
(1995) 05 CAL CK 0035
In the Calcutta High Court
Case No : C.O. No. 6448 (W) of 1993

Sujit Kumar Guha Thakurata	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1995) 05 CAL CK 0035

Hon'ble Judges : R. Bhattacharyya, J

Bench : Single Bench

Advocate : Asim Banerjee, for the Appellant; Santosh Ranjan Chakraborty, for the Respondent

Judgement

R. Bhattacharyya, J.—The petitioner by dint of his presentence during his teacherhood at Vivekananda Vidyapith at Dum acquired Post Graduate Diploma to Commerce: Though recruited for a different stream, yet by the reason of his educational performance and wisdom he imported Commerce education to the students at large. since inception of his service. Entitlement to higher scale of pay is an integral part of acquisition of search diploma. The school authorities, in acknowledgement of his excellent performance, recommended the higher pay scale to the D.I. School, as evident by of annexure "A" it was translated into action.

2. Happiness is a distant probability in all spheres of life which is an automatic truth where the petitioner was not an exception. Thus, with the passage of time, a dense cloud hovered in the sky of his career to search the benefit once seaweed are him dated 16.7.87.

3. The Headmaster and the Service of the school conjured up a design to the privet the petitioner of his service benefit under the presence of remodeling of the staff pattern forged with closure of the Commerce stream. To throttle his claim, he was shunted to "Work Education" Group. The petitioner during his teacherhood is and was teaching Additional Book Keeping as a general subject

which, continued in the Madhyamik Standard, 1974. The same was retained to the Madhyamik standard by the Government of West Bengal.

4. A rolling stone gathers no moss. The petitioner's duty of teaching Book Keeping, a Commerce subject went on unheeded and unabated.

5. To his disadvantage, casualty was inflicted on him by pushing him to the fold of "Work Education" Group though he was not armed with the suitable qualification of Work Education Group.

6. The teachers of the school adjusted themselves within the four groups. viz. Language Group, Science Group. Work Education Group and Social Science Group long after the appointment of the petitioner. He was stripped of the higher pay scale by a stroke of pen.

7. The annexure T and "J" dated 18.2.89 and 4.4.90 respective flash the well concreted action of the respondents behind the deprivation of higher scale. The representations of the petitioner were ignored. The combined result of the annexures "K" and "L". although provided a ray at hope to him but it faield out for the willful action of the respondents A teacher is always a good (sic). But his patternce reached its extremely when he bad to approach the Writ Court (sic) a roam in the Social Science Group. The refusal to higher scale of pay has been nude with an (sic) motive quite contrary to the Rules and Regulations.

8. The reliefs sought for by the petitioner have been opposed refutting the charge of ill-motive, design or conspiracy in denying the benefit accorded to the petitioner. Grouping of all the teachers unopposed were adhered to as for back as June, 1996 bringing the petitioner within the fold of Serial No. 7 under the "Work Education". The distribution met the approval of the authorities which conimensurated with the qualification of the teachers and their respective seniorities.

9. The school authorities are the creatures of the Statute. Rules, Regulations and Instructions which cannot be altered at the pleasure of the petitioner. His case was sympathetically considered by the school authorities which recommended the scale. It never wanted to withdraw any benefit granted to him. On the other hand, the petitioner managed to obtain higher scale of pay which was detected upon scrutiny of the records. The grounds are insubstantial to render him any benefit. The school authorities did not meddle in the affair to withdraw the scale when it recommended such scale.

10. In the background of the above, the respondents have prayed for dismissal of writ application in limine.

11. The material question which formulated for decision of the Court is as to whether the petitioner when he once received the higher scale of pay granted by the authorities could they revoke it, and such action, thereby constitutes an inroad on the right to his livelihood.

12. The Learned Counsel for the petitioner has relied on a number of annexures to ground his claim viz., "A to N". In short, they are suggestive of the fact about his up gradation entitling him to a higher scale. He was teaching Commerce subject, as submitted by the Learned Counsel for him, since his appointment in 1972, in addition to teaching of Book Keeping subject in Class IX- and X, for the last few years. In acknowledgment of his merit and worth, an unanimous decision was taken to place him in the, higher scale by the reason of his attainment of Post Graduate Commerce Diploma.

13. The Learned Counsel for the respondents in refuting the contentions of the Learned Counsel for the petitioners is emphatic in his contention that there was no Commerce stream in the school and the school cannot override the circular of the Education Department. The school, according to the Learned Counsel for the respondents, endorsed the entitlement of the petitioner to the higher scale of pay having had the least desire to deprive him or withdraw the scale once given. But the school, as contended by him is a creature of statute, circulars and instructions following therefrom from time to time at any rate cannot be overridden. The circular dated 31st of (sic), 1981 being Circular No. 372-EDN (B) is the guideline about the mode and manner proclaiming the right of the teachers to get the scale of pay from time to time. The same, according, to the Learned Counsel for the respondents, does not establish the right of the teacher as the circular dated 31.7.81 declared the future right but not the past right. The circular, according to him, blows off the claim of the petitioner to the higher scale of pay.

14. Upon analysing the respective claims, circular dated 31.7.81, in particular, the note appearing in the below of the circular needs be reflected which is as under :

(1) All existing Secondary School teachers will be allowed annual increments in the revised scales of pay provided that untrained teachers will have to get themselves trained within 5 years from April 1981 failing which their increment will be stopped till they get themselves trained.

