

Punjab Higher Qualified Teachers' Union (Non-Petitioners) and Others

Vs

State of Punjab and Others

Higher Qualified Teachers' (Ad Hoc) Association

Vs

State of Punjab and Others

Kirpal Singh

Vs

State of Punjab and Others

Non-Gazetted Employees' Organisation (Teachers' Wing)

Vs

Director of Public Instructions (Schools), Punjab and Others

Civil Writ Petitions Nos. 63, 499, 445 and 213 of 1986

(A.P. Sen, B.C. Ray JJ)

23.02.1988

JUDGMENT

SEN, J. –

1. This is a batch of petitions under Article 32 of the Constitution filed on behalf of Matriculate Junior Basic Trained Teachers in Government Schools placed in Category b, Group II in terms of paragraph 3 of the State Government Circular dated July 23, 1957 who have been continuously and relentlessly struggling to get the benefit of higher grade of pay on their improving or acquiring higher qualification viz. BA, BT/BA, BEd/Matric with JST/Gyani or Prabhakar, as per the terms thereof, and the persistent refusal of the State Government to adhere to the terms of the said circular mainly on the ground that such teachers on their improving or acquiring higher qualifications during that course of their service would not automatically be placed in different grades commensurate with their academic qualifications unless they had the professional qualification of requisite experience of a post carried in the higher grade irrespective of the number of posts available in the department in that category. It is asserted that the aforesaid circular was couched in somewhat ambiguous language and has resulted in different interpretations and it was never the intention of the government to undertake the continuing unintended heavy financial burden that had arisen because of the faulty drafting of the circular.

2. It is common ground that by the aforesaid circular dated July 23, 1957 the State Government

directed revision of the existing pay scales of various categories of subordinate offices including Teachers in the Education Department. Paragraph 3 thereof provided for revision of pay scales of Teachers and placed them into two distinct categories, namely, Category A and Category B and inter alia laid down the requirement of academic qualifications with respect to each. The relevant part of paragraph 3 reads as follows :

3. Teachers in the Education Department. - It has been decided that all teachers according to their qualifications should be placed in the following two broad categories :

Category 'A'

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

Category 'B'

Group I - Matrics with Basic Training (including Junior Teachers) Group II - Junior School Teachers (including Assistant Mistresses with BA/Inter/Matric plus JAV Training).

3. It is quite evident that the revision of pay of Teachers was based on the principle of linking pay to qualification. It would not be out of place to mention that the Kothari Commission constituted by the State Government of Punjab considered in great detail the scales of pay of Teachers. The Commission strongly expressed the view that the scales of pay of Teachers should be linked to educational qualifications. Accepting the recommendations of the Kothari Commission, the State Government of Haryana in 1968 directed further revision of scales of pay of Teachers working in Government Schools w.e.f. December 1, 1967.

4. On more occasions than one, this Court had to intervene on behalf of these unfortunate Teachers for the redressal of the wrong done to them by denial of higher scales of pay on their improving or acquiring higher academic qualifications and issued directions for extending the benefit of paragraph 3 of the circular to them. Despite the repeated directions, the State Government has been adamant in not complying with such directions on one pretext or another. 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) this Court upheld the judgment of the Punjab and Haryana High Court in *Union of India v. Kirpal Singh Bhatia* (1972 SLR 402) directing that Teachers holding BA, BT/BA, BEd qualifications would be entitled to the higher scale of pay. The court construed the aforesaid circular as falling within the ambit of Rule 10 of the Punjab Educational Services Class III School Cadre Rules, 1955 as to the entitlement of higher scales of pay and held that it had the effect of fixing the scale of pay on the basis of academic qualifications. It was accordingly held that Teachers who possessed the degree of BT or the equivalent on May 1, 1957 would be entitled to scales of pay commensurate with such higher qualification, and as to the Teachers who acquired such higher qualification thereafter, they would be entitled to their revised scale of pay with effect from the date they passed the examination. It categorically repelled the contention on behalf of the government that there could be no automatic revision of the scales of pay dependent upon the higher qualifications and unequivocally held that Teachers holding BA, BT/BA, BEd qualifications became entitled to the revised scales of pay according to Category A with effect from the date they passed the examination in terms of paragraph 3 of the circular.

