
(2008) 02 DEL CK 0121
In the Delhi High Court
Case No : LPA 321 of 1999

Vimal Prasad and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0121

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Non, for the Appellant; Avnish Ahlawat and Nidhi Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is preferred by the appellants challenging the legality of the judgment and order passed by the learned Single Judge on 14th May, 1999 whereby the writ petition filed by the appellants was dismissed.

2. The appellants herein are the Laboratory Assistants and they filed the writ petition seeking parity of pay scale with that of Primary Teachers contending, inter alia, that Laboratory Assistants and the Primary Teachers are having almost identical nature of work and discharge almost similar duties and, Therefore, there should be parity of pay scales between them. It was contended that the Primary Teachers have been given a pay scale recommended by the Fourth Pay Commission, but the Laboratory Assistants have not been given the same benefit. The appellants relied on an office order dated 23.10.1998 issued by Navyug School Education Society, New Delhi which reads as under:

As per the decision taken by the Board of Governors of Navyug School Education Society in its meeting held on 04.09.98 (item No. 7 (b)), the pay scale of Lab. Assistant working in Navyug Schools in the pay scale of Rs.1200-2040 (pre-revised) is hereby revised to the pay scale of Rs. 1400-2600(pre-revised) with

immediate effect.

3. The aforesaid contentions raised before the learned Single Judge were considered in-depth by him. However, after referring to the facts of the case and also upon reference to various decisions of the Supreme Court, it was held that the appellants cannot claim the reliefs as claimed in the writ petition. It was also held that the decisions which were relied upon and referred to, arose in different circumstances and the ratio decidendi of those cases cannot be of any help to the appellants. With the aforesaid observations the writ petition was dismissed.

4. Being aggrieved by the aforesaid order, this appeal was filed. We have considered the issue raised in the present appeal in the light of the records placed before us. The appellants are claiming parity of pay scale with the Primary Teachers who are placed in a better pay scale as the nature of duties and responsibilities discharged by the Laboratory Assistants are similar to those of Primary Teachers. Our attention was drawn to a letter of 4th June, 1998, issued by the Department of Education, Ministry of Human Resource Development wherein reference is made to a representation of the Delhi School Laboratory Assistants Association asking for equivalent pay scale as that of the Primary School Teachers. In connection with the said representation, it was stated that the claim of the Laboratory Assistants for parity with Primary Teachers was examined by the Department and a speaking order was passed on 24.1.1997 in pursuance of the directions of the Central Administrative Tribunal, Principal Bench, New Delhi. It was also indicated in the said letter that on the basis of recommendations of the Fifth Central Pay Commission, Primary Teachers have been provided improved pay scales whereas the Lab. Assistants have been provided only replacement pay scales. The Lab. Assistants were never considered equivalent to Primary Teachers, Therefore, there is no anomaly in respect of the revised pay scales for Lab. Assistants on the basis of recommendations of the Fifth Central Pay Commission.

5. We find from the records also that certain Original Applications had also been filed by the Laboratory Assistants before the Central Administrative Tribunal in respect of a similar relief claiming parity of pay scale with the Primary Teachers. The Tribunal issued an order on 2.12.1996 directing the Department of Education, Ministry of Human Resource Development to reconsider the matter. Pursuant to the said directions, the Ministry of Human Resource Development reconsidered the entire issue regarding parity of pay scales of Laboratory Assistants and the Primary Teachers and on consideration thereof it was conveyed by their letter dated 24th January, 1997 as under:

(i) The claim of Laboratory Assistants is for pay scales as granted to Primary School Teachers. The pay scale of Primary School Teacher is -(i) Basic Scale - Rs.1200-2040, (ii) Senior Scale after 12 years - Rs. 1400-2600, and (iii) Selection Scale after 12 years in Senior Scale and attainment of qualification laid down for TGTs - Rs.1640-2900. The pay scale of Laboratory Assistants is - (i) Rs. 1200-2040; and (ii) Rs.1350-2200 as personal to those Laboratory Assistants

who were in the pre-revised Selection Grade of Rs. 530-610. The Laboratory Assistants do not possess professional qualifications comparable to Primary School Teachers(PSTs). For the appointment of PSTs, 2 years JBT/ETT or equivalent is an essential qualification. The Laboratory Assistants employed under the schools of Govt. of NCT of Delhi are required only to possess Senior Secondary/Intermediate with Science for direct recruits and metriculation with Science for promotees. Hence, the qualifications of PSTs are much higher. The duties and responsibilities are also not the same as of Primary Schools Teachers(PSTs). It has also been represented that the Laboratory Assistants be granted teachers pay scale as has been extended to the Librarians and Sports Coaches. It is clarified that the Librarians and the Coaches of the different streams have been provided teachers pay scales as they possess certain professional qualifications which the Laboratory Assistants are not required to have since their duties and responsibilities are quite different. The essential qualifications for the appointment of Coaches are - (i) Graduate from a recognized university with diploma in physical education or Bachelor in Physical Education (ii) Three years service as Physical Education Teacher and; (iii) Certificate from NIS as Coach in the games concerned. Similarly the essential qualifications for the appointment of Librarians are graduate from a recognized university with diploma in library science or Bachelor in Library Science.

