

(2011) 03 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5212 of 1995

Uma Shankar Prasad and Braj Kishore Prasad Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Citation : (2011) 03 PAT CK 0046

Judgement

Mridula Mishra, J.—Heard learned Counsel for the Petitioner as well as counsel appearing for the State in C.W.J.C. No. 5266 of 1995. No one appears on behalf of Petitioner in C.W.J.C. No. 5212 of 1005, though the counsel for the State is present.

2. Similar relief has been prayed by the Petitioners in both the Writ Applications, which relates to granting of MA Trained Scale to them with effect from the date they have acquired the qualification of Post Graduate and also for payment of arrears of salary and other consequential benefits on account of MA Trained Scale. Petitioners have also prayed for quashing of Orders in their respective cases, passed by the Director, Secondary Education, Government of Bihar, Patna, whereby their claim with regard to grant of Post Graduate Pay Scale with retrospective date and all consequential benefits thereof, have been rejected. In C.W.J.C. No. 5266 of 1995, the impugned order is dated 30.06.1995, passed by the Commissioner, Primary, Secondary and Mass Communication Department, Government of Bihar and Order, dated 19.11.1990, passed by the Director, Secondary Education, Patna. In C.W.J.C. No. 5266 of 1995, the impugned order is dated 17.09.1994, passed by the Director, Secondary Education.

3. Petitioner in C.W.J.C. No. 5266 of 1995, Braj Kishore Prasad Singh, had earlier moved before this Court through C.W.J.C. No. 3827 of 1982 for similar relief, which was disposed of by Order, dated 21.09.1988 and the matter was remanded to Director, Secondary Education for passing appropriate Order, giving reasoning for that. The impugned order, dated 19.11.1990 was passed by the Director, rejecting the claim of the Petitioner. He filed an appeal before the Commissioner,

Primary, Secondary and Mass Communication Department, which was rejected by Order, dated 30.06.1995, stating that he is not vested with any appellate jurisdiction for passing any order in such matters.

4. Petitioner in C.W.J.C. No. 5212 of 1995 had applied for the post of Assistant Teacher in response to an advertisement published by Bihar Secondary Board. He was M. Sc. in Mathematics, and the duly constituted Interview Board selected him for the post. Secretary, Bihar Secondary Education Board issued appointment letter, dated 15.02.1977 and he joined as Assistant Teacher at K.N.S.M. School, Sultanganj, Bhagalpur.

5 .Petitioner's case is that in terms of the policy decision of the Government, as contained in Circular No. 891, dated 24.03.1967, one school teacher in each school was to be paid in P.G. scale. One of such posts in the Post Graduate Trained Scale was reserved for Science Faculty and another for Teachers either from Humanities or Arts, Commerce or Language. Petitioner in C.W.J.C. No. 5212 of 1995, having M. Sc. Degree and being Science Teacher, claimed to be entitled for Post Graduate Scale.

6. So far Petitioner in C.W.J.C. No. 5266 of 1995 is concerned, he also, after acquiring the Post Graduate Degree, filed his representation on 08.08.1977 before the Secretary of the Bihar Secondary Education Board for grant of Post Graduate Trained Scale in the faculty of Arts. There was no response from the authorities concerned. In the mean time, the schools, in question, in which the Petitioners were working was nationalized with effect from 02.10.1980 under the provisions of Bihar non-Government Secondary School (Taking over of Management and Control) Ordinance, 1980 and they became employee of State Government.

7. Petitioners' case is that they were entitled for Post Graduate Trained Scale prior to nationalization of the Schools with effect from 23.07.1977 as before 1980 as per existing rules every High School was treated as an independent unit, and that was the reason that transfer from one school to another school was not permissible. In case Petitioners have been allowed Post Graduate Scale, prior to take over of their schools, they would have got the pay-scale of Rs. 415 to 745 after the take over of the school. Since the Post Graduate Trained Scale was not allowed to them, as such they suffered financial loss as well as loss of the status.

