

**Prashant Kumar Mishra and Ors Vs. Human Resource Development**

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**Court :** Jharkhand

**Decided On :** Jun-20-2017

**Appellant :** Prashant Kumar Mishra and Ors

**Respondent :** Human Resource Development

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4162 of 2013

1. Prashant Kumar Mishra, son of K.P.Mishra, resident of 201, Shaivya Apartment, Lake Road, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh

2. Dr. Madan Mohan Pathak, son of Late Nageshwar Pathak, resident of Om Sai Enclave, Matwari Road, Near Hirabag Chowk, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh

3. Dr. Tarakant Shukla, son of Late Triguna Nand Shukla, resident of 301/B, Shanya Apartment, Jheel Road, Noora, P.O.Hazaribagh, P.S. Sadar, DistrictHazaribagh

4. Ajay Kumar Sharma, son of Late B.D. Shastri, University Department of Zoology, Vinoba Bhave University, Hazaribagh, resident of Near Ram Nagar Mala, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh

5. Prakash Kumar, son of Late Bihari Prasad Bhagat, resident of New Colony (Behind Police Station), Holding No.427, P.O.Jhumri Telaiya, P.S.Jhumri Telaiya,

DistrictKodarma

6. Dr. Sajal Mukherjee, son of Late Dr. P.S. Mukherjee, resident of Boddom Bazar, Malavia Road, Hazaribagh, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh

7. Baleshwar Prasad Singh, son of Sri Ram Bilas Singh, resident of Mandirgali Old Firebrigade, Hazaribagh, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh

8. Shailendra Kumar Sinha, son of Late Daya Shankar Prasad, resident of Nagendra Tower, Flat No.302, P.O.ISM Campus, Dhanbad, P.S.Saraidhela, District Dhanbad

9. Parmeshwar Mahto, son of Late Pela Ram Mahto, resident of Behind Mohan Petrol Pump, GT Road, Govindpur, P.O.Govindpur, P.S.Govindpur, DistrictDhanbad

10. Dr. Subodh Kumar Sinha, son of Late Muneshwar Prasad, resident of Opp Forester's Training School, Canary Hill Road, Hazaribagh, P.O.Hazaribagh, P.S.Sadar, DistrictHazaribagh .... . Petitioners Versus

1. The State of Jharkhand

2. The Secretary, Department of Human Resources Development (Higher Education), Government of Jharkhand, Ranchi

3. The Vice Chancellor, Vinoba Bhave University, Hazaribagh, P.O., P.S. & DistrictHazaribagh

4. The Registrar, Vinoba Bhave University, Hazaribagh, P.O., P.S. & DistrictHazaribagh .... . Respondents CORAM : HON'BLE MR. JUSTICE DR. S.N. PATHAK For the Petitioner : Mr. Saurav Arun, Advocate For the State : Mr. Shabad Bin Haque, J.C. to G.P I For the University : Mr. I. Sen Choudhary, Advocate C.A.V. ON: 24.04.2017 PRONOUNCED ON 20.06.2017 The present writ petition has been filed for grant of following reliefs: 2 (i) For issuance of an appropriate writ/order/direction or a writ in the nature of Certiorari for quashing of Notification dated 13.11.2001(Annexure1). (ii) For issuance of an appropriate writ/order/direction or a writ in the nature of Certiorari for quashing of letter dated

31.05.2005. (iii) For issuance of a writ in the nature of mandamus directing the respondents to consider the case of petitioners in the light of the order passed by Hon'ble Patna High Court reported in 2002(1) PLJR 716, 2005(4) PLJR

174. (iv) For issuance of a writ in the nature of mandamus directing the respondents for fixing an uniform and similar pay scale for the post of Reader as has been envisaged in University Grants Commission package. (v) For issuance of a writ in the nature of mandamus directing the respondents after clearing the same, pay the arrears thereof w.e.f. 01.01.2006 till today. (vi) During the pendency of this writ application, the operation of Notification dated 13.11.2001 (Annexure1) and letter dated 31.05.2005 (Annexure4) may be stayed. FACTUAL MATRIX2 The petitioners are working on the post of Reader with due concurrence and recommendation of the Bihar State University (Constituent College Commission). It is stated that all the petitioners of the instant writ petition were working on the post of Reader in different P.G. Department under the Vinoba Bhave University except petitioner nos.8 and

