

(1970) 05 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 2273 of 1968

Gurdip Singh Sra and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: May 4, 1970

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(1), 18
- Punjab Education Service Class III, School Cadre Rules, 1955 - Rule 7
- Punjab Services Integration Rules, 1957 - Rule 16

Citation: (1972) 2 ILR (P&H) 218

Hon'ble Judges: Bal Raj Tuli, J

Bench: Single Bench

Advocate: J.N. Kaushal and Kuldeep Singh, for the Appellant; A.S. Bains, D.A.G. II for Respondents Nos. 1 and 2, J.S. Wasu and Inderjit Sayal, for the Respondent

Final Decision: Dismissed

Judgement

B.R. Tuli, J.

The Petitioners are working as masters in different Government Higher Secondary Schools in the State of Punjab. All of them are trained graduates and prior to the enforcement of the Kothari Commission's recommendations they were drawing pay in the grade of Rs. 110--250. They are governed in the matter of their service by the Punjab Educational Service Class III School Cadre Rules, 1955 (hereinafter called the Rules). Those Rules provide for a selection grade and all the persons forming the cadre are entitled to be considered for promotion to that grade. In the return filed by the Director of Public Instruction it has been pointed out that the selection grade of Rs. 250--300 was available only up to October 31, 1966. This selection grade was abolished with effect from November 1, 1966, when the revised grades of pay were enforced on the recommendation of Kothari Education Commission, the revised grade of masters being Rs. 220--500. The promotion to selection grade used to be

made on seniority-cum-merit basis.

2. The Punjab Education Service, Class III, consisted of Headmasters, Masters/Mistresses, Teachers (men and women), D.P. Es. and P.T. Is., etc. The minimum qualification for the posts of Masters/ Mistresses was B.A., B.T./B. Ed. The post-graduates were also eligible for these posts and many M. As. and M. Scs. joined service as Masters and Mistresses in the same grade as the trained graduates. Some of the Masters/Mistresses improved their qualifications during service by obtaining post-graduate degrees. They, however, remained in the same grade and cadre to which they were recruited.

3. The Kothari Education Commission mads various recommendations with regard to qualifications of the teachers and the grades of pay to be allowed to them. In para 3.17 of the report the Commission made the following recommendation:

On the basis of their general education, the assistant teachers in secondary schools can be divided into two categories: graduates and those with post-graduate qualifications. The relative proportions of these two categories should be definitely prescribed. We recommend that depending upon the size, function and quality of school, the proportion of teachers with post-graduate qualifications should vary from about 10 to 30 per cent. It may be pointed out that, by "post-graduate" qualifications we mean the same type and level of qualifications as are prescribed for junior lecturers in affiliated college". Teachers with other post-graduate qualifications should be fitted in the scale or pay for graduate teachers in a suitable manner.

According to these recommendations 10 to 30 per cent of the total number of Masters with post-graduate qualifications were to be allowed the Lecturers" grade. The Government,--vide letter No. 2036-ED-I-67/21267, dated July 29, 1967 converted 829 posts of Masters to those of Lecturers. The Lecturers were allowed the pay scale of Rs. 300--25--450/25--600 for 1st and 2nd class M.A./M. Sc,M-Ed. and Rs. 250--25--400/25--550 for third class M.A./M. Sc, M. Ed., while the pay scale of the Masters was fixed at Rs. 220--8--300/10--400/20--500. These posts were to be allowed to various subjects keeping in view the requirement of institutions and appointments were to be made keeping in view the Rules and instructions as amended from time to time. The recruitment to these 829 posts has been made from amongst the Masters, who had post-graduate qualifications, subject-wise on the basis of seniority-cum-merit. Where more post-graduate qualified teachers were available than the posts created in the Lecturer"s grade, the senior-most required number of teachers were appointed as Lecturers while the remaining Teachers continued as Masters. The main grievance of the Petitioners is that the trained-graduate and post-graduate Teachers started equally in the same service and they are doing absolutely the same work of teaching 9th to 11th Classes in the Higher Secondary Schools. Various instances have been stated to show that in the same school one Section of the class is being taught by a Lecturer while another

