teaching staff would remain unchanged. It was provided further that in future the posts of laboratory instructors should be filled up from the candidates possessing B.Sc degree in the relevant science subject.

4.1. Some graduate laboratory instructors (not the petitioners) challenged this order, since they felt aggrieved because of the non-teaching status given to them, by way of a writ petition, which writ petition was allowed by this Court and a Mandamus Appeal being FMA 392 of 1991 filed by the State was dismissed by the Division Bench of this Court. The petitioners tried to intervene in the proceeding but that application for impleadment was dismissed. The writ petitioners thereafter remained silent. The Mandamus Appeal filed, by the State was dismissed by the Division Bench of this Court by its Judgment dated 15th May. 1992.

4.2. The State Government then preferred a SLP before the Supreme Court. However, even that SLP was dismissed with minor modifications. The Supreme Court opined firstly that the graduate laboratory instructors should be awarded the revised scale of pay with effect from 1st August. 1987 instead of 10th August, 1983. It was also provided that they were equivalent to the demonstrators or physical instructors and were entitled to that scale and not that of the lecturers. In pursuance of this order of the Supreme Court the State

Government issued executive instructions by G.O. dated 26th December, 1994 reference to which has already been made by us in the earlier part of the Judgment.

4.3. The original writ petitioners thereafter filed the present writ petition only on 14th February, 1995 claiming that they were discharging same and identical jobs as the graduate laboratory instructors and therefore they were bound to be awarded with the same pay scale. In their writ petition, the writ petitioners claimed that they were discharging the following duties:

- i) to make lesson unit for practical classes;
- ii) to assist the teacher and help the students in practical classes,
- iii) impart instructions to the students in practical classes;
- iv) to perform demonstration work in the practical classes; and
- v) to keep attendance of the students in practical classes and to maintain their records.

4.4. They claimed that these were the duties which were being done by the graduate laboratory instructors also and as such they were entitled to the same status and designation as also the scale of pay awarded to the demonstrators by the G.O. dated 26th December, 1994. They further based their claim on the order dated 10th August, 1983 which we have already referred earlier, by which the nomenclature of their job was changed from laboratory assistant to laboratory instructor identically with the graduate laboratory instructors.

4.5. This claim of the identical duties was opposed by the State Government in their affidavit. It was specified that the assertions regarding the duties made by the petitioners in their writ petition, more particularly in paragraph 3(i) to 3(v) were not admitted. It was pointed out that the teachers of the respective departments (not the laboratory instructors) prepared the lesson units for the practical classes and that a person having a qualification of Matriculation or Madhyamik or 11th class was not competent enough to prepare lesson units for practical classes for the higher secondary students or the students of degree level. It was asserted that the laboratory instructors used to act directly under the supervision of the departmental teachers as in the case of laboratory attendant, instrument keeper, sweeper, etc. It was further pointed out that the work in the laboratory for practical classes was like a concert. Regarding the claim made in paragraph 3(ii) and 3(iii), that was also disputed. Regarding the claim made in paragraph 3(iv) it was specifically asserted that the petitioners did not perform the demonstration work in the practical classes. In fact it was done by the teachers of the respective departments and the laboratory assistants/instructors assisted the teachers of the respective departments as and when necessary. As regards the assertions made in paragraph 3(v) it was pointed out that the laboratory instructors did not mark the attendance of the students in practical classes nor did they maintain the records of the students which was

being done only by the allotted teachers. It was further reiterated that the recruitment qualifications in respect of demonstrators and laboratory assistants were altogether different. For the post of demonstrator one had to have minimum qualification of being a science graduate and with effect from 10th August, 1983 the minimum qualification for all the laboratory instructors was fixed as science graduate while the qualification for Laboratory Assistants initially was Madhyamik (10th Class). It was reiterated that there was a marked difference in duties of the graduate Laboratory Instructors and the undergraduate Laboratory Instructors. It was clarified that after the Government Order changing the nomenclature was passed, the pay scale was increased with effect from 1st August, 1987 only in case of graduate laboratory instructors. This was obviously in pursuance of the order passed by the High Court and the Supreme Court.