9. Petitioner no.1 was appointed on 18.11.1981 as Lecturer in R.S. More College, Govindpur in the Department of Botany, Petitioner no.2 was appointed as Lecturer in the Department of Sanskrit in Simdega College, Simdega on 20.01.1979, petitioner no.3 appointed as Lecturer on 18.01.1981 in B.S.K. College, Maithan in the Department of Sanskrit, Petitioner no.4 appointed as Lecturer on 18.11.1981 in Birsa College, Khunti in the Department of Anthropology (Zoology), Petitioner no.5 appointed as Lecturer on 29.11.1981 in J.J. College, Jhumri Telaiya in the Department of Philosophy, Petitioner no.6 was appointed as Lecturer on 07.01.1982 in St. Columbus College, Hazaribag in the Department of Economics, Petitioner no.7 appointed as Lecturer on 29.11.1981 in Chatra 3 College, Chatra in the Department of Political Science, Petitioner no.8 appointed as Lecturer on 18.11.1981 in R.S. More College, Govindpur in the Department of Anthropology (Zoology), Petitioner no.9 was appointed as Lecturer on 07.01.1982 in R.S. More College, in the Department of Mathematics, Petitioner no.10 was appointed as Lecturer on 28.02.1982 in P.K. Roy Memorial College, Dhanbad in the Department of Geology and working to the satisfaction of respondent authority. All the petitioners were given promotion to the post of Reader vide different Notifications

in accordance with law under the provisions of Statute of Time Bound Promotion. All the petitioners have also done PhD. It is stated that the respondents have arbitrarily under the garb of this scheme deprived the petitioners with the scales, they were otherwise entitled to get the pay scale of Rs.12,00042018,300/ Petitioners under the career advancement scheme of the U.G.C. which shows that minimum length of service for eligibility to move into the grade of lecturers, senior scale would be 4 years for those with Ph.D., 5 years with those M. Phil and 6 years for those at the level of Lecturers and for eligibility to move into the grade of Reader/Lecturer Selection Grade, the minimum length of service of the Lecturer in senior selection grade shall be uniformly 5 years. Fitting into the formula in the case of the petitioners, it becomes clear that the petitioners were otherwise eligible for being placed at the lecturer selection grade in the scale of 12,00042018,300/ at the time of promotion to the post of Reader under the scheme, but they have been placed in the scale of 10,00015,200/ arbitrarily and depriving their right to get higher scale. Hence, this writ petition.

3. Learned Counsel for the petitioner Mr. Saurabh Arun strenuously urges that respondents have illegally and arbitrarily in contravention of the notification of the U.G.C. have fixed two pay scales for the post of Reader in a discriminatory manner. Learned Counsel submits that the respondentState cannot draw imaginary distinction when persons like petitioners have also got promotion in the cadre of Reader, be it through time bound promotion scheme itself. It is contended that the State Government has drawn artificial division not supported by Doctrine 4 of Classification in the pay scale of Reader drawn from different sources like time bound promotion scheme or through U.G.C.'s scheme.

4. Learned Counsel submits that the respondents have very cleverly not mentioned notification which has been issued by the U.G.C. on 24.12.1998, on revision of pay scale, minimum qualification for appointment of Teacher in Universities and Colleges and other measures of maintenance of students, in this situation, the pay scale which has been given for the lecturers, selection grade/Readers, shows Rs.12,00018,300/ and it is only one uniform scale mentioned for the post of Reader, but in contravention of the Notification of the UGC, arbitrarily two pay scales have been fixed for the post of reader in a

discriminatory manner. Learned Counsel submits that in similarly situated case, the Hon'ble Rajasthan High Court, Jaipur Bench has delivered the judgment that there cannot be two discriminatory scales of pay. The petitioner's case are also stand on the same and similar footing and when they are imparting same set of duties, working hours are same, teaching the same students, having same qualification, any arbitrary fixing of cut off date cannot deprive the similar benefits which they are entitled to. Learned Counsel also submits that the Hon'ble Supreme Court has also held that Constitution of Indian under Article 39D Equal pay for equal work applies if two classes of persons do the same nature of work under the same employer with same responsibility under similar working condition they are entitled for same pay which is also reported in AIR, 1988 (SC) 1505.

5. Relying on the judgment reported in AIR 1988(SC) 1505, learned Counsel further submits that the letter dated 31.05.2005 by which certain condition has been imposed and on fulfillment of said condition, scale of Rs.12,00042018,300/ will be admissible to the petitioners is in total contravention of the UGC scheme and is unreasonable, illegal and void as the petitioners were working as Reader prior to issuance of this letter and are entitled to pay scale of Rs. 12,00018,300/ meant for the post of Reader.

