

(2008) 12 JH CK 0065

Jharkhand High Court

Case No: None

Arbind Bhushan Dey
and Others, Suresh
Kumar Sharma and
Others and Ashok
Kumar Prajapati

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Dec. 5, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 309

Citation: (2009) 1 JCR 513

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The petitioners have filed three separate writ petition, seeking an identical relief arising out of the same cause of action and, thus, all the three writ petitions are being disposed of by this common order.

2. Common prayer in the aforesaid three writ petitions is for issuance of an appropriate writ in the nature of mandamus or any other appropriate writ, commanding upon the concerned respondents to immediately and forthwith allow them the unrevised Graduate Trained Pay Scale of Rs. 850-1360/- in the 4th Pay Scale and the subsequent replacement scales of pay in the 5th Pay Scale with effect from the respective dates on which the petitioners acquired teachers training in the light of the Government letter No. F/Wa 1-08/80 Ed. 50 dated 20.2.1981.

3. The facts, in brief, are stated as under:

Under the UNICEF Plan, Science Teachers were to be appointed in Primary Schools running up to Class-VIII as Additional Science Teachers. The then Education Commissioner, Bihar, Patna, vide its letter No. 285 dated 20.1.1979, addressed to all the District Superintendents of Education, communicated the said decision by letter dated 20.2.1981 of the Special Secretary to the Government that 2300 Units of Science Teachers were to be created in Non-Scheduled Areas. Specific condition was stipulated that even untrained Science Teachers could be appointed with a condition that they will have to proceed for training, failing which their services will stand terminated. It was also desired that untrained Teachers were to be paid stipend at the rate of Rs. 150/- per month and only on clearing the training, they will be allowed the pay scales, as admissible to the Trained Teachers with effect from the date(s), they clear the training. On 20.11.1982 the Education Commissioner, Bihar, Patna, addressed to all the District Superintendents of Education, informing the scale of pay applicable to the Teachers appointed on stipend basis. By the said letter the scales of pay of Graduate Untrained Teachers was fixed at Rs. 680-965/- and the Graduate Trained Teachers were allowed the scales of pay at Rs. 850-1360/-. Pursuant to recommendation by the Establishment Committee and selection, the petitioners were appointed under the orders of respondent No. 4 in the year, 1981 and they joined the Middle Schools and submitted their joining on different dates in different Middle Schools as Science Teachers. The writ petitioners were appointed as Untrained Science Teachers in different Middle Schools. By an office order dated 19.7.1982 the petitioners were allowed I.Sc. Untrained Pay Scale of Rs. 680-965/- with effect from 1.4.1982. The petitioners were sent for training and after completing intensive training for one year, they passed the said examination conducted by the Bihar School Examination Board and acquired the training on 1.5.1989.

4. Mr. A.K.Mehta, learned Counsel for the petitioners submit that the District Superintendent of Education prepared gradation lists of Science Teachers in the year, 1994, 1995, 1996 and 1998 but they were never finalized. The last gradation list was issued in the year, 2002. It is further submitted that as per letter No. 2277 dated 20.9.2002, issued by respondent No. 4, the total number of vacant post for B.A. Trained was 19 whereas for B.Sc. Trained was 47. The petitioners represented on 8.10.2001 that they should be allowed Graduate Trained Pay Scale and they are legally entitled for the same from the date when they acquired the qualification of training and finally they filed the present writ petitions.

5. The respondents' main submission is that as per Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 (in short ■Promotion Rules, 1993■), meant for Bihar State Owned Primary School Teachers as per Circular No. 1792 dated 8.7.1993, issued by the Secretary, Human Resources Development Department of the then undivided State of Bihar was applicable to the State of Jharkhand. It has also been submitted that petitioner No. 3 in W.P.(S) No. 1555 of 2007 was given the benefit of the pay scale of Trained Graduate Science Teacher with effect from the date of joining as per

the decision taken in the meeting of the Establishment Committee held on 14.6.2004. It has also been submitted that if the petitioners had any grievance, they could have filed their objections regarding the date of promotion before the Divisional Commissioner in accordance with the provisions laid down in Section 14 of the concerned Promotion Rules meant for the Teachers.

6. The next contention raised by Mr. Rajeev Ranjan, learned Counsel for the respondents is that the Promotion Rules, 1993 has come into effect from 1st January, 1986 and as per the definition Rule 2(2) ■Grade■ means ■Scale■. According to the respondents, Government order dated 20.2.1981 has no effect because of the Promotion Rules dated 8.7.1993, which came into effect from 1986. It is further submitted that in exercise of the power conferred under Article 309 of the Constitution, the Promotion Rules can be made applicable retrospectively and there is nothing wrong in changing the terms and condition of service extended under Govt. order 1981. Thus, the revised pay scale of Trained Graduate Science Teacher can be settled after finalization.