5. The learned single Judge after taking the resume of the whole history and noting the pleading came to the conclusion that though there was a difference in the qualification of the petitioners and the graduate laboratory instructors, initially they enjoyed the same pay scale under ROPA Rules, 1981. The learned single Judge then went on to record a finding that all the laboratory instructors whether graduate or undergraduate belonged to the same cadre. The re-designation or the change in the nomenclature was prospective in nature. He also noted that even in the G.O. dated 10th August, 1983 the graduate as well as undergraduate laboratory assistants were given the same nomenclature as laboratory instructors and therein it was also provided that they would draw the same scale of pay. From this the learned single Judge came to the conclusion that since the cadre of graduate and undergraduate laboratory instructors was only one and was not divided into two distinct cadres, the writ petition was liable to be allowed. The learned single Judge relied on the rulings in the cases of *Randhir Singh Vs. Union of India (UOI) and Others*, ; *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, and *State of U.P. and Others Vs. J.P. Chaurasia and Others*, to hold that there can be no discrimination between two groups namely graduate laboratory instructors and the undergraduate laboratory instructors. Thus, the writ petition came to be allowed necessitating the present appeal.

6. Shri Bikash Ranjan Bhattacharjee, the learned senior advocate appearing on behalf of the appellant pointed out that the Judgment of the learned single Judge was patently erroneous inasmuch as the learned single Judge has nowhere taken note of the different educational qualifications of the petitioners and the graduate Laboratory Instructors. He further pointed out that under the Service Jurisprudence, the different pay scales would always be provided depending upon the educational qualifications which was done by the impugned G.O. dated 26.12.1994. According to the learned Counsel that was perfectly permissible. He also pointed out that even that step was taken in pursuance of the orders passed by the High Court as well as the Supreme Court. As regards the duties, the learned Counsel pointed out that it was ridiculous that the undergraduate

Laboratory Assistants who had passed 10th Class Madhyamik or (+2) Examination, could be doing the duty of teaching. It was pointed out by the learned Counsel that the Supreme Court had acknowledged the status of the graduate Laboratory Instructors as teachers though they were paid the salary commensurate to the Demonstrator post. The learned Counsel also criticized the Judgment on the ground that merely because the concerned petitioners were described as Laboratory Instructors, they could not have asked for the benefit granted to their counterparts who were also Laboratory Instructors but had much better qualification of graduation in science subjects. Lastly, the learned Counsel urged that it was a misnomer to hold that the petitioners were belonging to the same cadre and even if they could be so termed, the Government was justified in fixing a better pay scale on the basis of better educational qualifications. The learned senior counsel also invited our attention to the fact that the petitioners had chosen to file the petition only in the year 1995, though the status as a teaching staff was denied to them by the G.O. dated 10.8.1983.

7. The learned Counsel appearing on behalf of the petitioners, Shri Asok Banerjee, on the other hand, supported the Judgment of the learned single Judge by pointing out that the nomenclature as also the duties in case of graduate Laboratory Instructors was identical as that of the petitioners. He pointed out that the petitioners had gained experience by their long service and, therefore, were entitled to be treated on par with the graduate Laboratory Instructors and as such, were entitled to the better pay scale awarded to them.

8. There can be no dispute that the graduate Laboratory Instructors are better placed insofar as the educational qualifications are concerned. Indeed, initially the post of Laboratory Assistants did not require the qualification of graduation. It is an admitted position that the minimum qualification was Madhyamik Examination (10th Class Matric). Due to the paucity of jobs, even the graduates joined the post which were drawing a meager salary. Obviously, the cadre of Laboratory Assistants was filled with some graduate Laboratory Assistants and some others like the petitioners who had merely passed Madhyamik or 12th Class Examination (Higher Secondary). This situation changed with effect from 10.8.1983 when the post of Laboratory Assistants was re-nomenclatured as Laboratory Instructors. In this G.O., it was specified that the status of the Laboratory Instructors would remain as a non-teaching staff as it was earlier in case of Laboratory Assistants. However, it was further provided that henceforth the minimum qualification for the post of Laboratory Instructors in non-government colleges would be possessing B.Sc. Degree in relevant science subject.

