

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21817 of 2013

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Krishna Lal Son Of Late Murlidhar Lal At and P.O. Sondhila, P.S. Buxar,
District - Buxar, Present Address Gate, Diwan Mohalla, P.O. Jhghauganj,
Patnacity, Patna - 800008

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary To The Government, Finance Department, Bihar,
Old Secretariate, Patna
3. The Director Land Records And Survey, Bihar Old Secretariate, Patna
4. The Deputy Director, Bihar Survey Office, Gulzarbagh, Patna - 800007

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Md. N. Hoda Khan, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 07-02-2023 1. Learned counsel for the petitioner is not available.

This writ petition is pending since 2013 and therefore has been
heard in his absence.

2. The petitioner by way of this writ petition claims a
pay scale of Rs. 535-765 instead of Rs. 480-680 with effect
from 01.04.1981 and 580-860 with effect from 01.06.1984 and
further pay scale of 1200-1800 instead of Rs. 975-1500 with
effect from 01.01.1986. He further prays a pay scale of Rs.
4000-6000 with effect from 01.01.1996 instead of Rs. 3050-
4590 with effect from 01.04.1997. He also claims fixation of
pay on account of first A.C.P. in the pay scale of Rs. 4000-7000



instead of Rs. 3200-4900 and further second A.C.P. in the pay scale of Rs. 5000-7000 instead of Rs. 4000-6000 and also revised retiral benefits.

3. The petitioner had earlier preferred a writ petition before this Court and this Court directed the respondents to pass a speaking order if the claim of the petitioner is found to be not admissible. The Finance Department in terms of the order passed by this Court dated 01.08.2012 in **C.W.J.C. 14436/2002 (Krishna Lala Vs. The State of Bihar & Ors.)** on 07.05.2013 rejected the claim of the petitioner. The authorities noticed that the post of an electrician falls in various departments of the State Government and the specific pay scale as allowed for electrician in the Department of Revenue and Land Reforms to which the petitioner belongs has a different pay scale from that of the Department of Agriculture.

4. The claim of the petitioner is based on the pay scale admissible to the electrician of the Department of Agriculture. It has also been noticed in the impugned order that the Pay Anomaly Committee did not make any changes and the various departments continued to disburse the salary as per the pay fixation and pay fitments allotted to the said departments for the post of electrician.



5. In rejoinder, the petitioner has claimed parity on the ground of equal pay for equal work. It has also been stated that after the 4th Pay Revision Committee, Fitment Committee for revision was formed and so far as electricians of some of the departments are concerned, they were granted similar pay as that of the Agriculture Department namely, Soil Conservation, Fisheries, Electricity Department and Tourism. It is stated that there is a case of hostile discrimination.

6. I have considered the submission, in **the State of Bihar & Ors. Vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors.** as reported in **2019 (18) SCC 301**, the Supreme court was considering the claim relating to grant of higher pay scales to teachers appointed in panchayats and it would be apposite to quote the observations of the Apex Court as under:

“96.3. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference.

96.5. Thus, normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly



interfere.

96.6. *Granting pay scales is a purely executive function and hence the court should not interfere with the same. It may have a cascading effect creating all kinds of problems for the Government and authorities.*

96.7. *Equation of posts and salary is a complex matter which should be left to an expert body.*

96.8. *Granting of pay parity by the court may result in a cascading effect and reaction which can have adverse consequences.*

103. *We, therefore, have to proceed on the following basic premise:*

103.1. *It was open to the State to have two distinct cadres, namely, that of “government teachers” and “Niyojit Teachers” with government teachers being a dying or vanishing cadre. The incidents of these two cadres could be different. The idea by itself would not be discriminatory.*

103.2. *The pay structure given to the Niyojit Teachers was definitely lower*



than what was given to government teachers but the number of government teachers was considerably lower than the number of Niyojit Teachers. As stated above, presently there are just about 66,000 government teachers in the State as against nearly 4 lakh Niyojit Teachers. There is scope for further appointment of about 1 lakh teachers which could mean that as against 5 lakh teachers the number of State Teachers would progressively be going down.

***103.3.** The parity that is claimed is by the larger group with the lesser group as stated above which itself is a dying or a vanishing cadre.*

***103.4.** The mode of recruitment of Niyojit Teachers is completely different from that of the government teachers as stated above.*

***104.** If a pay structure is normally to be evolved keeping in mind factors such as “method of recruitment” and “employer's capacity to pay” and if*



the limitations or qualifications to the applicability of the doctrine of “equal pay for equal work” admit inter alia the distinction on the ground of process of recruitment, the stand taken on behalf of the State Government is not unreasonable or irrational. Going by the facts indicated above and the statistics presented by the State Government, it was an enormous task of having the spread and reach of education in the remotest corners. Furthermore, the literacy rate of the State which was lagging far behind the national average was also a matter which required attention. The advances made by the State on these fronts are quite evident. All this was possible through rational use of resources. How best to use or utilise the resources and what emphasis be given to which factors are all policy can never be a ground if there is violation of fundamental rights of a citizen. Similarly, while construing



the provisions of the RTE Act and the Rules framed thereunder, that interpretation ought to be accepted which would make the right available under Article 21-A a reality. As the text of the Article shows the provision is essentially child-centric. There cannot be two views as regards the point that free and compulsory education ought to be quality education. However, such premise cannot lead to the further conclusion that in order to have quality education, Niyojit Teachers ought to be paid emoluments at the same level as are applicable to the State Teachers. The modalities in which expert teachers can be found, whether by giving them better scales and/or by insisting on threshold ability which could be tested through examinations such as TET Examination are for the Executive to consider.” matters and in our considered view the State had not faltered on any count. As laid down



by this Court in the decisions in Joginder Singh [State of Punjab v. Joginder Singh, 1963 Supp (2) SCR 169 : AIR 1963 SC 913] and Zabar Singh [Zabar Singh v. State of Haryana, (1972) 2 SCC 275] , the State was justified in having two different streams or cadres. The attempt in making over the process of selection to Panchayati Raj institutions and letting the cadre of State Teachers to be a dying or vanishing cadre were part of the same mechanics of achieving the spread of education. These issues were all part of an integrated policy and if by process of judicial intervention any directions are issued to make available same salaries and emoluments to Niyojit Teachers, it could create tremendous imbalance and cause great strain on budgetary resources.

105. *It is true that the budgetary constraints or financial implications can never be a ground if there is*



violation of fundamental rights of a citizen. Similarly, while construing the provisions of the RTE Act and the Rules framed thereunder, that interpretation ought to be accepted which would make the right available under Article 21-A a reality. As the text of the Article shows the provision is essentially child-centric. There cannot be two views as regards the point that free and compulsory education ought to be quality education. However, such premise cannot lead to the further conclusion that in order to have quality education, Niyojit Teachers ought to be paid emoluments at the same level as are applicable to the State Teachers. The modalities in which expert teachers can be found, whether by giving them better scales and/or by insisting on threshold ability which could be tested through examinations such as TET Examination are for the Executive to consider.”



7. Keeping in view above, this Court is of the firm view that the aspect regarding fitment and pay scale of a particular post in a particular department is in the exclusive domain of the State Government and its executive and would not lie for this Court to direct a particular pay scale to be made available for a particular post in a department.

8. The question of discrimination would also not arise as the duties assigned to an electrician in a Survey (Revenue & land) Department would not be similar to those assigned to another department namely, Agriculture. The pay scales can be different for the person who may be holding the post of similar nomenclature but in different departments governed by different set of rules.

9. The writ petition, therefore, is devoid of merits and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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