

(2006) 11 GAU CK 0050
Gauhati High Court (Agartala Bench)
Case No: None

Ranjit Bhattacharjee

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: Nov. 22, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2007) 2 GLR 124

Hon'ble Judges: Hrishikesh Roy, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hrishikesh Roy, J.

In the two writ petitions which are being disposed of by the present judgment, three writ petitioners who are working as physical instructors of Government colleges in the State of Tripura have claimed salaries at par with the lecturers working in such colleges in the State. There is no material difference in the claim in the two cases except in one factual aspect that is on the mode of entry into service in the college. In Civil Rule No. 135 of 1996, the sole petitioner Mr. Ranjit Bhattacharjee was initially appointed as an Assistant Teacher in school and was thereafter, posted as physical instructor in Bir Bikram Evening College. Whereas in the Civil Rule No. 357 of 1996, the two petitioners therein were directly appointed in Ram Thakur College and Belonia College, respectively at a stage when the said colleges were private colleges and were not taken over by the Government. Since common issues have been raised and argued on behalf of the writ petitioners by a common counsel, the two cases were heard together and are being disposed of by this judgment and order.

2. Some brief facts in respect of each of the petitioners may be noted at this stage for proper appreciation of the issues involved and the contentions raised on behalf of the parties.

The petitioner in Civil Rule No. 135 of 1996, Mr. Ranjit Kumar Bhattacharjee was initially appointed as an under graduate school teacher and after passing his B.A. examination in Arts, he was absorbed as an assistant teacher (secondary school) with effect from 15.4.1964. While working as assistant teacher, the petitioner was deputed for Diploma in Physical Education training during 1965 and was subsequently appointed as physical instructor on a pay of Rs. 175 per month in the scale of Rs. 175-325 with effect from 4.12.1965.

As a physical instructor, the petitioner was posted with effect from 4.12.1965 at Bodh Jung Higher Secondary school and thereafter he was transferred in the office of the Deputy Director (Youth Programme) in the same pay and scale with effect from 8.9.1975. Eventually, from the office of Deputy Director (Youth Programme), the petitioner was transferred to the establishment of Bir Bikram Evening College with effect from 16.7.1979. As per record, the salaries of all the physical instructors are drawn from the Directorate of Youth Affairs and Sports from March 1996, in terms of notification dated 28.3.1994 issued by the Education Department (School Education) whereby services of all the physical instructors working under the Directorate of Higher Education and Directorate of School Education, were transferred to the Directorate of Sports and Youth Affairs. Following the transfer of the services of the physical instructors as noted above to the Directorate of Sports and Youth Affairs, a memorandum dated 16.2.1996 has been issued by the Government under which different Heads of offices and Drawing and Disbursing Officers (DDO) under the Directorate have been authorized to draw and disburse the salaries of the physical instructors working in various schools, colleges and offices in the State.

3. Insofar as the petitioner No. 1-Mr. Nepal Adhikari in Civil Rule No. 357 of 1996 is concerned, he was appointed by order dated 20.1.1975 issued by the Administrator of Ram Thakur College, as a physical instructor of the said college. At the stage of appointment of the petitioner to Ram Thakur college, the college was a private college. Thereafter, Mr. Adhikari after working for about 9 years as a physical instructor in the college, obtained a Bachelor of Education (Physical) degree on 11.2.84. However, Mr. Adhikari had obtained the Bachelor of Arts degree on 13.3.1976, i.e., within a year of being appointed in the college on 20.1.1975.

Insofar as the petitioner No. 2 in Civil Rule No. 357 of 1996 is concerned, Mr. Santosh Bhattacharjee was appointed by order dated 26.1.1976 in the post of physical instructor in Belonia College. Just like the petitioner No. 1, at the stage of appointment of the petitioner No. 2, the Belonia college was a private college run under private management. At the time of appointment of Mr. Bhattacharjee as physical instructor, he had not obtained his Bachelor of Arts degree, which was obtained subsequently by Mr. Bhattacharjee on 13.3.1976. Thereafter, Mr. Bhattacharjee obtained a Diploma in Physical Education on 21.1.1981.

