

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

D.B. Civil Writ Petition (PIL) No.8193/2014

Suo Moto
V.
Principal Secretary, Education Department, Jaipur

Date of Order :: 11th September, 2015

P R E S E N T

HON'BLE MR. JUSTICE GOVIND MATHUR
HON'BLE MISS JUSTICE JAISHREE THAKUR

Mr. B.S.Sandhu, Amicus Curiae.

Mr. S.P.Sharma]
Mr. B.P.Mathur] for the applicants

Ms. Shobha with
Ms. Juhi Mathur]
Mr. Sanjeet Purohit] for the respondents.
Mr. Rajat Arora]

Mr. Sajjan Singh Rathore, assisting counsel to
Dr. P.S.Bhati, Additional Advocate General, for the State.

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BY THE COURT : (PER HON'BLE MATHUR,J.)

A Division Bench of this Court by order dated 22.9.2014, while dismissing three contempt petitions, called upon the Principal Secretary, Department of Education to submit a reply regarding salary and other allowances which are being paid to teachers in private schools in the State of Rajasthan. The Principal Secretary was also directed to provide the details with regard to

government interventions in the matters relating to grant of salary and other allowances to the teachers working with private schools and the body, if any, examining such matters for the welfare of teachers. While calling upon the Principal Secretary, the Court also noticed that the salary paid to the teachers teaching in private institutions in the State of Rajasthan is much below the living wage which is paid to skilled employees in metropolitan towns. Such low wages prima facie amounts to exploitation which is violative of Article 23 of the Constitution of India. The Court directed the Registry to continue the proceedings as a litigation in public interest.

In response to the notice to the Principal Secretary, an affidavit is filed by the competent officer of the Government of Rajasthan stating as under:-

“2. That in response to the aforesaid issues it is submitted that there is no such guidelines or orders of the State Government prescribing any pay scale to the teacher of the Non Aided Educational Institutions.

3. That there is no such provision provided in the Rajasthan Non Aided Education Institution Act 1989. That the only provision is Section 29(2) whereby it is provided that the recognized institution should pay the salary of the month by 15th or prior to 15th of the next month after making necessary deduction. That as per Section 30 the District Education Officer is authorized to inspect regarding payment of salary.

4. That as per Section 23(3) of the Right to Free and Compulsory Education Act 2009 there is provision of prescribing service conditions and

salary of the teachers of the private institutions.

5. That in the State of Rajasthan there is no such policy governing the prescription of any pay scale for the teachers of private schools.

6. That the only law governing the field of minimum wages is the minimum wages prescribed under the Minimum Wages Act 1948. While exercising the powers under Section 5 of the Act of 1948 the State of Rajasthan issued notification dated 28.01.2015 prescribing new rates of minimum wages to be paid to the employees.

7. That there is no such proposal pending regarding prescription of any pay scale to the teachers of the private schools.”

The writ petition came up for orders before the Court on 23.1.2015 on an application preferred by the association for unaided private schools of Rajasthan to join writ proceedings. The application was accepted in part and the applicant was allowed to participate in writ proceedings as intervenor. Several other applications were also filed on behalf of the teachers working with non-aided educational institutions as teacher to join the writ proceedings but those came to be dismissed on 25.3.2015 with observations that learned Amicus Curiae appointed under order dated 19.2.2015 is already taking necessary care of the rights of such applicants.

Learned Amicus Curiae urged that the response given by the State Government is not only vague but disappointing too. He asserted that the teachers working

with non-aided recognised institutions are discharging same duties as discharged by the teachers employed in government schools and government aided educational institutions, therefore, a legislation is highly needed prescribing pay scales for the teachers working in non-aided recognised institutions and those should be equivalent to the pay scales and other monetary benefits allowed to the teachers working with government institutions and non-aided government institutions.

Learned counsel appearing on behalf of the society for unaided private schools of Rajasthan, while supporting the stand of the State of Rajasthan, urged that the non-aided institutions are involved in imparting education at different stations in the State of Rajasthan and at every station the standard of educational institutions, kind of teaching, availability of the infrastructure and other co-curricular activities is different, as such the fee charged from the students is also having huge difference and no parity as desired for grant of pay scales and other monetary benefits can be maintained. It is also stated that if any compulsion is made for payment of wages to the teachers working in private non-aided schools at par with government schools, then such schools shall be having no option but to close down their operation.

