
(1996) 06 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 228 of 1983

Sundeshwari Prasad Singh and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 25-06-1996

Acts Referred:

Patna University Act, 1976 — Section 2

Citation : (1996) 2 PLJR 646

Hon'ble Judges : S.N. Jha, J;M.Y. Eqbal, J

Bench : Division Bench

Advocate : Basudev Prasad, Sunil Kumar and Rajeev Prasad, for the Appellant;
Rajendra Prasad and Pramod Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioners are Demonstrators in the Muzaffarpur Institute of Technology (MIT), Muzaffarpur, Bhagalpur College of Engineering, Bhagalpur and Bihar Institute of Technology (BIT), Sindri. In this writ petition they have sought direction to the Respondents to give them revised pay scales recommended by the University Grants Commission (UGC) from time to time, and apply the same service conditions with respect to leave, pay, higher educational facilities etc. treating them at par with Demonstrators of Bihar College of Engineering (BCE), Patna. During the course of hearing, however, the prayer was confined to giving direction to treat them (the Petitioners) at par with their counterparts of BCE, Patna in the matter of superannuation age only. It was stated by their counsel Mr. Basudev Prasad that the rest of the reliefs stood granted as the State Government has decided to give "all teaching facilities including the vacation" to them. Reference in this connection was made to the supplementary counter affidavit said to have been filed on behalf of Respondents 1 to 3. It may be stated here that no such supplementary counter affidavit has been filed in this case. The Petitioners have, however, filed a supplementary affidavit on 26.7.93 annexing a copy of the so-called supplementary counter affidavit. They have

stated that a copy of the said supplementary counter affidavit containing the aforementioned statement regarding giving all teaching facilities including vacation to the Petitioners was served on their counsel on 6.4.93. It is doubtful, even it be accepted that copy of the said supplementary counter affidavit was served on the Petitioners' counsel, whether any statement made therein can be used for the purpose of this case as the same was never filed. Be that as it may, since, as stated above, submissions were confined to the question of the age of superannuation of demonstrators in the colleges in question alone and no argument was advanced with respect to other reliefs, I do not propose to deal with other matters in this judgment.

2. The only question for consideration is whether the Petitioners are entitled to the same age of superannuation as in the case of demonstrators of the Bihar College of Engineering (BCE), Patna.

3. The sheet-anchor of the Petitioner's claim is inter-parte judgment of this Court in CWJC No. 522 of 1979. That writ petition was filed seeking mandamus to designate them as demonstrators (they were then working as Laboratory Assistants) and to implement the UGC pay scales prescribed for demonstrators with effect from 1.4.73. The grievance in the said writ petition was that the State Government had made discrimination between the Laboratory Assistants (Demonstrators) of MIT Muzaffarpur, BIT, Sindri and Bhagalpur Engineering College on the one hand and their counterparts of BCE, Patna on the other by implementing UGC pay scales in the case of latter while denying the same to the former, although they are similarly situate in all respects. A Division Bench of this Court under its judgment dated 2.7.80 found that the educational qualification and job contents of the Demonstrators (erst-while Laboratory Assistants) in the BCE, Patna are the same as those of the Laboratory Assistants employed in other Engineering Colleges and Polytechnics, including MIT, Muzaffarpur, BIT, Sindri and Bhagalpur Engineering College. The plea of the Respondents that the demonstrators of BCE, Patna stood as a different class from the Laboratory Assistants of the other Engineering Colleges was rejected. In the opinion of this Court the only distinction pointed out by the Respondents to the effect that while the Demonstrators of BCE, Patna were under the administrative control of Patna University whereas, the three Colleges in question function under the administrative control of the Government of Bihar was of no consequence because BCE, Patna also is a College owned by the State and the fund for payment of salary etc. is provided by the State Government itself. The aforesaid decision was challenged by the State Government before the Supreme Court vide SLP (Civil) No. 9096 of 1980 which was rejected. Thereafter the Government implemented the judgment giving the UGC pay scales and redesignated them as Demonstrators.

4. Mr. Basudev Prasad was at pains to submit that the demonstrators of three Engineering Colleges in question having been treated at par with their counterparts of the BCE, Patna, they are entitled to the same service conditions

and benefits as applicable to them.