In Civil Rule No. 357 of 1996, the two petitioners, apart from claiming the UGC scale of pay granted to lecturers of the colleges have also asked for quashing of the memorandum dated 16.2.1996 (Annexure-20). This impugned memorandum issued by the Directorate of Youth Affairs and Sports subsequent to the earlier memorandum of 28.3.1994 whereby the officers under the Directorate of Youth Affairs and Sports have been specified as Drawing and Disbursing Officers for drawing the salaries of physical instructors functioning under the administrative control of the Directorate. However, inexplicably, no challenge is made to the notification dated 28.3.1984 whereby the Government has been pleased to order that the services of all physical instructors of various designations working under the Directorate of Higher Education and the Directorate of School Education shall stand transferred to the administrative control of the Directorate of Sports and Youth Programme with effect from 1.4.1994. It might be convenient to extract a copy of the notification dated 28.3.1994 as well as the notification dated 16.2.1996 for ready reference and accordingly these two notifications are extracted as below:

F. 1(2-25)-DSE/93(Vol. III)

Government of Tripura

Education Department

(School Education)

Dated, Agartala 28.3.1994

NOTIFICATION

The Governor, Tripura has now been pleased to order that services of all Physical Instructors of various designations working under the Directorate of Higher Education and the Directorate of School Education of this Government shall stand transferred to the administrative control of the Director of Sports and Youth Programme of this Government w.e.f. 1st April, 1994.

2. The Governor has further been pleased to order that with the transfer of the existing Physical Instructors as above -

(i) the posts held by them along with all vacant posts of Physical Instructors existing under the Directorate of Higher Education and the Directorate of School Education as well as the budgetary provisions existing for the purpose shall stand transferred to the Director of Sports and Youth Programme;

(ii) recruitment of Physical Instructors as and when required in the exigency of public service shall be made by the Director of Sports and Youth Programme and he will also act as Head of Department and Disciplinary Authority in respect of Physical Instructors under the Education Department. He will also be responsible for maintenance of seniority list, confirmation and all other allied matters of Physical Instructors;

(iii) transfer and posting of Physical Instructor whether inter-Directorate or under the same Directorate and their deputation in connection with various sports/youth programme provided that prior consultation must be made by him with, and concurrence obtained from, the Director of Higher Education or the Director of School Education, as the case may be, when Physical Instructors are required to be transferred from and to an institution under the Directorate of Higher Education or the Director of School Education or when Physical Instructors are required to be posted on recruitment to an institution under the Directorate of Higher Education or the Directorate of School Education;

(iv) while the Physical Instructors already posted in, and those who may be posted in future to, an institution under the Directorate of Higher Education or the Directorate of School Education shall continue to work under the guidance of the respective Heads of Institution under the over-all supervision of the Director of Higher Education or the Director of School Education, as the case may be, the Director of Sports and Youth Programme shall have power to supervise the functioning of the Physical Instructors posted in various schools under the Directorate of School Education and colleges under the Directorate of Higher Education subject to a formal order to be issued in this behalf by the Director of School Education or the Director of Higher Education, as the case may be; and that

(v) the Director, Sports and Youth Programme will also have power to impart training to the Physical Instructors periodically as and when required by the Government.

3. The orders contained in this Department's notification No. F. 60 (347)-DE/74 dated 26.3.1979 and Memorandum No. F.60(347)-DE/74 dated 30.3.1979 regarding recruitment, promotion and transfers of employees belonging to common category posts stand revised to the extent indicated above in respect of Physical Instructors.

4. This will take effect from 1st April, 1994. By Order of Governor etc.,

Sd/- (M. K. Debbarma)

Joint Secretary to the Government of Tripura

No. F. 1(5-2)-DSYP/89/I 9124-19433

Government of Tripura

Directorate of Youth Affairs & Sports

Establishment Section

Dated Agartala the 16.2.96

MEMO

The following Head of Office and DDOs of the Directorate of Youth Affairs & Sports will draw and disburse the salaries, etc., of the P.I.s/Coaches of the Sub-Division mentioned against each of them Sl. No. 3 below from the month of March 1996 payable on 1.4.1996, but working in various offices, schools and colleges under the

administrative control of the Directorates of School Education and Higher Education based on the working certificates from the concerned offices/schools/colleges.

Sd/-

Director Youth Affairs & Sports,
Tripura.

