

W. P. NO. 1916 OF 2005

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

IN THE MATTER OF:
WEST BENGAL COLLEGE LIBRARIANS' ASSOCIATION & ANR.
-V-
STATE OF WEST BENGAL & ORS.

Appearance:

Ms. Lakshmi Gupta, Sr. Adv.,
Mr. Pantu Deb Roy, Adv.
...for the petitioner.

Mr. Anil Gupta, Adv.
..... for the U.G.C.

Mr. Tulsidas Maity, Adv.
...for the State.

BEFORE:

THE HON'BLE MR. JUSTICE MAHARAJ SINHA.

DATE: 07-02-2011.

The Court: - The first petitioner, West Bengal College Librarian Association (WBCLA in short) is a duly registered society and the second petitioner, Arun Kumar Ghatak is the General Secretary of the said Association.

The petitioners initiated the writ proceedings, W. P. No. 1916 of 2005 in this Court as representatives of the librarians serving in various non-government colleges, which are affiliated to different Universities in the State, primarily claiming the status of the librarians of Non-Government

Colleges as teachers and on that basis the same service conditions as that of the teaching staff of all such colleges in the State.

Before initiation of the present writ proceedings the petitioners, however, visited this Court with an earlier writ petition, W. P. No. 1569 of 2003, inter alia, claiming that the service conditions of the librarians of Non-Government Colleges in the State should be similar to the teaching staff or rather the teachers of such Non-Government Colleges and the said writ petition culminated in an order in which this Court observed (Bhaskar Bhattacharya, J.) that “whether the members of the first petitioner should be given the status of teaching staff is a question which is premature at this stage so long the service conditions are not framed”.

After making the above observations the Court was pleased to dispose of the writ petition with certain specific directions, for the sake of convenience the directions with which the writ petition was disposed of on 2 April 2006 by this Court are set out below:-

“I thus, propose to dispose of this writ application by directing the State respondents to immediately constitute a committee of experts for the purpose of framing the conditions of service of librarians. While framing such service conditions, the committee will give an opportunity of hearing to the representatives of the petitioner no.1 and also take into consideration the various recommendations already given by other committees or experts in the past and will also examine various other conditions of service prevailing any other universities in India. Over and above, the committee will also bear in mind the principle of equal pay for equal work while framing such conditions of service.

The committee should be formed within a month from today and such committee will give its recommendation to the State Government within three months from the formation of such committee. After submission of such report, the State Government will take step for implementation of the committee's report with such variation it thinks fit and proper within a further period of two months.

The writ application is disposed of with the above direction.

In the facts and circumstances, there will be, however, no order as to costs”.

It appears that after the said order the documents were submitted by the first petitioner as asked for and on 30 September 2004 the Deputy Secretary, Government of West Bengal passed an order purportedly fixing the service conditions of the librarians of Government college, librarians, assistant librarians, deputy librarians of Non-Government colleges by treating the said librarians as a separate category distinct from teaching and non-teaching employees of a college and such service conditions, needles to mention, were mentioned in the said order. The said order dated 30 September 2004 of the Deputy Secretary to the Government of West Bengal is primarily under challenge in this proceedings.

It should, however, be mentioned that in the above order of this Court dated 2 April 2006 the Court made it clear that in framing the service conditions of the librarians the other category of librarians (included). The committee which was to be constituted in terms of the said order would give an opportunity of hearing to the representatives of the

first petitioner and also take into consideration the various recommendations already given by other committees or experts in the past and examine various other conditions of service prevailing in any other Universities in India over and above the committee would also bear in mind the principle of equal pay for equal work while framing such conditions of service.

It was, however, submitted on behalf of the petitioners by their learned Senior Counsel Mr. L. K. Gupta that the committee in question gave no opportunity of hearing to the petitioners or their representatives and failed to consider some of the most vital documents in arriving at the decision regarding the framing of the service conditions of the librarians pursuant to the said order of this Court. The order impugned, it was emphasized more than once, should be termed as evasive and did not decide the issue or issues in terms of the order of this Court in the first place.