Section is being taught by a Master and similarly in some schools the same class is being taught by a Lecturer while in other schools it is being taught by Masters. The syllabii of studies are the same which both the Lecturers and the Masters teach, so that it is emphasised that there is absolutely no difference in the work that is being done by the Masters and Lecturers. It is, therefore, strenuously argued that the classification of the Masters into two grades, Lecturers and Masters, on different pay scales, has no nexus to the teaching work that is being done by them and cannot be justified in view of the provisions of Article 14 of the Constitution of India. In other words it is emphasised that the Masters have been discriminated against as compared with the Lecturers for which there is no justification especially because the Lecturers have been selected only from amongst the Masters and many of the Masters who still continue to be Masters were senior to those who have been appointed as Lecturers. This discrimination has created irritation and heart-burning amongst the Petitioners and other Masters. The Learned Counsel for the Petitioners has relied on a Full Bench judgment of this Court in *Brij Lal Goswamy v. The State of Punjab and Ors.* ILR (1965) 1 P&H 423., wherein it was held--

that the order of the Punjab Government, dated 29th September, 1961, bifurcating the P.E.S. (Class II) into School and College cadres is violative of the principle of preserving inter se seniority embodied in Rule 16 of the Punjab Services Integration Rules, 1957, in so far as it has affected the seniority of the Petitioners vis-a-vis the Respondents concerned and that the promotions to P.E.S. (Class I), in the wake of the aforesaid bifurcation, of the Respondents who were originally junior to the Petitioners in the joint P.E.S. (Class II) List, in preference to the Petitioners on the sole ground of the nature of vacancy in P.E.S. (Class I) are violative of Rule 16 of the Punjab Services Integration Rules, 1957 and Article 16 of the Constitution.

It is evident that that decision had nothing to do with classification under Article 14 of the Constitution, but dealt with the Rules of the service and on the basis thereof it was held that the order of the Punjab Government was violative of those service Rules and since the Petitioners had not been considered at the time of promotion, their fundamental right under Article 16 of the Constitution had been violated. This judgment has no relevancy to the facts of the present case.

4. The next case referred to by the Learned Counsel for the Petitioners is *Mrs. J.K. Pritam Singh and Ors. v. The State of Punjab and Ors.* 1967 S.L.R. 251. In that case it was held that in the Punjab Education Service Class III, School Cadre Rules, 1955, no distinction was made between J.S.T. and B.T. teachers for the purpose of further promotion and, therefore, the exclusion of J.S.T. teachers from further promotion by an executive order was contrary to the service Rules. The facts of that case were that the Petitioners and Respondents 4 to 127 in that case formed a cadre called "Non-Gazetted Class III" of Teachers receiving a time-scale salary of Rs. 70--150. In that cadre there were Teachers who were qualified in J.S.T. (Junior Secondary Training) and B.T. (Bachelor of Training) and by an executive order, which was

impugned in that petition, issued in the form of a memorandum by the Deputy Secretary, Education Department, the service was re-organised, with the result that J.S.T. women Teachers were to remain in the existing grades of Rs. 70--150 and 150-220 while those who had the degree of B.T. were adjusted In another grade designated as Class II. This revision in grades was to take effect retrospectively from April 1, 1962. The complaint of the Petitioners in that case was that when the Teachers having J.S.T. and B.T. qualifications were placed in one cadre, there could have been no re-organisation to their detriment preferring the B.T. Teachers who were treated on an equal footing with J.S.T. Teachers being in a common cadre before April 1, 1954. In view of these facts it was held--