5. It would appear from the judgment in CWJC No. 522 of 1979, copy whereof is Annexure-1 to the writ petition, that learned Judges decided the case on the principle of "equal pay for equal work". No doubt they also went into the question of distinction between the BCE, Patna on one hand and MIT, Muzaffarpur, BIT, Sindri and Bhagalpur Engineering College on the other but the thrust of the judgment is that the Demonstrators of BCE, Patna and the Laboratory Assistants of the other three Engineering Colleges were performing the same duties, they possessed the same qualifications etc. and no point of distinction between them had been made out by the Respondents; therefore, they are entitled to the same designation and the same pay scales. Pay is certainly a condition of service. However, so far as giving the same pay or equal pay is concerned, even "dissimilarly" placed persons may be entitled to the same pay if they are performing the same or similar duties. Merely because they are performing the same or similar duties and they also possess the same qualification etc., it cannot conclusively be said that they belong to the same class or category. Any employment-whether under the State or in the private sector-has conditions of service attached with the post or employment. One such condition of service is the age of superannuation. Merely because two sets of persons are performing the same or similar duties and on that basis are granted the same or equal pay cannot be a sufficient basis to buttress the claim of parity of service conditions. Whether the employees belong to same or separate category/class would depend on the nature, the mode and method of recruitment of particular category from very start, the terms and conditions of service, the nature and character of posts and promotional avenues, special attributes that the particular category of posts possess which are not to be found in other classes and the like. (See AIR India Vs. Nergesh Meerza and Others,)

6. Since the counter affidavit of the State was conspicuously silent on these points, counsel for the State was asked to take instructions and inform the Court whether there was any distinction in the nature or the mode of recruitment of the Demonstrators (erstwhile Laboratory Assistants) in different Engineering Colleges including BCE, Patna, whether the terms and conditions of service were different, whether the nature and character of the post and promotional avenue were different or whether there was any point of distinction which could stand Demonstrators of BCE, Patna as a class or category. The Respondents have accordingly filed supplementary counter affidavit stating that (a) while BCE, Patna is under the administrative control of Patna University, MIT, Muzaffarpur, BIT, Sindri and Bhagalpur Engineering College are under the administrative control of the State Government, (b) while the Demonstrators working under the BCE, Patna are governed by the rules and regulations of the Patna University the Demonstrators of the other three Engineering Colleges are governed by the rules and regulations of the State Government and thus their service conditions are different, (c) while appointing authority of the demonstrators of BCE Patna is the Vice-Chancellor of Patna University, the appointing authority of the

Demonstrators of the other three Colleges is Director, Science and Technology and (d) the Demonstrators working in the three Engineering Colleges are getting UGC/AICTE pay scales from 1.1.86.

7. It would appear that except the fact that AICTE scales have been implemented from 1.1.86, rest of the facts were already brought to the notice of this Court in the previous writ petition i.e. CWJC No. 522 of 1979 but this Court did not accept the Respondents' case that the Demonstrators in the two sets of Engineering Colleges did not stand at par. So far as giving AICTE scale of pay is concerned, it would appear from the letter of the Science and Technology Department dated 16.2.90 copy whereof is marked Annexure-B to the supplementary counter affidavit, that the same pay scales as recommended by the AICTE, and superannuation age of 60 years, amongst Ors. , have been made applicable to teachers of all Government Engineering Colleges including BCE, Patna, MIT, Muzaffarpur, BIT, Sindri and Bhagalpur Engineering College. In other words, by reason of the Government decision as contained in letter dated 16.2.90, the teachers of all Engineering Colleges have now been brought at par in the matter of not only pay scales but also the superannuation age. The said letter does not mention about Demonstrators. Mr. Basudev Prasad stated in this connection that no appointment to the post of Demonstrators has been made after 1975. What according to me is more relevant is the fact that in both Bihar State Universities Act, 1976, vide Section 2(v) and the Patna University Act, 1976, vide Section 2(r), the term "teacher" includes amongst Ors. "demonstrator and any other person imparting instruction in any department, institute and college maintained by the University". It is true, as noticed above, that according to the Respondents it is BCE, Patna alone which is maintained by the (Patna) University, the other three Engineering Colleges in question are controlled and maintained by the State Government through the Department of Science and Technology. But it is not in dispute that even those Engineering Colleges are affiliated with the respective Universities, namely, Bihar University in the case of MIT, Muzaffarpur, Bhagalpur University in the case of Bhagalpur Engineering College and Ranchi University in the case of BIT, Sindri. If those Demonstrators also are teachers (and there is no dispute that they also do the teaching work) it would not be just and proper to treat them as a different class and hold that the Government decision as contained in the aforesaid letter dated 16.2.90 is not applicable to them. If the State Government intended to treat the teachers of all (Engineering Colleges whether maintained by the Department of Science and Technology or by the University concerned on the same footing in the matter of not only pay but also the age of superannuation, it is not understandable to why the demonstrators working in the Engineering Colleges should be treated differently merely, on the ground that some of them are controlled and maintained by the Government while Ors. are controlled and maintained by the University. If the two sets of colleges are treated alike with respect to other categories of teachers, in my opinion, they should be treated alike so far as the Demonstrators are concerned, as well.