Before I proceed further it should, however, be mentioned that from a plain reading of the order in question it is extremely difficult for a reasonable man to appreciate with a reasonable and rational approach as to on what basis and upon what considerations the said order was passed. The said order was passed fixing the service conditions of the librarians in general of the Non-Government Colleges and apart from making an observation "that after careful consideration of the observation of the Hon'ble High Court and the recommendations of the expert committee, it was decided that henceforth librarians would be considered.....as a separate category", nothing else is to be seen or can be gathered from the said order as to whether the factors that were taken into account, if at all, were relevant factors and whether irrelevant considerations were excluded

and whether in framing the service conditions various recommendations already given by the other committees or experts in the past as mentioned in the earlier order of this Court were, in fact, considered and whether the committee, in fact, examined various other conditions of service prevailing in any other Universities in India and whether the committee did bear in its mind the principles of equal pay for equal work while framing such conditions of service. And above all whether the committee gave any opportunity of hearing to the representatives of the first petitioner at all as the committee was under an obligation to do under the earlier order of this Court.

The order in question, I find, is extremely sketchy and does not even mention that in framing the service conditions of the librarians the committee in question followed the mandatory directions of this Court and gave the petitioners a reasonable opportunity of hearing as the committee was obliged to do in the first place.

In other words, the order in question does not provide even the minimum information, as it should provide, as to whether all the relevant factors as mentioned in the said order of this Court were taken into account by the committee in question as directed or otherwise. From the impugned order it is impossible to ascertain whether any opportunity far from any reasonable opportunity was given by the committee to the petitioners as directed to be given by this Court or otherwise or at all before the decision as contained in the said order was arrived at for framing the service conditions of the librarians of Non-Government Colleges.

However, in challenging the above order of the Deputy Secretary the petitioners have highlighted that the librarians serving in Non-Government Colleges which are affiliated to the different Universities in other States get the same pay and have the same status as that of the teaching staff of such Non-Government Colleges. In order to substantiate this stand the petitioners have relied on different orders of the respective Governments of different States such as Delhi, Bombay, Tamil Nadu, Maharashtra and Andhra Pradesh.

The petitioners have also emphasized in the petition that the teaching status and benefits were also given to the librarians of Non-Government Colleges affiliated to other Universities in West Bengal and as an example the case of Vidyasagar University is cited.

The University Grant Commission (UGC in short), it is demonstrated by the petitioners, recognized the academic status and scale of pay of the librarians of Non-Government Colleges at par with the teaching staff of such Non-Government Colleges.

The petitioners have also relied on a letter dated 12 April 1991 of the Deputy Director, Education Department of the Government to show that the Calcutta University Syndicate on 12 March 1991 decided to grant teaching status to the librarians of Non-Government Colleges. The petitioners have also relied on the annual report (1996-97) of the Education Department to show that the Government of West Bengal, in fact, had recognized such librarians of Non-Government Colleges as teaching staff like the above documents, the annual report in question is annexed to the writ petition appearing at page 178 thereof.

Previously, it is pointed out by the petitioners, the librarians though were made eligible to receive pension, they were not given any leave encashment benefit as they were entitled to. However, it was subsequently changed and leave encashment benefit was decided to be given to the librarians by the order of the Government dated 31 September 2007. The prescribed recruitment qualifications for librarians of the Non-Government Colleges and that of the teachers are substantially the same. It is further pointed out that the Death-cum-Retirement Benefit Scheme framed by the State has deprived the librarians of Non-Government Colleges from having the status of teachers of Non-Government Colleges.

However, during the pendency of this proceedings, according to the petitioners, the disputes in question have been “narrowed down” as the Government has decided to recognize that teaching staff will include librarians in Non-Government Colleges and the supplementary affidavit which was affirmed with the leave of Court, in fact, contains certain documents or rather orders or memorandums of the Government to that effect. The documents, it has been pointed out, also show that the librarians were to receive pension on the same basis as that of the teaching staff of the Non-Government Colleges.

It is now, however, an admitted position that in view of the amendment of some sections of College Service Commission Act 1973 the selection of librarians is made through the said Commission and the necessary documents in this regard are mentioned in the supplementary affidavit.

The West Bengal College Teachers' Security of Service Act 1975 which was meant for the teachers of Non-Government Colleges only has now been extended to the librarians of Non-Government Colleges and this has been done, according to the petitioners, in recognition of the status of the librarians of Non-Government Colleges on a par with the teaching staff of such Colleges. [See the supplementary affidavit].

On the above basis, learned Senior Counsel appearing on behalf of the petitioners Mr. Gupta tried to demonstrate that every State action must be informed with reason and that such action should not be arbitrary or unreasonable. According to me the documents and materials on which the writ petition is based show and show quite clearly that the job performed by the librarians of Non-Government Colleges have already been found and recognized by different authorities in the State "as being substantially similar to those performed by the teachers of Non-Government Colleges". According to Mr. Gupta "even the Calcutta University Syndicate which is the highest statutory authority under the Calcutta University Act 1979 has recognized this position as a matter of fact". The Department of Education, Government of West Bengal has recognized this position as well.