4. A look at the aforesaid notifications would indicate that all the physical instructors of different institutions under the Government, which would include schools as well as colleges, have been treated at par and have been posted in a common pool under the administrative control of the Director of Sports and Youth Programme, Government of Tripura. The budgetary provisions were also transferred to the aforesaid Directorate and the power of recruitments as well as disciplining have also been conferred on the Director of Sports and Youth Programme. In terms of notification dated 28.3.1994, matters such as maintenance of seniority list, confirmation and other allied matters pertaining to physical instructors have been ordered to be the responsibility of the aforesaid Directorate. It appears that the Director of Sports and Youth Programme has also been given power to supervise the functioning of physical instructors posted in various schools under the Directorate of School Education and also of physical instructors posted in colleges under the Directorate of Higher Education. But, as already noted, this vital notification dated 28.3.1994 is not under challenge in these proceedings and instead the petitioners pray for quashing of the consequential second notification dated 16.2.1996 regarding nomination of Drawing and Disbursing Officers.

Attention of this court has been drawn to the Government of India, Ministry of Education circular dated 6.9.1968 which pertains to improvement of salary scales of college and university teachers and acceptance of the recommendation of the University Grants Commission (UGC). According to the said circular, a decision of the Government of India to include the posts of Director/Instructor of Physical Education and Librarian in university and colleges, in the scheme of revision of salary scales of university and college teachers is seen. Mr. Talapatra, learned senior counsel for the petitioners has specifically drawn attention of this court to Appendix II thereon wherein it is indicated that in so far as colleges are concerned, Director/Instructor of Physical Education is recommended to be paid the UGC scale of pay at the rate of Rs. 300-25-600. On the basis of the aforesaid circular, Mr. Talapatra has urged before this court that the writ petitioners who are functioning as Physical Instructors of colleges are entitled to the benefit of UGC scale of pay, on the basis of the recommendation made by the UGC which has been accepted by the Central Government. He further submitted that the refusal of the Government of Tripura to grant the benefit of UGC pay scale to the physical instructors in view of the aforesaid recommendation made by the UGC and accepted by the Central Government is uncalled for and accordingly intervention of this court is sought for exercise of jurisdiction under Article 226 of the Constitution of India.

In furtherance of the claim made on behalf of the writ petitioner, the learned Counsel for the petitioners has also drawn attention of this court to the Code of Conduct for teachers of educational institutions in Tripura (Annexure-13) wherein in the definition of "teacher" in clause 1.2, physical instructors, inter alia, has been referred to within the definition of "teacher" given in the said Code of Conduct. Mr. Talapatra has also drawn attention to the West Bengal Education Department circular dated 28.11.1969 (Annexure-14) where it has been that "teacher" would also mean a person who imparts instruction to students in the field of physical education. Reference to Sub-clause (ii) has also been made in Clause (1), where "teacher" is also supposed to include within its meaning that a person appointed in a college on temporary and substantive basis.

Decision rendered in judgment dated 24.9.1988 by a Division Bench of this court in Civil Rule No. 50 of 1980 in Braja Gopal Chakraborty v. State of Tripura has also been cited to press forward the claim of the petitioners. In the said decision, by adopting the policy of "equal pay for equal work", the assistant teachers who came to be appointed as lecturers in degree colleges, were ordered to be paid the salary of lecturers in the college, as the lecturers who were directly appointed were being paid higher pay scale.

5. Appearing for the Government of Tripura, Mr. S. Chakraborty, learned Counsel in Civil Rule No. 135 of 1996 and Mr. P. Dutta, learned Counsel in Civil Rule No. 357 of 1996, have, on the other hand, argued that the petitioners have no right to claim the pay scale applicable for lecturers of colleges as per the UGC recommendation inasmuch as the post of "physical instructor" held by the petitioners is not the same as the post of "Director/Instructor of Physical Education" which has been referred to in the circular dated 6.9.1968 relied upon by the learned Counsel for the writ petitioners.

Mr. Dutta and Mr. Chakraborty have further contended that there is a common pool of physical instructors with a common seniority list for them maintained by the Government under the Directorate of Youth Affairs and Sports and the posting of Physical Instructors from this common pool, either in a school or a college is on the basis of exigencies of service and not with reference to the qualifications possessed by the physical instructors concerned.

The further contention made by the two learned Counsels of the State respondents is that the post of lecturer is a gazetted post under the Tripura Government and the recruitments to the said post are made by the Tripura Public Service Commission whereas the post of physical instructor is a class-III non-gazetted post and as such it would be inappropriate to concede the demand for salary, at par of the colleges lecturers also for the writ petitioners.

In order to supplement the arguments advanced on behalf of the respondents, the judgments of this court in Smt. Seuli Roy v. State of Tripura and Ors. in Civil Rule No.