By placing reliance upon several judgments of Hon'ble Apex Court learned counsel for the association for unaided private schools of Rajasthan submits that no direction can be given by this Court to the State to

legislate enactment for making payment of wages to the teachers or other staff working with the non-aided educational institutions. According to learned counsel such directions shall be nothing but an encroachment to the authority which is available to the legislature. She has also placed reliance upon two judgments of this Court wherein after examining the entire scheme of the Rajasthan Non Government Educational Institutions Act, 1989 and the Rules framed thereunder, this Court held that the aided recognised institutions and recognised institutions are two different connotations and both stand on different pedestal. The recognised institutions which are not receiving aid stands on different footing than the recognised institutions receiving aid.

In the case of Adarsh Vidya Mandir Samiti, Bharatpur & Anr. v. Raju Lal & Ors., reported in 2014(2) RLW 1753 (Raj.), a Division Bench of this Court examined the scheme of the Act of 1989 and the Rules framed thereunder in light of the various judgments of Hon'ble Supreme Court and held as under:-

“18. The Apex Court in Govt. of A.P. v. B. Satyanarayana Rao (2000) II LLJ 5455 SC has observed as follows:

“The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue”.

19. In view of principles laid down and after we have examined the Scheme of the Act 1989 and Rule 1993 as indicated above certainly the decision of the Division Bench was given in ignorance of relevant statute and the view expressed by the Division Bench of this Court stands per incuriam and may not be of any assistance to the respondent employee.

20. The Apex Court in its judgment reported in Sushmita Basu & Others referred to supra observed that the private schools cannot be compelled to pay salary to the teachers equal to the government school teachers for want of any rules and after the Scheme of Act 1989 and Rules 1993 framed thereunder as have been examined in its terms we do not find that there is any provision which mandates the scale of pay & allowances of recognized unaided institution has to be in parity to the employees of govt. institution and it will be appropriate to quote extract of judgment ad infra:

“3. It was mainly complaining about the refusal of the management to implement the recommendations of the Third Pay Commission with effect from 1.1.1988 retrospectively, that the teachers went to court. We asked learned Senior Counsel for the appellants as to whether there was any Act, statutory rule or even Government Order directing private unaided educational institutions to implement the recommendations of the Third Pay Commission especially in the context of the fact that the salaries and emoluments of teachers of private unaided institutions was not a subject matter of reference to the Third Pay Commission. Learned Counsel fairly submitted that there was no statutory provision, Rule or binding Order, but referred to the decision of this Court in Frank Anthony Public School Employees'

Association v. Union of India and Ors. [1987]1 SCR 238 and submitted that the principle recognized therein should be applied to teachers like the appellants as well. Learned Counsel conceded that there was no provision corresponding to Section 10 of the Delhi School Education Act, 1973 in the Bengal Act. But the submission was that the appellants were approved teachers and they were also doing the same work as teachers of government schools and aided schools and in the circumstances 'equal pay for equal work' principle could be directed to be implemented and in that context the appellants could be granted relief. This was met by learned Senior Counsel appearing for the respondents by pointing out that the institution had not only implemented the recommendations of the Third Pay Commission but has also implemented the recommendations of the Fourth and Fifth Pay Commissions, though it was not bound to do so and there could be no grievance that teachers are being paid salaries that are not comparable with that of the teachers of government schools and aided schools. With reference to the pleadings, it was pointed out by the learned Senior Counsel that the teachers of the first respondent Institution, in fact, were enjoying some additional benefits which are not available to teachers of government institutions and aided institutions. It was also pointed out that out of the very many teachers in the school, only three of them, the appellants before us, have refused to enter into an agreement with the First Respondent and as observed by this Court in Reserve Bank of India and Ors. v. C.N. Sahasranaman and Ors. (1986)II LLJ 316 SC, the fact that a few are not satisfied, is no ground for

interference by court or for grant of relief in their favour when by and large the position adopted by the institution is found to be fair and just and is accepted by all other teachers. We find considerable merit in the submissions on behalf of the respondents. In the absence of a statutory provision, we are not in a position to agree with learned Counsel for the appellants that interference by the High Court under Article 226 of the Constitution 19 is warranted in this case. We find on the whole that there has been just treatment of the teachers by the first respondent. Institution and there is no reason to interfere even on the ground that the appellants are being treated unfairly by their employer, the educational institution, or on the basis that this is a case in which the conscience of the court is shocked, compelling it to enter the arena to afford relief to the teachers.