The Petitioners and the J.S.T. teachers on the one hand and their B.T. counterparts including Respondents Nos. 3 to 127 on the other, were recruited by the same machinery on the basis of one general set of minimum qualifications and they started as one single unit in a joint cadre in one distinct service and had a common inter se seniority till the impugned order was passed. There is, therefore, nothing in common between the relevant facts of Joginder Singh's case, and the case which we are called upon to decide. There is no doubt that equality of opportunity guaranteed by Article 16 of the Constitution as well as the equality referred to in Articles 14 and 15 of the Constitution has reference only to equality amongst equals, and not to any possible equality amongst inequal. In the instant case the two categories, now formed, originally fell into one common category, and, therefore, the persons falling in any of the two categories have to be treated equally in the matter of opportunity of promotion and higher remuneration, etc for each member of the erstwhile Joint Cadre. There is no force in Mr. Pannu's argument that the two categories started inequally, because of the B. Ts. being given Rs. 20 as additional pay at the time of their entry into service on account of their higher qualifications. The B. Ts. were admittedly, put in the same time-scale of pay, but were merely given four advance increments. This fact alone did not constitute a separate service for the trained graduates. For all matters they were subject to the same Rules and conditions of service and their inter se seniority among the members of the Joint Cadre was admittedly not affected by the grant of the advance increments.

5. The facts of that case are also distinguishable and in any case the binding force of this judgment has been greatly diminished by judgment of their Lordships of the Supreme Court in the [State of Mysore and Another Vs. P. Narasing Rao](#), , and a Division Bench judgment of this Court (Mehar Singh, C.J., and R.S. Narula J.) in Shri Rajinder Singh Chaudhary and Ors. v. The State of Punjab and Ors. L.P.A. No. 447 of 1966 decided on 9th Feb., 1970., to which I will refer a little later. 1867 S.L.R. 832.

6. The Learned Counsel for the Petitioners then relies upon a judgment of a Division Bench of this Court in the State of Punjab v. Lekh Raj Bowry and Ors. 1967 S.L.R. 816., which related to Vaidyas and Hakims. It was held therein--

Though some of the Hakims and Vaidyas may have started dissimilarly at the time of their appointment in different States, they had not continued dissimilarly, but had, after their being unified into one single cadre in the same time-scale of pay, been appointed to the newly-formed cadre in the united Punjab, irrespective of their initial educational qualifications. Once this had happened, some members of the unified cadre could not be treated dissimilarly as against others of the same cadre in the matter of their pay and other relevant conditions of service on the ground that some of them possessed higher or better qualifications. It is settled law that the equality of opportunity guaranteed by Clause (1) of Article 16 of the Constitution does not end with the stage of initial appointment, but would inevitably govern all matters relating to employment including questions of emoluments, chances of promotion etc.

This judgment is also on the same footing as the judgment in Mrs. J.K. Pritam Singh's case (2) and the observations made by me above in regard to that case also apply to this case. Learned Counsel for the Petitioners then relies on a judgment of their Lordships of the Supreme Court in *Roshan Lal Tandon v. Union of India and others* (6), in which it was held that discrimination cannot be made in favour of recruits from one source against the recruits from the other source in the matter of further promotion as once they are absorbed in one cadre, they form one class. In that case Train Examiners, Grade "D" were recruited from two different sources, that is, one from apprentice Train Examiners and the others from skilled artisans. Further promotion from Grade "D" to Grade "C" was made from the integrated cadre on the basis of seniority-cum-suitability. By notification, dated October 27, 1965, 80 per cent of vacancies in Grade "C" were reserved for apprentice Train Examiners who had been absorbed in Grade "D" before March 31, 1966. On these facts it was held that the notification violated the guarantee under Articles 14 and 16 of the Constitution. The facts of that case are also distinguishable from the facts of the present case.

7. As I have said above the present case is governed by the dictum of their Lordships in the State of Mysore v.P. NarasingaRao (3) (supra). In that case Tracers were employed in the Engineering Department of the State. Some of the Tracers were non-Matriculates while others were Matriculates. Different scales of pay were allowed to them on the basis of the educational qualifications. This classification was challenged and it was held by their Lordships as under:

In our opinion there is no justification for the argument put forward in favour of the Respondent. It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned Rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which" it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the

group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the Rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the Rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general Rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. It is true that the selective test adopted by the Government for making two different classes will be violative of Articles 14 and 16 if there is no relevant connection between the test prescribed and the interest of public service. In other words, there must be a reasonable relation of the prescribed test to the suitability of the candidate for the post or for employment to public service as such. The provisions of Article 14 or Article 18 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is, therefore, not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical "proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidates who have better educational qualifications besides technical proficiency of a tracer.

