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Court : Delhi

Decided On : Jan-13-1987

Reported in : 1987(13)DRJ21

Judge : B.N. Kirpal, J.

Acts : Constitution of India - Article 226

Appeal No. : Civil Writ Petition No. 262 of 1983

Appellant : Dhan Dev Kumar Jain

Respondent : The Director of Education, Delhi and ors.

Advocate for Pet/Ap. : G.N. Aggarwal and; R.M. Bagai, Advs

Judgement :

B.N. Kirpal, J.

(1) The main question which arises for consideration in this case is whether the petitioner, who had obtained a degree of Prabhakar, can be regarded as being eligible for getting higher scale of pay as a Language Teacher, which higher scale he would have been entitled to if the Government had recognised Prabhakar as being equivalent to the degree of B.A.

(2) On 1st December, 1958 the petitioner was appointed as a Junior Language Teacher by Jain Samnopasak Higher Secondary School, Respondent No. 3, which is a Government aided school. The petitioner at that time had done his metric and Prabhakar and bad also obtained a Special Teaching Certificate. The petitioner was placed in the grade of Rs. 80-220, which was subsequently revised to Rs. 130-300.

(3) According to the learned counsel for the petitioner, and as is the case of the petitioner in the petition, the Central Government regarded Prabhakar as being equivalent to B.A. vide a circular dated 12th April, 1966. According to the pay scales then in force a Junior Language Teacher, if he had obtained the degree of B.A. or an equivalent thereof, was entitled to be placed in the pay scale of Rs. 170-380. The case of the petitioner is that as he was a Prabhakar which was equivalent to B.A. degree and he should have been placed in the pay scale of Rs. 170-380, instead of the scale of Rs. 130 300 which he was then getting.

(4) It appears that this High Court had decided on 14th August, 1977 a case of R.C. Sharma & Ors. v. Union of India & Ors., (2nd 1978) Ii Delhi 175. This case essentially pertained to the question of seniority amongst Language Teachers. During the narration of facts, however, this Court held that the Government of India with effect from 12th April, 1966 recognised the qualification of Prabbakar as being equivalent to the B.A. Basing himself on this the petitioner applied for being placed in the higher grade of Rs. 170- 300 instead of Rs. 130-300.

(5) With effect from 1st June, 1978 the petitioner was promoted as a Senior Language Teacher and was placed in the grade of Rs. 440-750. On 18th September, 1978 the petitioner applied for the grant of a higher grade with effect from 12th April, 1966 on the basis that his qualification of Prabhakar was equivalent to that of B.A. According to the petitioner the circular dated 12th April, 1966 which had been issued by the Central Government and not been received by the school in which the petitioner was employed. The petitioner's request for the grant of higher grade was accepted by a letter dated 12th December, 1979 of the Education Officer. The petitioner was, by virtue of the said letter, placed in the grade of Rs. 170-380 with effect from 12th April, 1966. On the basis of the said

revision the Respondent No. 3 school revised the pay of the petitioner vide its letter dated 28th January, 1980.

(6) On 24th August, 1982 the petitioner wrote that he should be paid arrears of the salary and this representation was forwarded by the school on 16th September, 1982.

(7) The grievance of the petitioner arose when he received the letter dated 27th December, 1982 issued by the Education Officer in which it was stated that the scale of Rs. 170-380 was not admissible to the petitioner with effect from 12th April, 1966.

(8) The petitioner filed the present petition challenging the aforesaid decision. On 10th February, 1983 the High Court directed the Education Officer to come and appear in Court along with the records of the case. On 1st March, 1983 show cause notice was issued and on 16th March, 1983 the then Education Officer, Shri Bahuguna appeared in Court. It was stated by Shri Bahuguna on behalf of the Education Department that a hearing shall be granted to the petitioner and reasons for the orders dated 27th December, 1982 would be communicated. It might here by stated that in the letter dated 27th December, 1982 no reason was given as to why the department had reversed its earlier decision of granting the higher scale with effect from 12th April, 1966.