5. In *Labh Singh Garcha v. State of Punjab* (Writ Petition No. 1810 of 1976, decided on July 20, 1976), Chinnappa Reddy, J. speaking for himself and Surinder Singh, J. allowed the writ petition filed by JBT Teachers falling in Category B who claimed the benefit of higher scales of pay as done in the case of Graduate Teachers in Category A pursuant to the High court's decree in *Kirpal Singh Bhatia* case (1972 SLR 402). The court found that the action of the government in denying to the JBT Teachers who had acquired or improved their educational qualification, the benefit of the higher scales of pay, was per se discriminatory and accordingly issued a direction to the State Government to release to them the revised scales of pay admissible to them in terms of paragraph 3 of the circular. The State Government carried an appeal to this Court. In *State of Punjab v. Labh Singh Garcha* (Civil Appeal Nos. 926-27 of 1977, decided on August 7, 1979 (SC)) this Court held that the matter was squarely covered by the decision of this Court in *Kirpal Singh Bhatia* case and observed that 'no new point arises' and accordingly dismissed the appeal.

6. The State Government having failed to carry out the directions issued, the JBT Teachers with higher qualifications were constrained to move the High Court for contempt but it declined to interfere. Aggrieved, the Teachers came up in appeal. At the hearing of *Avtar Singh v. Manmohan Singh* (Civil Appeal Nos. 3790 of 1983, decided on September 14, 1984) the Court indicated that the view taken by the High Court did not commend to it and wanted learned counsel for the State Government to ascertain the attitude of the government. At his request, the matter was adjourned. At the resumed hearing, he signified the willingness of the State Government to comply with the directions given by this Court. The court accordingly set aside the judgment of the High court and directed the State Government to implement the order passed in *Labh Singh Garcha* case (Civil Appeal Nos. 926-27 of 1977, decided on August 7, 1979 (SC)) within three months, holding that the appellants and other petitioners in the High Court and Teachers similarly situate i.e. JBT Teachers with higher qualifications, were entitled to the benefit of paragraph 3 of the circular. It pointed out that the Director of Public Instructions (Schools), Punjab by her affidavit dated February 5, 1980 had unconditionally agreed to implement the same without any reservation. As regards such Teachers who had not approached the court but were similarly situate, the court directed that they must make an application for seeking benefit of the aforesaid circular.

7. By a clarificatory order dated February 21, 1985, the court clarified that every Teacher entitled to the benefit of the earlier order may make an application within six weeks from that date. It however made a direction to the following effect :

In the application the teacher should strive as best she/he could to set out his claim as directed herein. The Director may verify the claim with reference to record he may have and the eligibility for relief. But if the claim is of a teacher who was a petitioner in this Court or in the High Court, eligibility enquiry is impermissible, only amount of claim may be verified. The Director of Education shall process all the applications received by him in the manner he thinks fit but he must make the payment within three months from the date of the receipt of the application.

8. In compliance therewith the Director of Public Instructions (Schools), Punjab by order dated June 30, 1986 accorded sanction to make payment of arrears of pay according to Teachers belonging to Category B Group I, to 3600 JBT Teachers falling in Category B Group II who had improved their educational qualifications and acquired degrees in BA, BT/BA, BEd etc., but denied similar relief to other 6000 Teachers falling in Category B Group II i.e. the petitioners, on the ground that they did not have the requisite professional training of JST/JAV and therefore not entitled to the higher grade. The impugned order proceeds on the premise that eligibility for the claim for JST grade

which was a higher grade, did not depend upon acquiring a higher educational qualification of BA, BT etc. but also to having the requisite professional training i.e. JST/JAV training and further that a higher grade was only allowed to the then existing JST Teachers which was a diminishing cadre and since recruitment to that cadre had been stopped, there was no question of any entitlement of such Teachers to acquiring the necessary professional training. In other words, the government has adopted the stand that the right of the JBT Teachers belonging to Category B Group II to the higher scale admissible to Teachers placed in Category B Group I could not simply be based on their educational qualification.