9. The graduate Laboratory Instructors felt aggrieved by the denial of a teacher's status and challenged the same. The matter went right upto the Supreme Court where the Supreme Court acknowledged the status of the graduate Laboratory Instructors to be that of teaching staff. However, the Supreme Court equated them with the Physical Instructors or Demonstrators

who were carrying the same pay scale. The Supreme Court also acknowledged that the graduate Laboratory Instructors were entitled to that pay scale of Demonstrators or Physical Instructors. Taking cue from the Supreme Court Judgment, the order came to be passed revising the pay scale of the graduate Laboratory Instructors. Therefore, one thing is clear that it was acknowledged in the Supreme Court's Judgment that there were two distinct classes, namely, the graduate Laboratory Instructors who could be termed as a teaching staff and the other Laboratory Instructors like the petitioners who were not treated as the teaching staff. This was the essential difference in these two classes and, therefore, the subsequent order dated 26.12.1994 was passed. In fact, the status of the graduate Laboratory Instructors was acknowledged as a teaching staff way back from 27.7.1988 vide G.O. No. 1089-Edn(CS). This was confirmed by the Supreme Court Judgment which accepted the prayer by graduate Laboratory Instructors for a better pay scale. It is significant to see that this differentiation initially made on 27.7.1988 meant a refusal of teaching status to the other undergraduate Laboratory Instructors. This was, however, not challenged by the Laboratory Instructors like the petitioners. Thus the denial of teaching staff status vide G.O. dated 10.8.1983 was withdrawn and the teaching staff status was conferred upon the graduate Laboratory Instructors from 27.7.1988. Ultimately, this status was confirmed right upto the Supreme Court. This will suggest that the petitioners on this count were a distinct class from the graduate Laboratory Instructors. It must be said that the petitioners all the while kept on sitting on fence and when the benefit of a better pay scale was given in pursuance of the Supreme Court Judgment, they decided to raise their claim for the first time by filing the petition. This aspect was missed by the learned single Judge who merely on the basis of the G.O. dated 10.8.1983 came to the conclusion that both graduate Laboratory Instructors and others like the petitioners belonged to the same cadre. The only two reasons given by the learned single Judge for treating the petitioners on par with the graduate Laboratory Instructors are one, that they have the same nomenclature awarded to them by the G.O. dated 10.8.1983 and secondly, that they belong to the same cadre. It is only on the basis of these two factors that the learned single Judge has come to the conclusion that the principle of "equal pay for equal work" applied to the petitioners also. In our opinion, this was clearly erroneous.

10. It must be first clarified that though the identical nomenclature of Laboratory Instructors was given to all the Laboratory Assistants including the petitioners who were not graduate, yet a substantial difference is made by G.O. No. 1089-Edn(CS) dated 27.7.1988, a clear reference of which is to be found in the impugned G.O. dated 26.12.1994.

11. It is also to be seen in this behalf that the learned Judge did not refer to duties. There is no finding in the Judgment that the graduate and the undergraduate Laboratory Instructors did the same duty. We have pointed out that it was very specifically denied by the respondents that the duties in case of graduate Laboratory Instructors and the undergraduate Laboratory Instructors

were identical. In this behalf, it is to be seen that the claim of the graduate Laboratory Instructors in the earlier writ petition filed by them that they were discharging teaching functions was not controverted by the State Government before the High Court and the Supreme Court had also taken note of that fact. What is distinct in the present case is that such claim was vociferously denied in the present petition. Unfortunately, the learned single Judge has not taken note of this factor and that would make all the difference. It is true that in their affidavit-in-reply, the petitioners have tried to assert that the nature of work of the non-graduate Laboratory Instructors was identical with that of the graduate Laboratory Instructors. However, we do not find any evidence to support such a claim. On the other hand, the nature of duties pleaded in paragraphs 3(i) to (v) in the writ petition is clearly such as could not have been done by a mere matriculate. It is unthinkable that the matriculate would make lesson units for the practical classes of students of 12th class or higher classes. It is also impossible to think that they could, in any way, assist the teachers or help the students in practical classes. Further it is unthinkable that these 10th class pass or School Final pass Laboratory Instructors could impart instructions to the students in practical classes especially to the students who belonged to the higher classes like B.Sc. Part I, Part II or Part III. It is further difficult to think that these matriculate Laboratory Instructors could perform the demonstration work in practical classes or to note the attendance of the students and maintain their records of work.