119 of 1996 and Smt. Pranati Modak (Saha) v. State of Tripura and Ors. in Civil Rule No. 307 of 1998 have been cited. In Seuli Roy's case (supra) who was a physical instructor working in Women's college, Agartala and who made a claim for pay scales as per the lecturer's scale prescribed by the UGC, this court found that there is no separate recruitment rules for physical instructors in any college and that all the physical instructors are governed by common recruitment rules and that their postings are decided as per the needs of institutions at school level and colleges. This court went on to hold that Smt. Seuli Roy was appointed initially in school and although she was thereafter posted as a physical instructor in the Women's college, the said claim has to be examined from the point of view of the fact that the posting of Smt. Roy is fortuitous and from a common pool of Physical Instructors under the administrative control of the Director of Youth Affairs and Sports, from which a person could either be posted in a school or a college depending upon the exigencies of situation. The court also noted that since physical instructors constitute a common pool, there could be physical instructors who might be senior to the writ petitioner or who could be more meritorious and more qualified and merely because of exigencies of service such better qualified and senior people could be serving in schools rather than colleges and just because the petitioner Seuli Roy's services had been utilized in a college, she would not be entitled to get the benefit of higher pay scale applicable for lecturers in a college. This court also examined the qualification of Smt. Seuli Roy and held that she has not acquired the qualification prescribed for the post of Director, Physical Education and she is not a graduate in Physical Education and accordingly her claim cannot be entertained by this court. In the Seuli Roy's judgment, this court also approved the circular dated 28.3.1994 constituting a separate Directorate as a Directorate of Youth Affairs and Sports and opined that the said Directorate has been constituted for promoting the physical education including games and sports in Tripura by allotting all the physical instructors serving in various schools and colleges and other educational centres, under the administrative control of the said Directorate.

6. Insofar as the case of Smt. Pranati Modak (Saha) is concerned, where reliance has been placed on the Division Bench decision in the case of Braja Gopal Chakraborty in Civil Rule No. 50 of 1980 (supra) on the issue of "equal pay for equal work". This court after examination of the claim for pay of lecturers, found that the mode of recruitment of lecturers is entirely different and qualifications prescribed are also different from that of the physical instructors. This court also found that Smt. Pranati Modak (Saha) had not acquired the qualification prescribe by UGC for appointment to the post of Director, Physical Education as she is not a graduate in Physical Education and as such her claim for absorption in a post of lecturer is not tenable in law. The fact that, the petitioner had not challenged the circular dated 28.3.1994 transferring the services of all the physical instructors under the Directorate of Youth Affairs and Sports has also been considered to be a relevant point for denying the relief to the said petitioner.

On close scrutiny of the aforesaid judgment, this court is of the opinion that the ratio of the Braja Gopal Chakraborty's case does not help the cause of the petitioners since that was a case where this court ordered pay parity because the petitioners therein were working as lecturers in college after starting their career as school teachers. But here the physical instructors are not working as lecturers and the said decision is of no help to claim pay parity with lecturers. On the other hand the ratio of Seuli Roy and Pranati Modak (Saha) which have been cited by the respondent's lawyers are more relevant and acceptable in the facts of the present case. Like the petitioners in the two cited cases, the petitioners herein are not eligible to claim pay parity with lecturers as there are vital differences in the qualifications, mode of recruitments and other service conditions in the two posts of lecturers and physical instructors.

It would now be appropriate to examine the purport of recommendation dated 6.9.1968 on which heavy reliance has been placed by the learned Counsel for the petitioners claiming the benefit of higher pay scale for the physical instructors who are petitioners before this court. A mere glance at the said circular dated 6.9.1968 would reveal that the post referred to in the said circular is to the post of "Director/Instructor of Physical Education". The, said post obviously connotes a position at a level higher than the level of physical instructor in which the writ petitioners are serving. The writ petitioners, are not Director of Physical Education nor they are Instructor of Physical Education. They are physical instructors only. As has already been noted, in order to claim pay parity, it would be necessary for the writ petitioners to be holding the post at par with that of lecturers in colleges. However, it appears that the two posts are not at par with each other. It is seen that the post of physical instructor is a class-III non-gazetted post unlike the post of lecturer which is a gazetted post. The mode of recruitment for the two posts are also different since in case of lecturers, the recruitment is to be made through the TPSC. Further more, there are no sanctioned posts of Director/Instructor of Physical Education in colleges nor any rules have been made by the Government for governing the service conditions of Director/Instructor of Physical Education. These observations lead to an irresistible conclusion that the posts held by the writ petitioners as physical instructors are lower than the posts of Director/Instructor of Physical Education referred to in the circular dated 6.9.1968. Accordingly, the benefit of UGC pay scale available to the lecturer of Government colleges, cannot be given to the writ petitioners on the strength of the said circular dated 6.9.1968.