Mr. Gupta tried to emphasize more than once that the authorities concerned, as mentioned in the petition as well as in his written notes on submission, have also recognized the above position that the status of the librarians of Non-Government Colleges and the status of the teaching staff of such Colleges are substantially similar and even though such recognition is an admitted position and apparent from the records of this proceedings the Government has not yet recognized this obvious position

totally unnecessarily without showing any reason or for no reason whatsoever.

The Government, it was submitted, in the facts and the circumstances as narrated in the writ petition and the supplementary affidavit should not delay any further to recognize in black and white that the status of the librarians of the Non-Government Colleges and the status of the teaching staff of such Colleges are practically similar. The failure on the part of the Government to do so until now is an example of arbitrary or unreasonable act or action on the part of the Government and as such contrary to the “guarantee of equality enshrined in Article 14 of the Constitution” and by this, Mr. Gupta emphasized more than once, the service careers of the librarians of Non-Government Colleges have been substantially affected and they have been substantially prejudiced by such act or action on the part of the Government.

From the above facts it is quite clear “that the entitlement of the librarians to be recognized as having the teaching status for all purposes is established by the various educational authorities themselves. However, in view of the inexplicable apathy of the Government authorities it has become necessary for this Court to give direction to them to recognize and accept the librarians of Non-Government Colleges in the State as having the similar status as that of the teaching staff of such Non-Government Colleges and as such the librarians of such Colleges are entitled to all the service benefits including terminal benefits on the same basis with effect from the same date and at the same rate as were/are given to the teachers of such colleges”, it was submitted by Mr. Gupta with great emphasis.

In support of the above, a decision of the Supreme Court in the case of State of Uttar Pradesh & Anr. –V- Uttar Pradesh Librarians & Ors. (SLPC No. 1435 of 2007) was relied on. For the sake of convenience the observations of the Supreme Court in the said Judgment on the basis of which the above submissions were made are set out below:-

“Purpose of Article 39(d) of the Constitution is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work, in matters relating to pay. If two classes of employees perform identical or similar duties and carry out similar functions with the same measure of responsibilities having almost same academic qualifications and method of selection they would be entitled to equal pay. If one set of employees is denied parity though the relevant considerations are same, the action of the State Government would be violative of Articles 14 and 16 and the Court in that situation has ample power to strike down the discrimination and grant relief to the aggrieved employees”.

In that case the librarians of some colleges in the State of Uttar Pradesh were seeking the same status as that of the teachers of such colleges and in dealing with such question the Supreme Court also made the following observations:-

“Taking the holistic view of the matter, we are of the considered view that members of the petitioners’ association and other petitioners are also entitled for ancillary benefit of UGC, like Career Advancement Scheme and other benefits as has been provided to Teachers and Directors of Physical Education (now designated as Lecturer in Physical Education) from the date they were given UGC pay scale.....”

A copy of the judgment of the Supreme Court, still unreported (?), is annexed to the written notes of submission prepared and filed on behalf of the petitioners.

What was emphasized most by Mr. Gupta in support of the case of the writ petitioners for obtaining similar service status as that of the teaching staff of Non-Government Colleges was that since the Government had already sanctioned the scale fixed by University Grant Commission (UGC in short) for the librarians of Non-Government Colleges in the State of West Bengal with effect from April 1966 and furthermore when the Calcutta University Syndicate had passed the resolution to the effect by which the Syndicate decided to grant the teaching status of the librarians of the Non-Government Colleges, as aforesaid, the petitioners are now entitled to specific and mandatory orders or directions, as prayed for, in the writ petition and in support of this contention the above decision of the Supreme Court in Uttar Pradesh Librarians (Supra) was strongly relied on.

At this stage it should, however, be mentioned that in deciding earlier writ proceedings of the petitioners Bhaskar Bhattacharya, J. acknowledged as submitted before him on behalf of the petitioners that the definition of "librarian" as provided in Sub-Section 13 of Section 2 of the Calcutta University Act 1979 did neither fit with the expression 'teaching staff' nor the same was identical to the definition of non-teaching staff. The Hon'ble Judge also acknowledged that in the Calcutta University 1st Statutes there were (are) provisions for service conditions of teaching as well as non-teaching staff but that there was no service condition of the librarians and on that basis it was observed by the Court that since the librarians were

recognized as a “class by themselves, there should be a separate service condition for the librarians as the service condition prescribed for teachers or for non-teaching staff cannot be applicable to them. It is, therefore, clear that the State respondents have discriminated the members of the petitioner no.1 by not codifying the conditions of service”.