4. In this context, we must also notice that the writ Petition in the High Court is filed for the issue of a writ of mandamus directing a private educational institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by learned Counsel for the appellants, namely, K. Krishnamacharyulu and Ors. v. Shri Venkateswara Hindu College of Engineering and Anr. [1997]2 SCR 368 shows that interference under Article 226 of the Constitution of India to issue a writ of mandamus by the court against a private educational institution like the first respondent herein, would be justified only if a public law element is involved and if it is only a private law remedy no writ

Petition would lie. We think that even going by the ratio of that decision, a writ of mandamus could not have been issued to the first respondent in this case.

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average income. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice”

21. However, Hon'ble Apex Court in its latter judgment reported in 2011 (4) SCT 1 Satimbla

Sharma and Ors. Vs. St. Paul Sr. Secondary School & Ors. taking note of Sushmita Basu observed that no mandamus can be issued to the respondents regarding scale of pay & allowances on the ground that the conditions of affiliation/recognition of schools has not been carried out and observed ad infra:

13. We cannot also issue a mandamus to Respondent Nos. 1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 that the scales of pay of school teachers belonging to the same category but working under different managements such as government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court”.

22. In the instant Scheme of Rule 1993 Schedule 2 on which emphasis was made by the counsel for respondent appended to R.5(1) of the Rules Para 14 suffice it to say that the State Government has highlighted for making payment of scale of pay & allowances for recognized institution as per rules of the state govt. but as noticed there

are no rules to this effect framed by the state government so far prescribing scale of pay & allowances for employees of unaided educational institution and what being urged by counsel for respondent if still has been violated it may be within the institution and the state government but employee of unaided institution cannot seek mandamus regarding scale of pay & allowances equal to and in parity to the employees of government institution more so when the legislature has confined as regards scale of pay & allowances of employees of the aided institution similar to the employees of govt. institution but we make it further clear that for other purpose as regards recruitment, recognition, condition of service, leave, accounts & audit, conduct & discipline, constitution of managing committee etc. the legislature in its wisdom has put its control over the recognized institutions irrespective of the fact whether the institution is aided or unaided but in the instant matter scale of pay & allowances is the subject matter in our considered view under the Scheme of Act 1989 & Rules 1993 it is confined to the employees of non govt. aided institution and not for the employees of non government recognized unaided institutions.”

A Single Bench of this Court [to which one among us (Justice Govind Mathur) was a member] in *Guru Nanak Education Society, Udaipur & Anr. v. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors.*, reported in 2008 SCC OnLine Raj 168 : (2008) 7 SLR 157, examined provisions of the Act of 1989 and held as under:-

“6. To determine the answer to the question posed, this Court is required to examine the

scheme propagated under the Act of 1989 and the Rules framed thereunder. In State of Rajasthan also, as elsewhere in the country, three types of educational institutions are in operation and those are (1)run by the government or its own wings and are absolutely funded by the government; (2)the institutions under the private management but are getting financial aid by the government; and (3)the institutions run by the private management without any aid of the government but, are having recognition from the government.

7. The employees of the first category of the institutions are governed by the Rules/Policies enacted by the government and they are under absolute administrative control of the government. The employees of the aided institutions are though under the administrative control of the private management but their service conditions are regulated by the government. The employees of the third category of the institutions are under the control of the private management and the interference of the government is minimum.

8. As per the applicants and as accepted by the Tribunal, the employees of the second and third set of institutions, after promulgation of the Act of 1989 and the Rules of 1993 form one class and all these employees must be treated at par so far as their service conditions are concerned. According to counsel for the applicants no disparity in service conditions among the employees of the aided institutions and the recognised institutions is permissible under the Act of 1989 and if any discrimination exists, then i.e. in violation of Article 14 of the Constitution of India.

9. Under the Act of 1989 the terms "aided institution" and "recognised institution" are defined as follows:-

"Aided Institution" means a recognised institution which is receiving aid in the form of maintenance grant from the State Government."

"Recognised Institution" means a Non-Government Educational Institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf."

10. As per the definitions above, every aided institution is necessarily a recognised institution, but every recognised institution is not necessarily an aided institution. Grant of financial aid makes an apparent distinction among the aided recognised institutions and the non-aided recognised institutions. The legislature under the Act of 1989 has quite consciously taken note of this classification among the recognised institutions.

11. As per Section 16(1) of the Act of 1989 "the State Government may regulate the recruitment and conditions of service, including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline, of persons appointed as employees of aided institutions in the State". Section 16(2) of the Act of 1989 provides that "every recognised institution shall constitute a provident fund for the benefit of its employees in such manner and subject to such conditions as may be prescribed and contribute to

such fund and pay interest on the deposited amount at such rate as may be prescribed from time to time”.

