
(1990) 03 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 9674 of 1989

Subodh Kumar

APPELLANT

Vs

The Chancellor, Universities of Bihar and Others

RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21

Citation : (1990) 38 BLJR 1306 : (1991) 1 PLJR 452

Hon'ble Judges : P.S. Mishra, J;B. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.S. Mishra and B. Prasad, JJ.—Petitioner herein who has been appointed as a Craft Instructor in Agriculture and Gardening in Patna Training College, Patna, a College belonging to the Patna University, has moved this Court alleging that while Craft Instructors in Government Training College have been allowed a scale of pay of Rs. 8501360 with effect from 1-4-1981 and scale of pay of s. 940-1660 with effect from the date of his first time bound promotion, he hag been given a revised scale of pay of Rs. 730-1080 only with effect from 1-4-1981.

2. Petitioner's college belonged to the State Government until the Patna University Act, 1951, statutorily transferred the institution to the University. Section 51 of the Patna University Act, 195, named several colleges belonging to the State Government such as the Patna College, the Patna Science College, the Bihar College of Engineering, the Patna Law College, the Prime of Wales Medical College, the Magadh Manila College, the Patna Woman's College and included the Panta Training College in the list. For such transfer Section 52 stated, inter alia, that the University would employ, on such terms as may be determined by the State Government, all members of the teaching staff and Government employed in the college transferred to the University, 1951 Act. However, has since been repealed by the Patna University Act, 1976, Section 35 of the Act states, inter alia:

(I) Notwithstanding anything contained in this Act, no University or constituent college of such, University, except a college which-

(a) is established, maintained or governed by the State Government, or

(b) is a college established by religious or linguistic minority,

(i) shall, after the commencement of this Act, create any teaching or non-teaching post involving financial liability without the prior approval of the State Government;

(ii) shall increase the pay or allowances attached to any post, or sanction any new allowance:

provided that the State Government may, by an order, revise pay scale attached to such post or sanction any new allowances.

3. Petitioner has alleged that he was interviewed on 3-1-1975 and given appointment letter for aforesaid post on 12-4-1975. The State Government had then revised the scale to Rs. 348-570 per month, that was the scale of pay admissible to Craft Instructors working in all other Government Training College. Since his appointment however, the Pay Revision Committee, Known as 4th Pay Revision Committee, appointed by the State Government made its recommendation for revision of scale of pay of the Craft Instructors in the service of the State Government with effect from 1-4-1981. It recommended the scale of pay of Rs. 850-1360 to such Craft Instructor. Notwithstanding the said recommendation, however, in the case of the petitioner who had been by now confirmed in the service of the State Government, the University issued an order fixing the scale of pay of the petitioner at Rs. 730-1080 and put him at a salary of Rs. 860 per month as on 1-4-1981. Petitioner represented his case and demanded fixing of his pay in the aforementioned scale of pay recommended by the 4th Pay Revision Committee and accepted by the State Government for Craft Instructors working in the Government Teachers Training College. He has been, however, denied the said scale of pay. His representation has not found favour with the respondents.

4. The University has filed a counter-affidavit. The Registrar of the University has not disputed most of the statements made by the petitioners but has stated that:

The State Government has approved the pay scale of Crafts teacher of Rs. 730-1080 by its Notification I/ME-7/8 Edu-881 and 882, dated 2-6-1982.

AND

the State Government thereafter again issued a letter No. 156/C dated 19-8-1985 whereby the employees getting pay scale of Rs. 730-1080 were allowed the revised pay scale of Rs. 785-1210 at par with the Assistant of the Secretariat. Consequently, the Patna University issued office order dated 3-3-1986.

A copy of the Government Notification has been annexed to the counter-affidavit. The stand of the University is that since the State Government is required to sanction any increase in the pay or allowance attached to a post and it has made no exception in the case of the petitioner and issued instruction to the effect that the revised scale of pay admissible to the petitioner shall be Rs. 730-1080 with effect from 1-4-1981 and a further revision has been allowed to Rs. 785-1210 no further revision of the scale of pay of the petitioner is possible.

5. We have noticed the facts and the law on the subject. The College in which the petitioner has been appointed by the University is one which had been established by the State Government. There is a possibility to read Section 35 to apply to the Colleges established by the University or belonging to the University only and not to a College which had been established by the State Government. But difficulty, however, arises on account of the other qualifying expressions namely "maintained" or "governed". If disjoining word between ""maintained and governed" Section 35 of the Act is brought in between "established and "maintained" to read established or maintained, the College, in question, any employee in College in question cannot deny the fact that the College belongs to the University. The University is liable to respect to the service conditions of its employees. Since the University does not have any control beyond the administration, subject to the provisions of the 1976 Act, the University may be in difficulty in putting the petitioner or any other employee of the University at par with the scale of pay made admissible to Government servants holding equivalent or similar rank.

6. The case of the petitioner before this Court is that the University's control upon the College and the service of the petitioner notwithstanding he has been subjected to a discrimination inasmuch as the 4th Pay Revision which changed the status of the Craft Instructors of the Government Teachers' Training Colleges, taking into consideration the conditions of service which were similar to the conditions of the service of the petitioners by not extending to the petitioner the same scale of pay as has been made admissible to the Craft Instructors in the Government Colleges, respondents have violated equal protection of law and equality before it. The discrimination has affected the petitioner's life inasmuch as for the reason of his appointment in a Teachers Training College falling under the Patna University, he has been left behind in the matter of scale of pay whereas those who opted to go in the Government Teachers' Training College have been granted higher scale of pay. Petitioner has thus alleged that apart from equality of opportunity guaranteed under Article 16 of the Constitution, his rights under Articles 14 and 21 of the Constitution of India have also been violated.

7. The rule of equal pay for equal work has been recognised as a right to the employees in any State and is thus, present in Articles 14 and 16 of the Constitution of India. Petitioner's difficulty, however, is that Patna University is a State for the purpose of Part IK and also an authority for the purpose of Article

12 of the Constitution of India. It is not the same as the State Government is. Thus, petitioner's employer is different from the State Government. Will this then give to the petitioner's employer, that is to say, the Patna University, option to deny to the petitioner the same protection and the same benefits which have been extended to the Craft Instructors in the Government Colleges who before the 4th Pay Revision were in the same scale of pay as that of the petitioner. There would have been possibility to say that petitioner may not be allowed to claim parity of pay with the employees in the Government Colleges. That also is of no consequence in view of the express language of Section 35 of the 1976 Act aforementioned. It is the same State Government which has to revise the scale of pay of the employees of the Patna University which on the basis of the recommendation of the 4th Pay Revision revised the scale of pay of the Craft Instructors in the Government Teachers Training Colleges. The State Government, thus, cannot be ignorant of the nature of the service of the petitioner and that of the Craft Instructors in the Government Teachers Training Colleges and the fact that they were in the same scale of pay before the 4th Pay Revision. There can be no justification in putting the petitioner in a lower scale of pay than the scale of pay before the revision. This will, in our view, be a discrimination in the teeth of the aforementioned provisions of the Constitution of India and enough to extend the rule of "same pay for the same work" to the petitioner that is to say. a Craft Instructor in the Patna Teachers Training College to be at par with the Craft Instructors in the Government Teachers' Training College. For the reasons aforementioned, we have no hesitation in holding that the petitioner has been denied his due scale of pay and the State Government is obliged to consider the pay of the petitioner to extend him the same scale of pay as has been given to the Craft Instructors in the Government Teachers' Training Colleges.

8. For the reasons aforementioned, this application is allowed. Let a writ of mandamus issue to the State Government and the University to give him his due scale of pay and other consequential benefits.