On a plain reading of the above judgment of this Court pronounced on the earlier writ proceedings of the writ petitioners it is clear that this Court was of the firm opinion that there should be a separate service conditions for the librarians of Non-Government Colleges as they did not have any such service conditions for them at all unlike the teaching and non-teaching staff of such Colleges and that is why the Court gave the mandatory direction for forming a committee of experts for framing service conditions of the librarians as aforesaid.

The Court in saying that the service conditions for the teaching and non-teaching staff of the Non-Government Colleges could not be applicable to the librarians did not by any means say or mean that the librarians of the Non-Government Colleges are not entitled to have the similar or same service conditions for them as that of the teaching staff of such Colleges. What it really meant was that the service conditions as framed for the teaching staff of Non-Government Colleges could not apply to the librarians because those conditions were meant for the teaching staff of the Non-Government Colleges and not for the librarians. The Court did by that expression make it clear that the librarians should have their own service conditions and that service conditions the librarians of Non-Government Colleges were entitled to simply by virtue of their position as employees of Non-Government Colleges.

In the present case, it has been demonstrated by Mr. Gupta on behalf of the petitioners that the librarians of Non-Government Colleges in the facts and circumstances of the case are entitled to the similar service conditions as that of the teaching staff of such colleges and in support of such submission he has relied on the facts of this case as well as the decided authorities and most importantly that the librarians of Non-Government Colleges of the other States have by now the same or similar service conditions as that of the teaching staff of such colleges which are affiliated to different universities of such States.

The resolution of the Calcutta University Syndicate, no doubt, suggests and suggests quite clearly that there is no and should not be any difficulty in framing the same or similar service conditions for the librarians as enjoyed by the teaching staff of Non-Government Colleges.

I have already said above that the order under challenge does not even contain the minimum information as to why the librarians cannot have the similar service conditions as that of the teaching staff of the Non-Government Colleges. The order mainly says that this Court said earlier that the service conditions of the teaching staff of Non-Government Colleges could not apply to the librarians.

This, in my opinion, was a misinterpretation of the judgement and order pronounced by this Court on the earlier writ proceedings of the petitioners. As I have tried to clarify that what the Court really meant by that expression that the service conditions for the teaching staff “cannot be applicable to” to the librarians was that the service conditions already

made for the teaching staff of Non-Government Colleges could not be made applicable to the librarians because it was meant for the teaching staff and the teaching staff of Non-Government Colleges alone. But that by no stretch of imagination meant or means that the librarians of Non-Government Colleges cannot have similar if not identical service conditions of the teaching staff of Non-Government Colleges for themselves in the first place.

In framing the service conditions for the librarians pursuant to the earlier judgement of this Court the people in authority or the men in power exercised their authority extremely mechanically without even attempting to appreciate the spirit of the judgement or rather what the Court really intended which was reflected in the mandatory directions of the Court passed in the earlier proceedings. The authority or the men in power framed a service conditions for the librarians just for the sake of complying with the earlier directions of this Court somehow. It was, in my opinion, merely a face saving operation. I repeat that a reasonable man would find it extremely difficult to appreciate as to on what basis and on what considerations the service conditions of the librarians were framed by the committee as it did in the facts and circumstances of the case with any reasonable and rational approach.

However, having considered the case as made out in the writ petition, the earlier judgement of this Court dated 2 April 2006, all the relevant documents relied on by the petitioners, the impugned order as contained in the memorandum dated 30 September 2004, the submissions made on behalf of the petitioners and the affidavit affirmed by the University Grant Commission and taking into account all relevant considerations and the

decided authorities as relied on by the petitioners on the subject as mentioned above, I think the petitioners are entitled to the relief as claimed by them in this writ petition.

Thus there will be an order in terms of prayers (a), (b), (c) & (d) of the writ petition. It is also made clear that the librarians of Non-Government Colleges will be entitled to the similar or if not identical leave rules as framed for the teachers of such colleges including leave encashment, leave accommodation benefits with effect from the date from when such rule is framed, namely within four weeks from the date of communication of this order.

It is made clear that the order passed herein is to be implemented positively within a period of eight weeks from the date of pronouncement of the judgement.

However, having regard to the facts of the case there will be no order as to costs.

Urgent Xerox certified copy of this judgement, if applied for, be given expeditiously.

(MAHARAJ SINHA, J.)