(2) (a) All existing Secondary school teachers who have improved their qualifications relevant to their teaching subjects will get the higher scale on qualification without, any restriction;

(b) All existing Secondary School teachers who have improved their qualifications not relevant to their teaching subjects will be allowed the higher scale on qualification basis after five years teaching counting from the date on which higher qualification was obtained

(c) In future Secondary school teachers will be allowed higher pay scale on qualification basis only when they obtain such higher qualification in the subject relevant to their teaching/appointment.

15. Looking to the anatomy of the circular it is manifest that the authorities have

provided reliefs for respect of the different categories of teachers of Secondary schools which not only included the past right but also the future right for the higher scale of pay. It is notorious that the petitioner obtained his Post Graduate Diploma in Commerce in the year 1984 and that he was placed in the Second Class. The improvement of qualification was a means to obtain the higher scale of pay. The circular as it appears was brought into existence on the 31st of July, 1981. Therefore, his right to receive the higher scale of pay arises after obtaining the Post Graduate Commerce Diploma. In the instant circular dated, mentioned hereinbefore, does not exclude his right as it manifests from the circular that petitioner can harvest the relief within the fold of Note : 2(b) and (c). Undoubtedly, it will be a great fiction that the petitioner, since his inception into service, was teaching the Commerce subject about which there could be no denying the fact and despite his obtaining Post Graduate Diploma, he will be isolated from other teachers of the school in the matter of pay scale who can hold a fire in his hand, thinking on frosty Caucasus ? He will teach the Commerce subject where; the scale of pay does not commensurate with his qualification relevant to teaching. It is unimaginable. His uninterrupted teaching in respect of the Commerce subject in absence of the Commerce stream and the abolition of the same for the fusion of remodeling of the staff pattern cannot foreclose his right

16. Further, it is significant to note that the combined reading of Note 2(b) and (c) provides relief for a teacher to a higher scale. Note 2(b) speaks: that all existing Secondary School teachers who have Unproved their qualification not relevant to their teacher subjects will be allowed the higher scale on qualification basis after 5 years teaching counting from the date on which the higher qualification was obtained Though he was thrown to the fold of Work Education Group, yet in reality he was teaching Commerce subjects, then again. Note 2(c) speaks of the future right of the teachers who will be entitled to scale of pay on qualification basis only Emphasis supplied by me when they obtain such higher qualification in the subject relevant to their teaching/appointment The qualification as Indicated above, has been obtained by the petitioner relevant to fate teaching subject buttressed by his obtaining Post Graduate Diploma in Commerce where mere placing him in the "Work Education Group" cannot take away his right to a higher scale of pay. Even Note 2(c) affords him the right to higher scale for the Post Graduate Diploma obtained by him in the subject relevant to teaching/appointment. I do not find any substance behind the contention urged by the Learned Counsel for the respondents that the circular being No. 253 EDN(B) dated 17th of September, 1964 has altered the position.

17. A serious question has been raised in this case that there is no Commerce stream in the school and the petitioner could not be accommodated. Can it stand in the way of securing the higher pay scale ? In my view, his right to receive the higher scale of pay for his up gradation of his educational qualification cannot be denied. In the situation, the petitioner was placed by the action of the respondents, a supernumerary post be created which will be co-terminus with his

retirement, or in the alternative, to pay him the higher scale of pay and to absorb him when the vacancy will occur. If the petitioner is denied of his scale, there will be an encroachment upon his livelihood as the factual exposure of the case shows that the boot is on the other leg. The denial of higher scale of pay on the pretext of remodelling of staff pattern cannot fold the relief as it must stand the test of equality. The claim of the petitioner for the action taken by the authorities comes within the broad sweep of the Article 21 of the Constitution of India as it affects the livelihood of the petitioner when his right to receive the higher scale of pay has been denied.

18. I am not unmindful while looking to the provisions of Articles 14 and 21 of the Constitution of India that Where, as here, two procedures exist for two classes of teachers. the "Same must satisfy the test, as indicated above, Articles 14 and 21. If one of such is harsh, oppressive, unjust, unfair and unreasonable, the same offends not only the principle of natural justice but also the Constitutional rights. The authorities are not fair in their approach in negating the clam of the petitioner to higher scale of pay which they should not be after taking into consideration the subject he taught from the very inception of his service and the placing him in serial No. 7 of the work Education Group is arbitrary, fanciful and oppressive. The mode and manner pursued, in my view, should have been just and fair. It should conform to all the principles of natural justice namely fairplay in action.

19. The treatment as meted out by the respondent to the petitioner proves the disgraceful invasion of right and savage outburst of discrimination. It may be recalled for the judicial decisions galore that prejudice, malice or taint is not a matter for presumption in the absence of evidence supporting it Burden lies on the persons alleging bias or malice to prove its existence. If the malice or bias is proved in a particular case, the Court would not be slow and the Court would be perfectly within its jurisdiction to strike down the action of the adversaries in exercise of its power under Article 226 by the reason of flouting the core of Article 14, 16 & 21.

20. The Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., held : Article 21 clubs life with liberties, dignity of persons with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice.

21. In the light of the above, the case being a case of glaring violence of right affecting livelihood and to restore equal pay for equal work, the impugned, action of the respondent is struck down restoring the relief available to the petitioner. Thus in all litness of things, the relief obtained by the petitioner and withdrawn thereafter must be restored. According, I direct the respondents to pay up his dues six weeks from date and continue to pay a higher scale of pay along with other pecuniary benefits. If no post is available, a supernumerary post be created in the alternative to restore the benefit to the petitioner. Without his

right to be absorbed in the vacancy which will consequently arise in future. The writ application is accordingly, disposed of.

Issue mandamus.