

Gurpal Tuli and Others

Vs

State of Punjab and Others

Civil Appeals Nos. 3452-54 and 4030-32 of 1982

(R. S. Pathak, R. B. Misra JJ)

28.09.1984

JUDGMENT

PATHAK, J. –

1. The appellants, in these appeals by special leave, are aggrieved by the judgment of a Division Bench of the High Court of Punjab and Haryana affirming the dismissal of their writ petitions by a learned Single Judge of that Court.
2. The appellants are teachers in the service of the State of Punjab. They claim the grades prescribed in paragraph 2 of Government Circular letter No. 2036-ED.I-67/2167 dated July 29, 1967, and in that regard seek the benefit of the Circular letter No. 9/9/79-FR(2)/143 dated February 19, 1979 and its clarification by Circular letter No. 8937-5 ED. 1179/2659 dated September 20, 1979.
3. The Circular letter dated July 29, 1967 gave effect to the recommendations of the Kothari Commission with effect from November 1, 1966 in respect of teachers in Government schools. Paragraph 2 of the Circular letter provided :
 2. Lecturers in Higher Secondary Schools, Punjab Institute of English and Masters/Mistresses with postgraduate qualifications in High/Higher Secondary Schools will be placed in Rs 300-25-450/25-600 grade provided they have first and second division Master's degree. Those with third class Master's degree will be placed in the grade of Rs 250-25-400/25-550.

It was specified that "the number of posts in Lecturer's grade will be 1571 i.e. 742 posts for the existing school Lecturers and 829 additional posts for other Masters/Mistresses with postgraduate qualifications". It was clarified that "the Masters/Mistresses will be eligible to Lecturer's grade only if they have postgraduate qualifications in the subject of their teaching. No one will be entitled to those 829 additional posts automatically. These posts will be allocated to various subjects keeping in view the requirements of the educational institutions and the appointments will be made keeping in view the rules/instructions as amended from time to time". Paragraph 3 stated that "all trained graduates and all other Masters with postgraduate qualifications, who are not fitted in the scale of Lecturer, will be in the scale of Rs 220-8-300-10-400/20-500."

4. It is apparent that paragraph 2 of the Circular letter dated July 29, 1967 is concerned essentially with providing for a Lecturer's grade :

(1) It was intended to have 1571 posts in the Lecturer's grade, consisting of 742 posts

for the existing Lecturers and another 829 posts for Masters or Mistresses. Masters or Mistresses were eligible for those posts in the Lecturer's grade only if they possessed postgraduate qualifications in the subject of their teaching. Those who did not satisfy that criterion were not eligible for those posts. Moreover, no one was entitled to any of the 829 additional posts automatically. The additional posts were to be distributed with reference to different subjects, and the distribution would be made having regard to the requirements of the educational institutions and subject to the rules and instructions currently in force.

(2) Existing Lecturers and Masters or Mistresses with postgraduate qualifications, possessed a Master's degree in the first or second division, would be entitled to the grade of Rs 300-25-450/25-600. Lecturers and Masters or Mistresses with postgraduate qualifications who possessed a Master's degree in the third division would be entitled to the grade of Rs 250-25-400/25-550.

5. The appellants say that they are employed as Masters and Mistresses in High and Higher Secondary Schools run by the Punjab Government and possess an M.A. or M.Sc. or B.T. or B.Ed. degree and some of them have even acquired an M.Ed. degree. They are presently paid according to the pay scale Rs 220-500. They claim that they are entitled to either of the higher grades set forth in paragraph 2 of the Circular letter dated July 29, 1967. From what has gone before it is clear that they can legitimately claim the benefit of those grades only if they are appointed to the posts of Lecturer. And they do not dispute that they are not incumbents of those posts.

6. Much reliance has been placed on the decision of this Court in *State of Punjab v. Kirpal Singh Bhatia*. ((1976) 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L & S) 438 : AIR 1976 SC 2459 : (1975) 2 LLJ 540 : (1975) 2 SLR 621 : 1976 Lab IC 1561) In our opinion, that case is of no assistance to the appellants. That was a case which was primarily concerned with Circular letter No. 5058. FR-II-57-5600 dated July 23, 1957.

7. The Circular letter dated July 29, 1967 operates on a very different plane from the Circular letter dated July 23, 1957. A brief reference to the historical background of the Circular letter dated July 23, 1957 will suffice.

8. Concerned at the low salaries granted to certain categories of Government servants, the Punjab Government issued Circular letter No. 5058.FR-II-57/5600 dated July 23, 1957 revising their scales of pay. Paragraph 3 classified all teachers in the Education Department according to their qualifications in two broad categories. Category 'A' being :

B.A./B.Sc./B.Com./B.Sc. (Agriculture) and B.T./Diploma in Physical Education/Diploma in Senior Basic Training.

and they would now carry the scale of pay :

Rs 110-8-190-10-250 with a higher start for M.A. or M.Sc. as at present.