The classification was upheld. On the basis of this judgment a Division Bench of this Court in *Shri Rajinder Singh Chaudhary and Ors. v. The State of Punjab and Ors.* (4) (supra) decided that the conversion of 256 posts of M. Sc. Masters and Mistresses and 512 posts of M.A. Masters and Mistresses from the grade of Rs. 110--250 to the grades of Rs. 200--500 and 180--450 respectively was legal and valid and did not violate Article 14 or 16 of the Constitution. The facts of the case before the Letters Patent Bench were identical with the facts of the present case and on the basis of that judgment, which is binding on me sitting singly, I hold that the creation of the Lecturer's grade and the appointment of 829 postgraduates from the cadre of Masters does not violate any fundamental right of the Petitioners guaranteed by Articles 14 and 16 of the Constitution of India. The Learned Counsel for the Petitioners has sought to distinguish that judgment on the ground that In that case the selection was made by the Public Service Commission from amongst the members of the Service as well as outsiders which meant that all eligible persons were entitled to apply for employment and not only the members of the Service already serving the Department. This distinction is of no consequence as " what has

to be seen is whether the qualification prescribed for classification has any nexus with the nature of the work which the Lecturers and Masters are expected to do. This test is fully satisfied in the instant case and, therefore, that judgment directly applies and the instant case is concluded by that judgment.

8. The Learned Counsel for the Petitioners has greatly stressed that the fundamental right guaranteed under Article 16 of the Constitution applies not only at the stage of the initial appointment but at every stage of promotion during the course of service and for this proposition he relies upon the judgment of their Lordships of the Supreme Court in T. Devadasan Vs. The Union of India (UOI) and Another . It is submitted that the chances of promotion of the Petitioners have been drastically curtailed because of the creation of the cadre of Lecturers between them and the Headmasters. Previously they were entitled to be promoted to the posts of Headmasters and if, in consequence of their higher grade of pay, the Lecturers are promoted as Headmasters, the Masters will have no chance of getting that promotion. In the returns filed by the Director of Public Instruction, Punjab, on two different occasions it has been stated that the channel of promotion of Lecturers has not yet been settled. It cannot, therefore, be said at present whether the channel of promotion for them will be prescribed to the post of Headmaster or Lecturers in Colleges or to both. Even otherwise, according to Rule 7 of the Punjab Educational Service, Class III, School Cadre Rules, 1955. I find that the appointment to any post by promotion of officials already in service or by transfer from other services within the Education Department of the Government or other Departments of any State or Central Government, is to be made strictly by selection based on consideration such as qualifications and/or consistent good record for a number of years and no official has any claim to such appointment as of right,--vide Rule 7(c)(iii) of the Rules. Before the bifurcation of the cadre of Masters into the two cadres of Lecturers and Masters, the Masters did not have the absolute right to be promoted as Headmasters on the basis of seniority. The selection had to be made for promotion to the rank of Headmasters and even a junior man could be selected in preference to a senior one on the basis of his academic qualifications and the consistent good service record. It can also not be said that the possession of academic qualifications has no nexus with the teaching which the Lecturers and the Masters have to do. Therefore; the classification on the basis of higher academic qualifications is fully justified under Article 14 of the Constitution in view of the dictum laid down by their Lordships of the Supreme Court in the State of Mysore and Anr. v. P. Narasinga Rao (3) (supra). It will, however, be for the Government to prescribe the channel of promotion for Masters and the Lecturers and this Court only hopes that while providing the channel of promotion due regard shall be paid to the interests of the members of both the services.

9. The Learned Counsel for the Respondents raised a preliminary objection to the effect that the writ petition was liable to be dismissed on the ground that necessary parties likely to be affected by the decision have not been impleaded meaning

thereby that 829 Lecturers, who have since been appointed have not been made parties to this petition although they will be directly affected by the decision therein. Since I have found no merit in this petition, I need not decide this objection, particularly because the Learned Counsel for the Petitioners stated that he would be satisfied with the declaration of the rights of the Petitioners claimed in the petition.

(10) For the reasons given above there is no merit in this petition which is accordingly dismissed, but without any order as to costs.