9. In support of these petitions Shri A. K. Ganguly, learned counsel appearing for the petitioners, with infinite care took us through all the orders referred to above and rightly submitted that the State Government having given an undertaking in Avtar Singh case (Civil Appeal Nos. 3790 of 1983, decided on September 14, 1984) that they are prepared to carry out the directions made by the High Court, they are bound to grant the benefit of paragraph 3 of the circular to all the Teachers belonging to Category B Group II entitled to the higher grade of pay on their acquiring or improving their qualification, as from the respective dates of their passing the examination. He further submitted that it was not open to the government on the pretext of verification of claims to confine the relief to some of the Teachers and deny the same to the others who were all similarly situate, recruited in the same manner and appointed as Matriculate JBT Teachers and had improved their qualifications by acquiring degree in BA, BT etc. and the so-called professional training i.e. JST/JAV could not be made a condition prerequisite to the grant of higher pay.

10. In reply Shri R. S. Sodhi, learned counsel for the State Government with his usual fairness accepted that the government was bound by the undertaking given in Avtar Singh case (Civil Appeal Nos. 3790 of 1983, decided on September 14, 1984) but contended that even so, the petitioners were not entitled to such higher pay as they did not stand the eligibility test on verification of their claims merely on their acquiring higher educational qualification. He pointed out that according to paragraph 3 of the circular, all Teachers according to their qualifications were placed into two broad categories for purposes of revision of pay, Category A consisting of BA/B.Sc/B.Com/ B.Sc (Agriculture) and BT, and Category B consisting of four groups of whom Group I was 'Matrics with basic training (including JBT)'. There were three scales of pay in Category B - Lower Rs. 60-120, Middle Rs. 120-175 and Upper Rs. 140-200. By way of incentive, it was directed that posts falling in these groups would be in the following proportion - Group I, Lower Scale 85 per cent., Middle Scale 15 per cent. 15 per cent. of Teachers in this group had to be straightway promoted to the Middle Scale by selection based on seniority and merit, while the rest were given the Lower Scale. The scale of Rs. 60-120 was later revised to Rs. 125-300, that of Rs. 125 - 175 to Rs. 150-300 and that of Rs. 140-200 to Rs. 480-880 w.e.f. November 1, 1966, July 16, 1975 and January 1, 1978. In contrast, Junior Secondary Trained/Junior Anglo-Vernacular Teachers with JST/JAV Teachers training qualifications were placed in Category B Group II and their pay scale was not revised. The then existing incumbents in this category were allowed to retain their existing pay scale of Rs. 80-250 which was subsequently revised from time to time as per conditions of their service. As a diminishing cadre, they were therefore carried on a protected pay scale of BA, BT Teachers viz. Rs. 620-1200. According to the learned counsel, the question before the court is whether JBT Teachers placed in Category B Group II have to be given the benefit of the pay scale of Rs. 620-1200. This, he says, cannot be done as these Teachers were not entitled to initial scale of Rs. 80-250 meant only for Junior Secondary Trained/Junior Anglo - Vernacular Teachers with JST/JAV training qualification i.e. Teachers governed by the protected category. At the hearing we directed the State Government to clarify its stand on the eligibility test of Category B Group II Teachers to higher pay. The Director of Public Instructions (Schools), Punjab and the Deputy Director (School Admn.),

Office of the Director of Public Instructions have accordingly filed their additional affidavits dated November 10, 1986 and March 9, 1987. The petitioners have also placed on record their written submissions in answer to these additional affidavits.

11. The controversy is now limited to the question whether JBT Teachers falling under Category B Group II are not entitled to the higher pay merely on their acquiring higher educational qualification of BA, BT/BA, BEd etc. but that gaining professional experience of JST/JAV training was essential. That must turn on the relevant clause in paragraph 3 relating to them which may be extracted below :

Category 'B' Group II - Junior School Teachers (including Assistant Mistresses with BA/Inter/Matric plus JAV Training).

