

(1995) 07 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1726 of 1988

Uma Kant Yati and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-07-1995

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1995) 2 PLJR 559

Hon'ble Judges : I.P. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : Rajendra Prasad, Ram Sagar Singh and Arun Kumar Singh, for the Appellant; Deo Narain Yadav and Hari Shankar Roy, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The instant writ petition has been filed by trained teachers claiming that they should be given the same scales as has been granted to science graduate trained teachers. The Petitioners are arts graduates. Pursuant to an advertisement the Petitioners and many others applied for appointment as Assistant Teachers in the Elementary Schools in the district of Siwan. The Petitioners along with many others were selected for appointment, and were appointed initially as Assistant Teachers on stipend basis. All the teachers so appointed were paid monthly stipend of Rs. 175/-. Amongst the Assistant Teachers selected for appointments were Science teachers as also Arts teachers. All of them were graduate trained, meaning thereby that all of them were graduates, whether in Science or Arts and had acquired the necessary training to work as teachers. Twenty teachers in Science and thirty teachers in Arts were appointed. In the year 1981 all the teachers so appointed were granted matric trained scale. Therefore, by order dated 28-5-1983 all the Science teachers were promoted to the higher scale, namely, graduate trained scale, but the Petitioners and other Arts teachers have continued in the lower scale, namely matric trained scale. Their grievance is that they should also be promoted to the higher scale,

meaning thereby graduate trained scale.

2. It is not disputed that there are different scales for the teachers with different qualifications, namely, middle trained teachers, matric trained teachers, intermediate trained teachers and graduate trained teachers. Different pay scales have been prescribed for different categories of teachers. It is also not disputed that posts are sanctioned for each category, and though it has varied from time to time, a certain percentage of posts in the service are earmarked for each category. It is also not disputed that a person who is graduate trained cannot seek direct appointment against a post in the graduate trained scale. He has to begin at the bottom of the rung and reach that scale by promotion. Promotions are granted on the basis of the vacancies which occur in different scales. There is also a further subdivision of Science and Arts teachers.

3. It is not the case of the Petitioners that graduate trained teachers in Science have been wrongly promoted without there being vacancies in the B.Sc. trained scale nor is it their case that despite vacancies in the graduate trained scale of teachers in Arts, the Petitioners have not been promoted. It is, therefore, obvious that the Petitioners have not been promoted to the higher scale, because there are not sufficient vacancies against which they may be promoted. On the other hand, the Science teachers are luckier inasmuch as they have been promoted against the vacancies which were caused or existed. Obviously, therefore, it cannot be said that there has been any arbitrariness in the matter of promotion of Science teachers, who were Graduate trained. The Petitioners cannot claim equal pay for equal work. It may be that all the teachers do the same type of work, but the different pay scales prescribed is based on the higher educational qualification required of a teacher before he can be promoted/appointed to that scale. The higher pay scales are meant for different categories of teachers depending upon their educational qualification. The pay scale of a Matric trained teacher is obviously less than that of Intermediate trained or Graduate trained. It may be that Graduate trained teachers may have been appointed initially in the scale meant for Matric trained teachers, but they cannot complain if a person with similar qualification, who has been promoted to the Graduate trained scale, is getting higher pay. If the Petitioners are also promoted to the higher scale, they will also get higher scale. The fact that in one branch there are quicker promotions, whereas in other branch the promotions are not so many, is a matter of luck and is an incidence of service. For this reason it cannot be held that the grant of promotion to Science teachers and failure to grant such promotion to teacher in Arts is on account of arbitrary action. As and when vacancies occur, teachers teaching Art subjects may be promoted and in that event they will also get the higher scale. We are of the view that the principle of equal pay for equal work cannot be invoked in the facts and circumstances of this case.

4. Counsel for the Petitioners contended that in the matter of appointment of Head Masters, seniority in the Graduate trained scale is a relevant consideration

and, perhaps, the most important consideration. He, therefore, submitted that the teachers, like the Petitioners, who with the same qualification having been appointed on the same day, will not come within the zone of consideration for appointment as Head Master, but their counter-parts, namely, Science teachers with same qualification and who were appointed on the same day, may be considered for appointment as Head Master because of quicker promotion granted to them. It would be difficult to hold as a matter of principle that the criterion adopted to take into account the seniority the incumbent of posts in the immediately lower scale for promotion to the higher scale is either irrational or arbitrary. For promotion as Head Master, if the seniority of teachers in the highest scale, namely, Graduate trained scale is taken into account, that cannot be termed as arbitrary, because teachers in the Graduate scale must be considered as a separate class, and appointed against a higher scale, as against teachers in the Intermediate trained scale or Martic trained scale. In any event, no rule of circular providing for appointment of Head Masters has been challenged in this writ petition and, therefore, it is not necessary for us to say anything more on this aspect of the matter.

5. Counsel for the State has brought to out notice the fact that the Government of Bihar has been pleased to frame rules for promotion of the teachers of the Elementary Schools taken over by the Government in exercise of power conferred by proviso to Article 309 of the Constitution of India. The rules are known as The Bihar Taken Over Elementary School Teachers Promotion Rules, 1993. These rules are deemed to have come into force with effect from 1st January, 1986. It is indeed heartening to note that such rules have been framed, because for several years matters were governed by Circulars and Memorandums issued from time to time which created a lot of confusion, because sometimes they were found to be inconsistent. With the framing of rules confusions can now be successfully avoided. The rules provided for the manner in which the seniority is to be determined. Under these rules as well, the date of getting the grade shall be the basis for determining the seniority. Obviously, the inter se seniority must relate to the teachers working in the same grade.

6. Having regard to all aspects of the matter, we are of the view that no relief can be granted to the Petitioners. They are in the Matric trained scale, whereas those who are considered for promotion as Head Master are persons, who are in Graduate trained scale. The Petitioners must wait for their promotion to the higher scale, and such higher scale cannot be granted to them unless there are vacancies in the higher scale in Arts against which they may be promoted.

7. This writ petition is, therefore, dismissed.

I. P. Singh, J.

8. I agree.