7. The contention advanced on behalf of the respondents to the effect that the physical instructors form a common pool from where postings of incumbents are made to a school or a college or to other institutions as per exigencies of service and the accident of posting from the common pool of physical instructors to a college, cannot give rise to a claim from the said physical instructor to be entitled to have pay parity with that of a lecturer in college is a contention, which, recording to the perception of this court, has substantial force.

The writ petitioners have not challenged the circular dated 28.3.1994 whereby all the physical instructors working in different institutions at various levels have been constituted into a common pool under the Directorate of Youth Affairs and Sports. In view of the said omission, the contention that the physical instructors posted in colleges do not enjoy a higher status than that of a physical instructor posted in a school has to be accepted and accordingly, this court is not inclined to consider the writ petitioners, if only by virtue of they being posted or functioning in college, to be in a higher category or status vis-a-vis the other physical instructors, in the common pool under the Directorate of Youth Affairs and Sports.

8. At this point, it would be relevant to refer to the two writ petitioners in Civil Rule No. 357 of 1996. Insofar as the petitioner No. 1 Mr. Nepal Adhikari is concerned, he was appointed in the Ram Thakur College by order dated 20.1.1975 when the said college was a private College and he obtained the Bachelor of Education (Physical) degree on 11.2.1984, long after his appointment to the said college as a physical instructor. Insofar as the petitioner No. 2 Mr. Santosh Bhattacharjee is concerned, he was appointed on 26.1.1976 in Belonia College as a physical instructor and only two months after his appointment, i.e., on 13.3.1976, he obtained his B.A. degree in Articles Mr. Bhattacharjee obtained his degree in B.Ed, in the year 1990 prior to which he had obtained his Diploma in Physical Education on 21.1.1981.

In the context of the notification dated 17.2.1984 which is marked as Annexure-R/2 in the counter affidavit filed in Civil Rule No. 357 of 1996, the status of the two writ petitioners can also be examined in terms of Section 10, when private colleges were taken over by virtue of the Tripura Educational Institutions (Acquisition of Right, Title and Interest) Act, 1980 that from the appointed day every person worked in a private college covered by the said Act would either become a "teacher" or "other employee" of the Government. The said Section 10 indicates that at the time of provincialisation of the private colleges, the Government also contemplated categories of employees other than the teachers of a college and as such the two writ petitioners who were directly appointed to the college unlike the petitioners in Civil Rule No. 135 of 1996, can at best claim to be in the category of other employee" and not in the category of teachers of a college. This interpretation of Section 10 would appear to be reasonable in the context of the Government decision to provincialise the private colleges in which the two writ petitioners are working.

In the counter affidavit filed on behalf of the Government of Tripura, it is stated that the matter of granting of pay parity as claimed by the writ petitioners is under consideration of the Government and this court feels that since conferment of pay parity as claimed would involve financial outflow of the Tripura Government and is a matter of Government policy and is a matter which might be within the domain of Government policy, it would not be appropriate for this court to preclude the Government to take a decision in the matter, by taking into account all the relevant considerations.

9. It is accordingly held that the writ petitioners are not entitled to claim pay parity as applicable to lecturers getting UGC scale of pay.

The challenge made to the notification dated 16.2.1996 in the Civil Rule No. 357 of 1996 cannot also be entertained inasmuch as the said notification dated 16.2.1996 is a consequential notification arising out of notification dated 28.3.1994. both of which have been extracted in the present judgment. As the writ petitioners did not choose to challenge the notification dated 28.3.1994, whereby they have been placed in a common pool of physical instructor under the Directorate of Youth Affairs and Sports, it would not be appropriate to consider their prayer for quashing of the consequential notification dated 16.2.1996 which is simply an administrative exercise for specifying the authority under the Directorate, who will draw and disburse the salaries of the physical instructors under the common pool of the Directorate of Youth Affairs and Sports.

Accordingly, these two writ petitions are without any merit and the same are dismissed. No cost.