8. Mr. Basudev Prasad placed strong reliance on a Bench decision of this Court in *The Teachers' Association of the Government Engineering Colleges and Others Vs. State of Bihar and Others*. The point for consideration in that case was precisely the same as in the present case, namely, whether retirement age of teachers in the different Engineering Colleges owned by the State Government could be different. The Colleges in question were also the same. This Court held that prescribing different age of superannuation in different Engineering Colleges was discriminatory and arbitrary. The following observation in paragraph 15 of the judgment may usefully be noticed:

I, thus, do not see any justification as to why the age of superannuation of those teachers, who are imparting education in the Bihar College of Engineering, Patna and those like the Petitioners, who are imparting education in other three Engineering Colleges of the State, should be different. The State of Bihar cannot be allowed to make discrimination in regard to the age of retirement of the Petitioners vis-a-vis those who are working in the Bihar College of Engineering, Patna.

9. The aforesaid letter of the Science and Technology Department dated 16.2.90 does not appear to have been brought to the notice of this Court in the abovementioned case. This Court proceeded on the assumption that the age of superannuation of teachers of Bihar College of Engineering, Patna being 62 years, the same age of superannuation should, be applicable to the teachers of other three Engineering Colleges, although from the Government decision contained in the said letter it appears that on coming into force of the AICTE scales the age of superannuation of teachers w.e.f. 31.10.89 is to be 60 years. This appears to be so because of the decision of the State Government to enhance the age of superannuation of the Patna University teachers to 62 years, vide paragraph 4 of the judgment in the *Teachers' Association* case (*supra*). The circumstances and the date on which the State Government took that decision are not known. Prima facie it appears from the Government decision as contained in letter dated 16.2.90 that on implementation of the AICTE pay scales the age of superannuation of teachers is to be 60 years from 31.10.89. If the State Government has taken a conscious decision to enhance the superannuation age in the case of teachers of Patna University and to give the benefit of same superannuation age to the teachers of Bihar College of Engineering, Patna the matter would be different. But in that case teachers of other Engineering Colleges would also be entitled to the same superannuation age. This is what this Court has done in the *Teachers' Association* case (*supra*). This is what the letter of the Science and Technology Department dated 16.2.90, in substance, says. In my opinion the decision of this Court in the *Teachers' Association* case which has been rendered with respect to other categories of teachers, and the one rendered in CWJC No. 522 of 1979, which is an inter-parte judgment, hardly leave any scope for taking a different view. Mr. Basudev Prasad in course of his submissions stated that no appointment to the posts of Demonstrators having been made after 1975, the demonstrators are virtually like a "dying race". He

further pointed out that except the Petitioners herein all Ors. have already been granted benefit of the same superannuation age, the State Government should not deny them the same benefits.

10. In the facts and circumstances of the case as brought to the notice of this Court, in my opinion, the Petitioners have made out a case for parity with their counterparts of Bihar College of Engineering, Patna in the matter of superannuation age and are entitled to a mandamus to that effect.

11. The writ petition is accordingly allowed. The Respondents are directed to treat the Petitioners at par with the Demonstrators of Bihar College of Engineering, Patna, in the matter of age of superannuation and give them the consequential benefits. There will be no order as to costs.

M.Y. Eqbal, J.

12. I agree.