8. Similar Counter Affidavits have been filed in both the Writ Applications by the Respondent No. 2. It has been stated that Petitioners were initially appointed as Assistant Teacher by the Bihar Secondary Education Board in the Graduate Trained Teachers Scale, as such they were not allowed Post Graduate Trained Teachers Scale. Subsequently, vide Resolution No. 1, dated 04.01.1982, all the scales of Assistant Head Masters, Post Graduate Trained Teachers, Selections Grade Teachers and Trained Graduate Teachers were merged into one and 20 per cent of the aforesaid posts have been allotted for Selection Grade Teachers with effect from 01.04.1978. Since 01.04.1978, there is no separate existence of Post

Graduate Trained Teachers Scale, as it has been abolished. u/s 5(Aa)(3)(kha) of the Service Condition Rules, 1983, it has been provided that Teachers, appointed by Bihar Secondary Education Board on the basis of the panels prepared by the then Schools Service Commission Vidyalaya Seva Board and the erstwhile Bihar Secondary Education Board in the Trained Graduate Teachers Scale, if allowed the Post Graduate Trained Teachers Scale without considering their relative seniority, shall not be treated as the Teachers of the Post Graduate Trained Scale. The Petitioners, who were directly appointed by the Bihar Secondary Education Board from the panel, can not be allowed the Post Graduate Teachers Scale. Petitioners can not claim for higher scale from the date of their initial appointment, as they were not appointed in the higher scale. They can only be allowed Selection Grade Scale, if and when will come within the reserved 20 per cent quota for the same.

9. Counsel for the Petitioner has submitted that the legality of Rule 5(Aa)(3)(kha) was considered in C.W.J.C. No. 1523 of 1984, as it was challenged by the Petitioners that on account of Clause (kha) of Sub-rule (3) of Rule 5 (Aa) of 1983 Rules, Post Graduate Trained Scale earlier allowed to them had been taken away without giving any opportunity to show-cause. The provision was challenged on the ground that it is violative of Article 311(2), 14 and 16(1) of the Constitution of India and also of the Principles of Natural Justice. In this case, the assertion of the Petitioners was that due to the impugned note, attached to the Clause (Kha) of Sub-rule (3) of Rule 5 (Aa) of 1983 Rules, the Petitioners have been reduced in rank without any enquiry or any opportunity of hearing. Because of this provision under Rule 5(Aa)(3)(kha) of 1983 Rule, persons, junior to the Petitioners, have been made senior merely because they were appointed by Managing Committee and were given scale of Post Graduate Trained Teachers by the District Education Officer, but the Petitioners, who were appointed by the Board and eligible for Post Graduate Trained Scale, have not been allowed this, though there is no justification for denial of benefits of the Post Graduate Trained Scale to the Petitioners. Finally, it was held in this very judgment that though the emoluments, which the Petitioners were drawing in the Post Graduate Trained Scale, have not been affected under the impugned note, but certainly there cannot be any doubt that they have been reduced in rank and status and that too without complying the requirement of Article 311 of the Constitution of India and the Rule of Natural Justice. This finding was recorded, placing reliance on a Supreme Court decision in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, . Vide para 18 of this judgment, the impugned note, attached to Clause (Kha) of Sub-rule 3 of Rule 5(Aa) was held ultra vires Articles 311(2), 14 and 16(1) of the Constitution of India and thus void and inoperative. A direction was issued to the Respondents to treat the Petitioners as Teachers in the category of Post Graduate Trained Teachers and consequently give them all benefits, accruing therefrom, including re-fixation of seniority and promotion.

10. Counsel for the Petitioner submits that Rules, reference of which has been given in the Counter Affidavit, has already been held ultra vires. Petitioners

became entitled for Post Graduate Trained Scale with effect from 23.07.1977, i.e., prior to take over of the school. They were entitled for grant of Post Graduate Scale against two reserved posts in each of the High School, since prior to taking over of the school, each school was considered as an independent unit. The Petitioners at the relevant time had requisite qualification and seniority for grant of Post Graduate Trained Scale in their respective schools, against two reserved posts. One for the Teachers in Humanities, Arts or Culture and another for Science.

11. In the Counter Affidavit, except the statement, as stated above, there is nothing more so far the claim of the Petitioner for grant of Post Graduate Trained Scale prior to taking over of the school is concerned. In similar circumstances, in the judgment, referred above, in C.W.J.C. No. 1523 of 1984, the relief had been allowed to the Petitioners in that case. Since Petitioners have also claimed, it must be allowed.

12. In view of the aforesaid facts and circumstances, I do not find any reason for not allowing similar relief to the Petitioners. Accordingly, the impugned orders in both the Writ Applications are quashed. The Respondents are directed to grant Post Graduate Trained Scale to the Petitioners with effect from 23.07.1977 with all consequential benefits.

13. With the aforesaid observation, Writ Applications are allowed.