12. Under Section 16 of the Act of 1989 itself a clear distinction is made between the aided institutions and the recognised institutions. A power is given to the State Government to regulate the recruitment and other conditions of service relating to aided institutions, whereas for all recognised institutions the embargo is to constitute a provident fund for the benefit of the employees.

13. It is true that under the Act of 1989, vast powers are given to the State Government to supervise all recognised educational institutions, but the nature and intensity of the control for “aided recognised institutes” and non-aided recognised institutes”, is quite different and that can be noticed apparently. A need of objective and fair recruitment in all recognised institutions is emphasised under Section 17 of the Act of 1989. As per the provisions of Section 18 of the Act of 1989, certain checks are given for removal, dismissal or reduction in rank for the employees of a recognised institution. Similarly, with a view to maintain discipline, as per Section 28 of the Act of 1989 “every employee of a recognised institution shall be governed by the code of conduct as may be prescribed and on the violation by him of any provision of such code of conduct, the employee shall be liable to a disciplinary action”. Section 30 of the Act of 1989 empowers the District Education Officer or any other officer of the Education Department not below the rank of the District Education Officer to inspect any recognised institution or call for such information or records from its management with regard to payment of salaries to the employees.

14. Except the Section 16 of the Act of 1989, all the provisions referred above relate to the recognised institutions. These provisions provide certain supervisory powers to the government relating to all recognised institutions, but do not clothe the government with a power to interfere with a day to day administration and the management of the recognised educational institutions. The powers referred above are just to protect the employees of recognised institutions from arbitrary actions of the management and also to ensure better organisation and development of education through the non-government educational institutions.

15. The aided recognised institutions have quite deep administrative control by the State Government. The power to prescribe service conditions for the employees of aided institutions is with State Government. As per provisions of Section 31 of the Act of 1989, the management of an aided institution is required to disburse the salaries of its employees by account payee cheques and on being failed to pay the salary of its employees, the Director of Education or any other authorised officer is having a right to deduct such salary from the amount payable from the next grand-in-aid. A power is also available to the government authorities to make payment of salary directly to the staff on behalf of the management.

16. The availability of all these powers establishes it well that the legislature made a clear distinction among the aided recognised institutions and non-aided recognised institutions. The aided institutions are having deep and pervasive administrative and financial control by the government, whereas the non-aided recognised institutions are only under

supervisory control of the government. Such a distinction is made in view of the fact that the aided institutions are receiving grant from the public money and to ensure optimum use of that, much more control is desirable. The power under section 16 of the Act of 1989, therefore, is given to the State Government to prescribe service conditions to staff of aided institutes only. Those could not be made applicable for the institutes not receiving aid. The classification of the aided institutions and the non-aided institutions is quite reasonable. In no way it can be said discriminatory or arbitrary. The employees of the aided recognised institutions and non-aided recognised institutions form two separate classes and, therefore, the Tribunal erred while applying the provisions of Rule 45 of the Rules of 1993 upon the applicants who are in service of a non-aided recognised institution.

17. It is also urged on behalf of the applicants that the recognition was given to the petitioner institute subject to the compliance of the Act of 1989 and the Rules of 1993, therefore, the Rules of 1993 should be made applicable in totality.

18. I do not find any substance in the contention advanced. The recognition is given subject to the compliance of the Rules and not for something i.e. not prescribed in the enactment itself. The power to prescribe age of superannuation is available to the State Government only for the employees of the aided institutions and not for non-aided recognised institution.”

On examination of the Act of 1989 and the Rules framed thereunder, as considered and interpreted in the case of Adarsh Vidya Mandir Samiti (supra) and Guru Nanak Education Society (supra), we are having no doubt that as

per the Act of 1989, there is no mandate of legislature for making payment of wages to the teachers working with non-aided recognised institutions at par to the teachers working with government schools or with non-aided government institutions . The reply given on behalf of the respondent too is quite clear in this regard.

True it is, the teachers working with the non-aided recognised institutions deserve adequate pay and other perquisites, but while exercising powers under Article 226 of the Constitution of India we do not consider it appropriate to issue any writ to the State legislature to legislate provisions in this regard.

Accordingly, the notice issued is discharged and no writ is issued to the respondent State for the cause considered. The writ petition stands disposed of accordingly. At this juncture we deem it appropriate to clear that discharging the notice shall in no manner be treated as an impediment or mandate of the Court for not providing adequate wages, other monetary benefits and perquisites to the teachers and other staff working with non-aided recognised educational institutions, if the legislature desires to have an enactment in this regard or the executive desires to provide that through executive institutions.

(JAISHREE THAKUR),J.

(GOVIND MATHUR),J.