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Court : Patna

Decided On : Jan-27-2004

Judge : Sachchidanand Jha, J.

Acts : Service Law

Appeal No. : CWJC No. 7224 of 1999

Appellant : Bihar State + 2 Lecturers Association and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Sarvadeo Singh, Adv. and JC to GP-1

Advocate for Pet/Ap. : Rajendra Prasad Singh, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Jha, J.

1. The dispute in this case relates to pay scale on Untrained Post Graduate + 2 Lecturers in Nationalised Secondary Schools and the question for consideration is whether they are entitled to the same scale as their trained counterparts.

2. The case of the petitioners supported by the intervenes is that in the advertisement, being Advt. No. 1/87, inviting applications for the post of + 2

Lecturers in Secondary Schools, the pay scale of the post was mentioned as Rs. 940-1660/- and they are entitled to the corresponding replacement scale after the pay revision. After the Fifth Pay Revision, by resolution No. 6021 dated 18.12.1988, the existing scale of Rs. 940-1660/- was replaced by the scale of Rs. 1640-2900/- with effect from 1.1.1986. However, by Government order dated 25.8.1990 scale of Rs. 2000-3500/- was allowed for Lecturers in + 2 Government Schools giving rise to anomaly of pay of + 2 Lecturers in the Government Schools and nationalised schools. In the circumstances, the Association of + 2 Lecturers of nationalised Schools preferred writ petition, CWJC No. 2445/94 seeking direction to provide the same scale i.e., scale of Rs. 2000-3500/- to them. On 8.2.1996 i.e., during pendency of the case they were allowed scale of Rs. 1800-3330/-. On 30.9.1997, the writ petition was allowed with a direction to give same scale i.e., scale of Rs. 2000-3500/- to + 2 Lecturers of nationalised Secondary Schools with effect from 1.1.1986, the monetary benefit thereof was to be paid with effect from 1.3.1989. As the order was not being implemented the Association filed contempt petition, being MJC No. 1160/97. On 4.5.1999 order was issued, in compliance of the Court's order, giving the petitioners scale of Rs. 2000-3500/-. The resolution stated that the employees of the State Government had been allowed central pay scale with effect from 1.1.1996 and accordingly untrained + 2 Lecturers would be entitled to scale of Rs. 5000-8000/- while trained + 2 Lecturers would get scale of Rs. 6500-10500/-.

3. It would appear that the distinction between + 2 Lecturers in nationalised schools and + 2 Lecturers in Government Schools has been done away with but they are now sought to be classified on the basis of their qualification in the matter of pay scale. The question is whether the decision suffers from any irregularity so as to warrant interference by this Court.

4. Shri Rajendra Prasad Singh, learned counsel for the petitioners submitted that there was no such clause in the advertisement that the applicant should be trained. At a later stage no distinction on the basis of training qualification can be made. It was a common advertisement for the Government Schools as well as nationalised Schools and no distinction was made in the matter of pay scale. It was submitted that if such decision had been taken earlier, the persons concerned

would have acquired the qualification in the meantime.

5. The grant of scale depends on variety of factors, the qualification for the post being the most important of them if I may say so. Thus, in principle, classification on the basis of qualification cannot be said to be erroneous or arbitrary.

6. Counsel placed reliance on para 31.49 of report of the Fitment Appellate Committee. However from bare reading of the said paragraph it is evident that even Fitment Appellate Committee was of the view that training was essential and therefore the Fitment Committee should not have recommended the same scale for untrained teachers. But on the ground that the original advertisement did not require 'training' as an essential qualification, the Committee observed that the incumbent cannot be denied higher pay of Rs. 6500-10500/- even if they are untrained.

7. From the supplementary counter affidavit it appears that this part of the recommendation of the Fitment Appellate Committee has not been accepted by the State Government. In para 7 of the said affidavit it has been stated that after considering the report of the Fitment Appellate Committee the State Government decided to grant the Untrained + 2 Lecturers the scale of Rs. 5000-8000/- so long they remain untrained. However after obtaining the training qualification they will be eligible for trained scale of Rs. 6500-10500/-.

8. It is true that the advertisement did not make any distinction between + 2 Lecturers of nationalised Schools and + 2 Lecturers of Government Schools. Nor it mentioned about the 'training' as an essential qualification. So far as distinction between the two sets + 2 Lecturers is concerned, the same has been done away with, as seen above. Thus irrespective of the fact as to whether they belong to the Government Schools or nationalised Schools, they have been given the same pay scale. The distinction is now on the basis of qualification. So far as this aspect is concerned, the fact that the advertisement did not refer to the 'training' qualification as an essential qualification only means that even untrained teachers could be appointed; it does not mean that they would be entitled to same pay on their appointment.

9. As mentioned above, the qualification is a relevant, indeed, one of the most important factors for determining the pay scale. Any distinction in the matter of pay scale on the basis of qualification therefore cannot be said hostile discrimination. It is relevant to mention here that the minimum academic qualification prescribed in the regulation framed by the National Council for Teacher Education called National Council for Teacher Education (Determination of Qualification for Recruitment of Teachers) Regulation 2001 is 'Master's Degree in the relevant subject with Bachelor of Education (B.Ed.) or its equivalent'. In other words, those who do not possess B.Ed. i.e., training qualification are not even eligible for appointment at the Senior Secondary/PUC/Intermediate level. Though the Regulation of 2001 may not have retrospective effect, it nevertheless indicates the relevance of the training as qualification.

10. In the above premises, the distinction between the trained and untrained teachers having reasonable nexus with the object cannot be said to be arbitrary so as to warrant interference by this Court.

11. My attention was drawn to the Office Order No. 70 dated 22.1.2001 of the Director, Secondary Education, by which deputation order dated 19.10.2000 with respect to 10+ 2 Lecturers were sent for in-service training at the Patna Training College/Patna Womens Training College, was cancelled. The cancellation was on ground that training qualification has been held to be not mandatory by the Fitment Committee. If that were so, the teachers cannot insiste on in-service training. However if they are sought to be classified on the basis of training qualification in the matter of pay scale I am of the view that the Director should consider sending concerned + 2 Lecturers for in-service training as per the past practice.

12. With the observation made in the foregoing paragraph the writ petition is dismissed.