6. Learned Counsel argued that there cannot be any distinction between two sets of Reader on the basis of Readers who are promoted before and after 1.3.1989 and fixing of 1.3.1989 as cutoff date for giving 5 two different pay scales for the post of Reader is in contravention of Article 39D of the Constitution of India and Readers who are imparting similar nature nature of job having the similar qualification and have been promoted through similar selection procedure, are entitled to get uniform pay scale and in that view of the matter Annexure1 and Annexure4 are fit to be quashed and set aside.

7. Learned Counsel for the petitioner relied on several decisions of the Hon'ble Patna High Court as well as the Hon'ble Apex Court (2002

(1) P.L.J.R. Page 716 Prof. Dr. Amarnath Singh & Ors. Vrs. State of Bihar & Ors. , [1989] 1 RLW (Raj) 165 Dr. R.R.Gupta Vrs. State of Rajasthan.

8. In order to buttress his argument learned Counsel Mr. Saurabh Arun relied on the judgment of Apex Court in case of Union of India & Ors Vrs. Atul Shukla in Civil Appeal Nos. 47174719 of 2013 and argued that the respondent State cannot draw imaginary distinction when persons like petitioners have also got promotion in the cadre of Reader, be it through time bound promotion scheme itself. It is contended that the State Government has drawn artificial division not supported by Doctrine of Classification in the pay scale of Reader drawn from different sources like time bound promotion scheme or through U.G.C.'s career Advancement Scheme.

9. On the other hand counter affidavit has been filed.

10. Learned Counsel for the State represented by Mr. Krishna Murari Verma, G.P.I and the University represented by Mrs. I. Sen Choudhary vehemently opposes the contention of the learned Counsel for the petitioner. Learned Counsel for the respondents submits that pay scale has been fixed by following the guidelines of the U.G.C. and the petitioners are not eligible for promotion on the post of Reader as per U.G.C. guideline. Learned Counsel argued that it is policy decision of the State and the Court should keep away from interference in the policy decision of the State.

11. Learned Counsel for the respondents vehemently argued that there is huge delay in approaching this Hon'ble Court and after being fully aware that they have given option for acceptance of the pay scale so at this stage they cannot be allowed to reopen the matter of discrimination. 6

12. Learned Counsel further argued that if the petitioners opt for U.G.C. pay scale, the respondent will consider.

13. Learned Counsel for the respondents draws the attention of the Court towards paragraph No.12 of the supplementary counter affidavit filed on 10.09.2014 and submits that if the petitioners are not satisfied with the State Government scheme of promotion vide Annexure A aforesaid they should give option for U.G.C. scheme and they will be considered for promotion afresh as per U.G.C. scheme and the State Government shall withdraw the monetary facilities already given to them and

the amount shall be recoverable/adjustable as may be applicable in each case.

14. Learned Counsel submits that the judgment of Patna High Court relied on by the petitioner is not at all applicable in the instant case and hence writ petition is devoid of any merit and fit to be quashed and set aside.

15. Be that as it may, having gone through the rival submissions of the parties and going through the records of the case and the averments made in the writ application as well as that of the counteraffidavit, I am of the considered view that there is force in the submission of the learned Counsel for the petitioner. It is well settled that there cannot be unreasonable classification. The contention of the Counsel for the respondents is not well founded and not acceptable to this Hon'ble Court. The respondents cannot be allowed to travel against the provision of law. The statutory regulation cannot be relaxed by executive instructions. The Rules and guidelines as envisaged by the University Grants Commission cannot be relaxed and cannot be given go-by. Such relaxation by way of executive instructions are in complete defiance of statutory provisions and as such there cannot be artificial division. The theory of equal pay for equal work fully applies in the instant case. The U.G.C. has recommended only one scale of Reader and only by way of executive order, the respondents are trying to amend the statute which cannot be allowed. The Director, Higher Education has no authority under the law to relax the statutory provisions or the notifications which is against Jharkhand State University Act, 2000. 7

16. Rule 34 & 36 of the Jharkhand State University Act, 2000 speaks about as to how they are made.

34. The Statutes, Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely; (a) the institution of Fellowship, Scholarships, exhibitions, medals and prizes:

9. (b) the designations and powers of the officers of the University: (c ) the constitution, powers, functions and duties of the authorities of the University: (d) the admission of educational institutions as colleges and the withdrawal of privileges from Colleges so admitted: (e) the institution of Colleges and hostels

and their maintenance and management: (f) the classification of teachers of the University, the manner of their appointment and their recognition: (g) the constitution of pension, insurance or provident fund for benefit of the officers, teachers and other servants of the University, and the teacher of Colleges: (h) the maintenance of the register of registered graduates: (I) the number, qualification, grade, pay reservation of posts for [scheduled castes, scheduled tribes, Backward Classes, Women and economically weaker sections] and conditions of service of teachers, officers and other servants of the University including the creation of new posts after considering, as the case may be, the recommendations of the Academic Council and the Syndicate, in the case of creation of other posts, and the recommendation of the Syndicate, in the case of posts of officers and servants of the University; (j) the maintenance of accounts of the income and expenditure of the University including the income and expenditure of Colleges and the forms and registers in which such accounts shall be kept; 8 (k) the maintenance of a register of teachers; (l) the conferment of honorary degrees and distinctions; (m) all other matters which are or may be prescribed by the Ordinance of the Statutes. 36. Statutes how made. (1) The Senate may, either on its own motion or on submission by the Syndicate, make Statutes, or amend or repeal it: provided (a) the Senate shall not consider any statute having the effect of changing the number of post of teachers, officers and servants of the University, their pay scales or pay order; unless such a draft is recommended by the Chancellor for the considerations of the Senate; (b) the Syndicate shall not propose any such statutes, as may affect the status, powers and constitution of any authority of the University, unless that authority has been allowed an opportunity to furnish written opinion upon the proposed changes, and the Senate shall have to consider such option expressed in writing; and (c) in matters relating to status, powers, functions and constitution of the Academic Council, it shall be lawful for the Academic Council to initiate such Statutes and forward it to the Syndicate, which shall submit it to the Senate with such recommendations as it may like to make. (2) if the draft of any Statutes or a portion thereof, after being presented by the Syndicate before the Senate is sent back to the Syndicate for reconsideration, and the Syndicate does not agree, after reconsideration, to the amendments suggested by the Senate, then it shall be lawful for the Senate to pass the Statutes or a portion of

the Statutes in such form, as it may deem appropriate, and the decision of the Senate shall, subject to the provision contained in sub Section (3) sub section (4), be that [3 where the Senate has passed the draft of any statute if shall be submitted to the Chancellor who shall 9 declare that he assents thereto as passed by the Senate or with such amendments as he deems proper;] Provided that the Chancellor may as soon as possible after the presentation to him of the draft of the Statute so passed for assent, return the draft together with a message requesting that the Senate shall consider the draft and when the draft is so returned, the Senate shall consider the draft accordingly and if the draft is passed again by the Senate with or without any amendment and is presented to the Chancellor for assent, the Chancellor for assent, the Chancellor shall declare either that [he assents thereto with such amendments which he deems proper] or that he withholds assent there from. (4) Where any member of the Senate proposes to be Senate of the draft of any Statute, the Senate shall refer the same to the Syndicate, and it shall thereupon be the duty of the Syndicate to consider the draft and the Syndicate may either recommend to the Senate that the proposal be rejected or submit the draft to the Senate in such forms as the Syndicate may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in case of the draft proposed to the Senate by the Syndicate. (5) A statute passed by the Senate shall have no validity until it has been assented to by the Chancellor. (6) Notwithstanding anything contained in the above clauses, if at any time when the Senate is not in session and the Chancellor is satisfied that it is necessary to frame Statutes on any subject, the Chancellor after obtaining the advice of the Department of Higher Education, Government of Jharkhand] shall send the draft Statutes for opinion to the Syndicate of the University and it shall be binding on the Vice Chancellor to convene a meeting of the Syndicate for consideration of the drafts statutes within 10 days of receipt of the said draft. The Chancellor shall then give his assents to the Statutes with such amendments as may deem necessary in the light of the opinion 10 of the Syndicate. The Statutes shall be deemed to have come into force in the University form the date of assent. Statutes framed in this manner shall be placed before the next meeting of the Senate for confirmation. 17. It is evident from letter dated 22.07.1988 issued by the Govt. of India Ministry of H.R.D. in respect to the 4 th