12. Shri Banerjee, appearing for the respondents, very earnestly urged before us that the vast and long experience of the petitioners, though they were undergraduates, had qualified them to be treated on par with the graduate Laboratory Instructors. We do not think that mere experience, howsoever long it may be, would be sufficient to replace the educational qualification of graduation in science. In our opinion, there is nothing on record to suggest that the undergraduate Laboratory Instructors did any such duties including the teaching duties. It is liable to be seen that the said duties could be performed only by the graduate Laboratory Instructors. It cannot be imagined that these Madhyamik pass Laboratory Instructors could instruct and teach the students of B.Sc. The claim, therefore, that they were doing identical duties with the graduate Laboratory Instructors must fall to the ground. This aspect also has not been considered by the learned single Judge.

13. Thus, we are of the clear opinion that after 27.7.1988 when the teaching status was awarded to the graduate Laboratory Instructors, they became a separate class and, therefore, it could not even be said that they belonged to the same cadre as that of the non-graduate Laboratory Instructors. A mere identity of nomenclature of the service does not create a cadre. That does not also entitle an employee to be equated with the employee who is better qualified and does entirely different functions.

14. In this behalf, the Supreme Court in a reported decision in Deb Narayan

Shyam and Others Vs. State of West Bengal and Others, . has specifically observed in paragraphs 15 and 16 that the principle of "equal pay for equal work" depends upon the nature and duties performed by a particular category of posts and the qualifications for their recruitment. In the above case, the Supreme Court was testing the claim of the Amins that they are entitled to be treated as Surveyors. The Supreme Court found that the educational qualifications for the post of Amins and Surveyors were different and so were their duties and though in the earlier few Judgments passed by the High Court. Amins were equated with Surveyors and though the said Judgments remained unchallenged, the Supreme Court ultimately refused to accept the case of the Amins that they could be treated on par with the Surveyors.

15. We have already pointed out as to how the qualifications in the two categories are different and how the nature of duty also differs. The principles in the above case, therefore, apply on all fours to the present case.

16. In another case reported in (2005)¹⁰ Supreme Court Cases 339 State of West Bengal and Anr. v. T.K. Ghosh and Ors. the Supreme Court went a step ahead to hold that even if the employees were discharging similar duties but possessing different qualifications having a bearing on quality of work discharged, could be treated differently and such differentiation was permissible depending upon the qualitative difference of work/duty performed. In this case, the Supreme Court was considering the claim of Draftsmen who were claiming the status of the Overseers and Sub-overseers and claimed the pay scale paid to them. Their claim was accepted by the learned single Judge on the ground that they were discharging similar duties. The learned single Judge also held that academic qualification had no bearing on the amount of emoluments paid for the similar nature of work. This Judgment of the learned single Judge was upheld by the Division Bench. There was no discussion in the learned single Judge's Judgment regarding the nature of work and duties performed by the different categories of Draftsmen. The Supreme Court took a view relying on Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, that it is always open to the State Government to put its employees in the same service in the different categories for the purpose of pay scale according to the qualifications possessed by them. The Supreme Court also relied on the other decision reported in Government of West Bengal Vs. Tarun K. Roy and Others, and relied on the following observations:

14. Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of the work is same, irrespective of an educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of a higher educational qualification can be treated as a separate class. Such classification, it is trite is reasonable. Employees performing, the similar job but having different educational qualification can, thus, be treated differently.

17. We have already pointed out in the earlier part of the Judgment that in the present case, even the duties were not similar. Therefore, granting of a different pay scale to the graduate Laboratory Instructors was quite justified.

18. Similar view is taken by the Supreme Court in *State of Punjab and Others Vs. Savinderjit Kaur*, and *M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another*, . All these Supreme Court decisions would clinch the issue in favour of the State Government.

19. In view of these latest Judgments of the Supreme Court, we need not take stock of the Judgments relied upon by the learned single Judge, namely, *Randhir Singh Vs. Union of India (UOI) and Others*, , *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, and *Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others*, as also *Union of India (UOI) and Another Vs. S.S. Ranade*, and *State of U.P. and Others Vs. J.P. Chaurasia and Others*, . We do not find these cases to be of any assistance to the respondents in view of the subsequent Judgments which we have quoted above and relied upon.

20. Under the circumstances, we are not in a position to agree with the Judgment of the learned single Judge of this Court and would set aside the same. Hence, the appeal is allowed and the writ petition is directed to be dismissed. No costs.

21. Urgent Xerox certified copy of this Judgment may be supplied to the parties, if applied for.

Nadira Patherya, J.

22. I agree.