12. As a matter of plain construction, we are quite clear in our mind that Graduate Teachers form a class by themselves and cannot be subjected to the further requirement of having JST/JAV training. The words 'plus JAV training' clearly qualify the word 'Matric' and relate only to Matriculate JBT Teachers. Such a classification for revision of pay satisfies the touchstone of Article 14 and would render the action of the State Government in seeking to discriminate between Graduate Teachers with JST/JAV training and Graduate Teachers with or without such training, impermissible as the attempt is to create a class within a class without any rational basis.

13. We must accordingly uphold the contention of the petitioners that they are entitled to higher pay on acquiring or improving their academic qualification. It is regrettable that despite clear pronouncements made by this Court as well as the High Court in a long line of decisions starting with Kirpal Singh Bhatia case ([1976] 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L & S) 438 : AIR 1976 SC 2459), there is no redressal of the wrong done to JBT Teachers belonging to Category B Group II although they had acquired BA, BT/BA, BEd qualifications. Quite recently, in Chaman Lal v. State of Haryana ([1987] 3 SCC 113 : 1987 SCC (L & S) 175), Chinnappa Reddy, J. has considered the question in some depth. The learned Judge repelled the contention of the State Government of Haryana based on its order dated September 5, 1979 which was sought to be interpreted to mean that the Teachers who had acquired the BT or BEd qualification subsequent to December 1, 1967, the date on which the 1968 order came into force, and before September 5, 1979, would be entitled to the higher grade but w.e.f. September 5, 1979 only and that those who acquired the qualification subsequent to that date would not be entitled to the higher grade. According to the High Court in that case, the 1968 order did away with the principle of the 1957 order that Teachers who acquired BT or BEd qualification should get the higher grade and that a concession was shown in 1979 enabling the Teachers who acquired the BT or BEd qualification between 1968 and 1979 to get the higher scale from 1979. This Court held that the view taken by the High Court could not be sustained and observed : [SCC pp. 119-20 : SCC (L & S) p. 181, para 2]

The principle that pay should be linked to qualification was accepted by the Punjab Government in 1957 and when Kirpal Singh Bhatia case ([1976] 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L & S) 438 : AIR 1976 SC 2459), was argued in the High Court and in the Supreme Court there was not the slightest whisper that the principle had been departed from in the 1968 order. In fact the 1968 order expressly stated that the government had accepted the Kothari Commission's report in regard to scales of pay and as already pointed out by us the main feature of the Kothari Commission's report in regard to pay was the linking of pay to qualification. That was apparently

the reason why no such argument was advanced in Kirpal Singh Bhatia case ([1976] 1 SCR 529 : (1975) 4 SCC 740 : 1975 SCC (L & S) 438 : AIR 1976 SC 2459). Even subsequently when several writ petitions were disposed of by the High Court of Punjab and Haryana and when the government issued consequential orders, it was never suggested that the 1968 order was retraction from the principle of qualification linked pay.

The learned Judge then said : [SCC p. 120 : SCC (L & S) p. 181, para 2]

The 1968 order must be read in the light of the 1957 order and the report of the Kothari Commission which was accepted. If so read there can be no doubt that the government never intended to retract from the principle that teachers acquiring the BT or BEd would be entitled to the higher grade with effect from the respective dates of their acquiring that qualification. The 1979 order was indeed superfluous. There was no need for any special sanction for the grant of Master's grade to unadjusted JBT teachers who had passed BA, BEd. That was already the position which obtained both as a result of the 1957 and 1968 orders and the several judgments of the court. We do not think that the Punjab and Haryana High Court was justified in departing from the rule in the judgment under appeal. The rule had been well established and consistently acted upon. Nor was it open to the government to act upon the principle in some cases and depart from it in other cases.

14. The result therefore is that the writ petitions succeed and are allowed with costs. We direct the respondents to give to the petitioners who are Teachers placed in Category B Group II, the higher scale of pay admissible to Teachers in Category B Group I, they having acquired the qualification of BA, BT/BA, BEd etc., with effect from the respective dates of their acquiring the qualification.

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