As is evident, the category was defined by reference to the possession of the specified graduate degree or diploma. In the event such a teacher also held a postgraduate degree he was entitled to a higher start in the grade. The grade, however, remained the same.

9. It appears that several teachers filed writ petitions in the High Court claiming revised scales of

pay on the ground that they had taken graduate degrees and, therefore, were entitled to the benefit of the grade mentioned against Category 'A' in the Circular letter dated July 23, 1957. In opposition to the writ petitions, the State Government contended that the letter did not contemplate the grant of the grade to all teachers but only to teachers appointed as Masters. The High Court held the teachers entitled to the benefit of the revised grade, whether or not they had been appointed as Masters, because, in the opinion of the High Court, the qualifying criterion was the possession of a graduate degree. The judgment of the High Court was affirmed by this Court in *Kripal Singh Bhatia* ((1976) 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L & S) 438 : AIR 1976 SC 2459 : (1975) 2 LLJ 540 : (1975) 2 SLR 621 : 1976 Lab IC 1561). The State Government found it difficult, having regard to the prevailing burden on its financial resources, to extend the benefit of the Circular letter dated July 23, 1957 to the much wider section of teachers covered in consequence of the Court's judgment. Accordingly, the State Government issued Circular letter No. 9/9/79-FR(2)/143 dated February 19, 1979, paragraph 3 of which stated that "these unintended and large financial implications do not continue arising in future" the whole matter had been reconsidered by the State Government and as a result the Government ordered that henceforth the teachers of the Education Department would not automatically be entitled to placement in the higher scales of pay in terms of paragraph 3 of the Circular letter dated July 23, 1957 by the mere circumstance of their improving or acquiring higher qualifications in the course of their service. The rigour of the restriction was relaxed in some measure. Paragraph 3 said further :

However, in order to avoid discrimination between teachers who have already been allowed higher scales of pay on account of having improved their qualifications and those who have not yet been allowed this benefit even though they also possess higher qualifications it is decided that all teachers in the Education Department who have improved their qualifications before the issue of this letter may be allowed the benefit of higher scale of pay on the basis of their qualifications.

The benefit was not extended to those who were appointed or who had improved their qualifications after the issue of that Circular letter. The teachers continued to agitate for a more generous dispensation. The State Government then issued Circular letter No. 8937-5ED. 1179/2659 dated September 20, 1979, which declared :

The implementation of the decision contained in Finance Department Circular letter No. 9/9/79/FR(2)/143 dated February 19, 1979 to grant higher pay scales to the teachers on the basis of higher qualifications was kept pending for want of clarification on certain points from the Finance Department which has now become available and is reproduced below :

1. The higher scale may be allowed from the date of passing the respective higher examination by the concerned teacher where this has already been done. However, actual payment at enhanced rates should commence from February 12, 1979 and the payment of arrears accruing from the date of passing the examination till February 13, 1979 be restricted to the maximum for 38 months.
2. The benefit of the higher scale may be allowed from the date a particular teacher is appointed on regular basis or the date of passing the higher examination, whichever is later, but the payment of arrears as a result of grant of such benefit should be restricted to a period of 38 months only, as already mentioned above.

3. The teachers placed in the higher scale can only be regularly adjusted when corresponding posts in the higher scale become available; in that case such teachers may continue to enjoy the higher scale as a personal measure till they are adjusted against regular posts as and when the same become available.

10. It was clarified that the contemplated benefit was confined to the categories of teachers mentioned in the Circular letter No. 5058. FR II-57/5600 dated July 23, 1957.

11. The appellants claim the benefit of paragraph 2 of the Circular letter dated July 29, 1967, and therefore no reliance can be place by them on the Circular letters dated February 19, 1979 and September 20, 1979, which relate merely to the scheme embodied in the Circular letter dated July 23, 1957.

12. The appellants contend that on the principle of "equal pay for equal work", affirmed by this Court in *Randhir Singh v. Union of India* ((1982) 3 SCR 298 : (1982) 1 SCC 618 : 1982 SCC (L & S) 119 : AIR 1982 SC 879 : (1982) 1 LLJ 344 : 1982 Lab IC 806), they are entitled to the grades mentioned in paragraph 2 of the Circular letter dated July 29, 1967. It is urged that like those Masters or Mistresses who have been given that benefit they have acquired postgraduate qualifications and are doing the same kind of work. As has been explained earlier, the grades specified in paragraph 2 of the Circular letter dated July 29, 1967 are applicable only to those who specifically hold the posts of Lecturer. There are a limited number of such posts, and appointment to them is strictly subject to the conditions detailed in paragraph 2 of the Circular letter.

13. In the result the appeals fail and are dismissed, but in the circumstances of the case there is no order as to costs.

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