revision of pay scale by which since 1988 two scale of pay of Reader has been combined into single scale of Rs.37005700 and they have been given revised scale of Rs. 37005700. Scales of pay (i) The two scales of pay of Readers mentioned in Annexure1 to the Scheme are combined into a single scale of Rs.3700 12549501505700. Consequently all existing Readers and Selection Grade Lecturers in Colleges in the scale of Rs. 1200 1900 will be placed in the revised scale of Rs. 37005700. The revised Selection Grade for Lecturers will also be Rs.3700 5700. (ii) The revised pay of the vicechancellor will be Rs.7600(fixed). This revised pay is applicable to central Universities. The State Governments may, if they so wish, adopt this pay for State Universities also. But no financial assistance will be available from the Central Government for this purpose. (iii) The scheme of Professor of Eminence is being further examined and a decision in this regard will be communicated in due course. 18. From bare perusal, it is apparent that only one scale has been provided for cadre of Reader i.e. 37005700. It is also evident from statute No.22 in respect to the revision of pay scale of University and Degree College teachers which came in existence on 07.08.1989 w.e.f. 1.1.86 after the letter issued by the H.R.D. Govt. of India and there also scale of Reader is only one i.e. 3700 to 5700 from earlier existing scale of pay of Rs.1200 1900. 5th scale of pay commission dated 27.07.1998 also does not 11 differentiate the two scale of Reader and recommended only one scale of Reader i.e. Rs.12000 18,300/ 19. The notification dated 16.05.2005 of the State of Bihar was amended by the executive order dated 20.07.2001 and only one scale of Reader has been given i.e. Rs. 12,000 to 18,300/. Now when 6 th pay revision has come into existence and the Govt. of India, Ministry of HRD has also recommended for revision of pay to teachers and from bare perusal of the letter dated 31.12.2008 by which 6 th pay revision of scale has been given w.e.f. 01.01.2006 also speaks of one scale of Reader i.e. 12,00018,300/. 20. Since the petitioners have completed 8 years of service which is required for further promotion to the post of Lecturer, they cannot be discriminated and also in view of the fact that State of Jharkhand has adopted for implementation of 6th U.G.C. package on 8.01.2011, the petitioners are entitled for arrears of their revised scale w.e.f. 1.1.96 or at best from the date of issuance of U.G.C. revision of pay scale on 27.07.1998. 21. The Hon'ble Rajasthan High Court, Jaipur Bench in case of Dr. R.R.Gupta Vrs. State of

Rajasthan, reported in [1989] 1 RLW (Raj) 165 in Civil Writ Petition No. 2558/1988 decided on: December 09, 1988 held that: Persons similarly situated with reference to their status, designation, nature of work, quantum of work, quality of work, duty they have to perform Source of recruitment does not make them different in any manner There is no distinction between the promotees or direct recruits. (Para 7)

(b) Constitution of India Art. 39 Equal pay for equal work Directive principles of state policy are fundamental in nature Artificial discrimination cannot be made Difference in mode of selection will not effect the doctrine of Equal pay for equal work. 22. Similar issue fell for consideration before the Hon'ble Patna High Court in case of Prof. Dr. Amarnath Singh Vrs. State of Bihar, 12 reported in 2002 (1) PLJR 716 and the Hon'ble Court after taking the relevant issues came to a finding: Coming back to the controversy before this Court, it is held earlier in this judgment that the condition imposed for implementing the 1996 UGC scales as contained in para 14 of the Secretary's letter, dated 20.07.2001 is bad and illegal and it offends Article 14 of the Constitution because it purports to make a classification which is unreasonable, arbitrary and causes adverse discrimination against teachers promoted under the timebound Statutes. The impugned condition as contained in para 14 of the Secretary's letter is, therefore, set aside. As a consequence provisions made in paras 15, 16 and all other provisions in the letter corresponding to and arising from the offending condition contained in para 14 will also fall to the ground. What, therefore, remains is the decision of the State Government to be given to the University and college teachers in this State the 1996 U.G.C. scales sans the conditions as contained in paras 14,15,16 and any other corresponding provisions in that letter. The State Government is directed to give teachers promoted as Readers/University Professors under the time bound statutes the respective replacement scales like all other teachers and to implement the 1996 U.G.C. scales, in the light of this judgment without any further delay. 23. This Court is of the considered view that the ratio of the case 2002(1) PLJR 716 is fully applicable in the instant case. 24. The upshot of the above discussions is that the classification made by the respondent for the purpose of different pay scales in the cadre of Reader does not stand scrutiny on the touchstone of Article 14 & 16 of the Constitution as rightly observed by the Apex Court. 25. As a cumulative effect of the aforesaid rules, guidelines, legal propositions, this Court is of the considered

view that Annexure1 dated 13.11.2001 and Annexure4 dated 31.05.2005 are not tenable in the eyes of law and as such are fit to be quashed and set aside. The petitioners are entitled to pay scale of Rs. 1200042018,300/ in place of Rs. 10,000 to 13 15,200 along with the arrears of the pay scale with effect from 1.1.2006. The RespondentState is directed to take immediate steps for providing the replacement scales along with the arrears without any further delay. 26. Resultantly the writ petition stands allowed without any order as to cost. (Dr. S. N. Pathak, J.) P.K.S.

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