(ii) That the Lab Assistants have been given certain service benefits as has been extended to teachers such as age of retirement, teaching allowances, medical allowances, etc. The extension of these benefits alone cannot be considered a ground for pay parity between Lab Assistants and Primary School Teachers.

(iii) That the Fifth Central Pay Commission is presently considering the revision in the pay scales and other service benefits of different categories of employees. The Commission has also obtained comments of the Department of Education on a memorandum submitted by one Shri Y.P. Sharma, R/o C/221, Minto Road Complex, New Delhi, relating to grant of teachers pay scales to Lab Assistants. This is a further reason why at this stage, it would not be appropriate for this Deptt. to take a decision on the question of the revision of the pay scales of Lab Assistants.

2. In view of the position stated above, the Department of Education in the Ministry of Human Resource Development would not be in a position to consider any change in the existing pay scales being enjoyed by the Laboratory assistants employed under the Government of Delhi.

6. Therefore, so far the question of parity is concerned, a decision has already been taken that there cannot be parity of pay scales between Laboratory Assistants and the Primary Teachers for they discharge duties and responsibilities which are dissimilar to each other.

7. In this connection we may also refer to a decision of the Supreme Court in Union of India (UOI) Vs. Tarit Ranjan Das, in which the Supreme Court has

considered the issue of parity in employment and equal pay for equal work. What was involved in the said case was pay scale of Stenographers Grade "C" in the Central Secretariat and Stenographers of subordinate offices of Geological Survey of India. In the context of the said case it was held that equality cannot be based on designation or the nature of work alone, but there are several other factors like, responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, the qualifications required which are equally relevant. By referring to its own earlier decisions in the cases of State of U.P. and Others Vs. J.P. Chaurasia and Others, , State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, and Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, , it was held thus:

...whether two posts are equal or should carry equal pay, depends on several factors. It does not depend just upon either the nature of work or the volume of work done. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts by the competent authorities constituted for the purpose and courts cannot ordinally substitute themselves in the place of those authorities. The quantity of work may be the same but the quality may be different. That cannot be determined by relying upon averments in affidavits of interested parties. It must be determined by expert bodies like Pay Commission and the Government, who would be the best judges, to evaluate the nature of duty, responsibility and all relevant factors.

8. In our considered opinion, the ratio of the aforesaid decisions of the Supreme Court is applicable to the facts of the present case for the Government has made an extensive evaluation of the nature of duties and of other factors and thereafter come to the conclusion that their nature of work and responsibilities are dissimilar. In this connection, we may also refer to a decision of the Division Bench of this Court in the case titled as Siya Ram Rai and Ors. v. The Chairperson, Navyug School Educational Society and Ors. in LPA Nos. 131-136/2006 dated 17th May, 2007. In the said case the issue was of Laboratory Assistants working in Navyung Schools claiming pay scale at par with the pay scale of Primary Teachers working in the schools run by Delhi Administration and New Delhi Municipal Council. In the said case the Division Bench of this Court also held that there cannot be any dispute to the fact that both the Primary Teachers and Lab Assistants belong to distinct, different and separate cadres. In the said case reference was also made to Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, and State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., and also the decision in the case of U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others, . After referring to the aforesaid decisions it was held that there is visible difference between the two cadres of Primary Teachers and Laboratory Assistants for the minimum educational qualification is different. The criteria for admission is also different in the two cadres. There is also difference in the promotion quota for Lab Assistants to the post of T.G.T. Therefore, there is difference between the

posts of Laboratory Assistants and the Primary Teachers.

9. We are of the opinion that on the basis of the ratio of the aforesaid decisions of the Supreme Court and the Division Bench decision of this Court, this appeal has no merit. We find no error in the judgment of the learned Single Judge for arriving at a conclusion that both the cadres are distinct and separate and there cannot be parity of pay scales between the two cadres.

10. We, Therefore, find no merit in this appeal and the same is dismissed. No costs.