(9) The department then issued a notice dated 19th March, 1983 to the petitioner asking him to submit oral and written evidence in support of his claim for payment of higher scale. To this the petitioner replied vide his letter dated 30th March, 1983 that in the said notice dated 10th March, 1983 the petitioner was Which specific ground the petitioner should file the reply. According to the petitioner, even in the order dated 27th December, 1982 the grounds on which the earlier order was reviewed was not indicated. In reply to this the petitioner received a communication dated 2nd April, 1983 from the Education Officer, who inter alia, stated that the petitioner was given another opportunity to state his case 'with specific reference to the Prabhakar qualification and its evidence.' The petitioner wrote back on 4th April, 1984 and he referred to the aforesaid words quoted from the letter from the department and the petitioner stated in this letter of the April,

1983 that he wanted to know the specific grounds on the basis of which the order was to be reviewed. On 4th April, 1983 a memorandum was drawn up in which it was stated that the petitioner did not sign the copy of the minutes and he had been informed about the reason for reviewing the earlier order. According to this memorandum the petitioner was informed that the earlier orders were reviewed on the ground that Prabhakar qualification was not equivalent to B.A. The petitioner then sent a letter dated 6th April, 1983 lodging his protest to the contents of the said memorandum. According to the petitioner, lie had never refused to sign the memorandum. On 30th April, 1983 ihe petitioner retired from service.

(10) One of the contentions raised by 'he petitioner before me is that prior to the issuance of letter dated 27th December, 1982 no opportunity was afforded to the petitioner to show cause against the proposed action.

(11) The fact that no such opportunity was granted to the petitioner before the issuance of the letter dated 27th December, 1982 is not in dispute. The contention of Shri Bagai, however, is that subsequent to the filing of the petition opportunity of being heard has been granted to the petitioner. I have gone through the notice dated 19th March, 1983 and also the other correspondence on the subject. There is in a letter of 2nd April, 1983 of the Education Officer a brief reference to the Prabhakar qualification but it was not specifically put to the petitioner that the order granting higher scale was sought to be reviewed on the ground that Prabhakar was not equivalent to a B.A. degree.

(12) As already noted, the petitioners is seeking to place reliance on a circular dated 12th April, 1966. He has also drawn my attention to the Judgment of a Single Judge of this Court in R.C.Sharma's case (supra), in which at a number of places it is mentioned that the Government of India recognised Prabhakar as being equivalent to B.A. Mr. Bagai, however, has drawn my attention not to a document which is on the record of this case but to a document from his file purporting to be a copy of the said circular dated 12th April, 1966. This document has been perused by me and prima facie there is no specific reference in the said document to the degree of Prabhakar being regarded as equivalent to that of B.A. This circular is not in the possession of the petitioner. The petitioner, as already

stated, has based, his claim on the observation of this Court in R.C. Sharma's case (supra). The learned counsel for the respondents states that the Single Judge in R.C. Sharma's case, had recorded the finding of fact on the basis of the affidavit failed before him and not on the basis of the circular dated 12th April, 1966.

(13) Taking all the facts and circumstances into consideration, I agree with the contention of the learned counsel for the petitioner that a full and effective hearing has not been granted to him. It is only now that the petitioner knows the full case of the respondents, namely, that the Prabhakar, is not recognised is being equivalent to B.A. According to the respondents, the circular of the Government of India dated 12th April, 1966 a copy of which has been shown in Court, also does not support the case of the petitioner. It may be that the petitioner is able to substantiate his contention by reference to some other documents or even to this document in conjunction with another. Granting of a fresh opportunity to the petitioner to put forth his case before the respondents would not prejudice anyone. It is not desirable that member of such respected profession as that of teachers should have a feeling that full and effective hearing has not been granted to them. I, thereforee, issue Writ of Mandamus quashing the letters dated 27th December, 1982, 2n April, 1983 and 4th April, 1983 and direct the respondents to decide the petitioner's representation afresh. The petitioner is at liberty to lead such evidence before the respondents want to rely upon any document that should be made available to the petitioner who should be granted an opportunity working his submission in respect thereof.

(14) The petitioner is now aware of the case against him. He sho file a fresh representation supported by all documents which he wishes to upon within four weeks from today. If copy of the circular dated 1 April 1966 should be made available by the counsel for the respondents to petitioner, with two days from today. The representation may be directly to the Director of Education. The Director of Education will de in Education Office or any other officer, other than Shri Bahuguna to de to representation. If the Director so desires, he can decide the case hill The representation should be decided within six weeks of the same. such decision the stay granted on 18th May, 1983 will stand. If, how fresh

representation is not filed within four weeks from today, then the stay will stand automatically vacated.

(15) The writ petition is disposed of in the aforesaid terms. parties to bear their own costs.

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