7. I have considered the rival submissions and the contention/ argument raised by the learned Counsel for the parties and the moot question to be decided is as to whether the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 applies to the present claim of the petitioners. The second question is as to whether it can be given a retrospective effect from 1986 taking away the accrued, vested and legal right of the petitioners. The third issue for consideration is as to whether the respondents are bound by their resolution and Government order dated 20.2.1981 more so when it has been acted upon and as to whether rule of estoppel by conduct will apply against them. The last question is as to whether the respondents are guilty of double standard and discrimination.

8. It appears that the decision of the Government in the financial year, 1981 to appoint 2300 Science Teachers in different units clearly specifies that even Untrained Teachers can be appointed on a fixed stipend of Rs. 150/- per month and unless they become Graduate Trained Teachers and clear the training, they will be paid the fixed stipend. The Government order also prescribed that they will be entitled to the pay scale at the rate of Rs. 160-175/-, as applicable to the Trained Teachers from the date on which they acquire the training. There is no dispute that the present petitioners were Untrained Graduate Science Teachers but achieved and acquired the training on respective dates and thus their claim for Trained Graduate Science Teachers pay scale and the subsequent revised pay scale is fully justified. The petitioners have also annexed documents to show that identically placed candidates along with them, who acquired the Teachers Training qualification, were extended the pay scale of Trained Teachers from the date when they acquired such qualification. Three such examples have been given. One is annexed as Annexure-10 to W.P.(S) No. 1555 of 2003 and two others are annexed with the rejoinder, wherein, it is clearly ordered by the District Superintendent of Education, Giridih, where the petitioners are also working, that he will be entitled to the Trained Graduate Teachers Pay Scale from 15.5.1989.

9. Similar issue was taken up by Patna High Court in the case of Arjun Rajak v. State of Bihar and Ors. as reported in 2000 (4) P.L.J.R. 42, wherein, the High Court held that the petitioners were entitled to the salary in Graduate Trained Scale of Pay of Rs. 850-1360/- (unrevised) from the date when they achieved the qualification.

10. Prima facie it appears to be a clear cut case of discrimination and double standard on the part of the respondents in violation of their own circular and order, issued on 20.2.1981. It is a settled law that a legal, vested and accrued right cannot be taken away retrospectively. In the instant case when the very advertisement was that the petitioners will be entitled to Graduate Science Teachers Pay Scale from the date when they achieve or acquire the qualification, based on which the petitioners acted upon and qualified for the same, the State cannot resile from its own commitment and undertaking an even otherwise rule of estoppel will apply against it. The respondents' reliance on the Bihar Taken Over Elementary School Teachers Promotion Rules, 1993 is also misplaced and misconceived. These Rules were actually meant as Promotion Rules and for implementation of the Central Pay Scale with effect from 1st January, 1986 and the same cannot apply to the present facts and circumstances of the case.

11. The argument of the learned Counsel for the State that the Promotion Rules, 1993 came into effect from 1st January, 1986 and further ■Grade■ means ■Scale■ and the petitioners were not entitled to Graduate Science Trained Pay Scale since they achieved their qualification of training only in 1989 is misconceived and unsustainable. Learned Counsel for the State has further submitted that in any case the rule will apply retrospectively since 1986. This argument is also fallacious and against the settled law.

12. In a similar case reported in (2005) 10 SCC 429 (State of U.P. v. Ram Charitra Tyagi) at paragraph Nos. 5, the Hon■ble Supreme Court held as under:

5. The contention advanced by the counsel for the State appears not to be correct. The Government accepted the Kothari Commission Report and in the proceedings issued on 24.5.1966, it is specifically stated that the moment an untrained teacher gets himself trained, he will be entitled to the scale of pay meant for a trained teacher. Para 6 of the proceedings reads as follows:

6. No increase in emoluments will be admissible to untrained teachers beyond 1.4.1968 nor will they be entitled to draw more than the initial of the pay scale now prescribed for trained teachers of the next lower qualification. But, the moment an untrained teacher gets himself trained, he will be entitled to the scale of pay meant for a trained teacher of his qualification and his pay will be fixed in the new scale in the same manner as indicated in para 3 above.

13. Finally the Hon■ble Supreme Court held while setting aside the order passed by the Hon■ble High Court that the teachers were entitled to trained graduate teachers scale of pay from 22.12.1971, which was the date on which they qualified and got trained and also

entitled to consequential benefits.

14. A Constitution Bench in [Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others](#), at paragraph 20 held as under:

20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

The aforesaid Constitution Bench judgment squarely covers the issue involved in this case.

15. Considering the aforesaid facts and circumstances of the case, these writ petitions are allowed and the respondents are directed to pay the petitioners the Graduate Trained Science Teachers Pay Scale with effect from their respective dates on which they acquired teachers training and the subsequent revised pay scale accordingly and also to pay them the arrears thereto within a period of two months from the date of receipt/production of a copy of this order. However, there will be no order as to costs.