
Before N.K. Agrawal, J

HARYANA STATE ADHYAPAK SANGH & OTHERS,—*Petitioners*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. 7945 of 1997

9th December, 1999

Constitution of India, 1950—Art. 226—Haryana Aided Schools (Security of Service) Act, 1971—Parity in allowances and benefit—Petitioners teaching in privately managed aided schools—Party sought in matters of all benefits as given to Government school teachers—Plea upheld—Petitioners entitled to allowances and other retiral benefits—Directions issued to respondents to frame scheme for other remaining allowances like medical, bonus, leave encashment etc.

Held, that the petitioners have a justifiable case in their favour while seeking parity in respect of remaining allowances and the retiral benefits. The petitioners are entitled to parity in respect of other allowances and other retiral benefits also. The matter has already been examined by the Supreme Court and a scheme was required to be formulated by the State Government in consultation with the managements of the privately managed schools. It appears that the State Government has done little in this direction.

(Para 21 and 23)

Further held, that the writ petition is allowed with a direction to the respondents to prepare a scheme with regard to the remaining other allowances like medical allowances, bonus, leave travel concession and the retiral benefits like leave encashment etc. Respondents No. 4 to 12 (managements of the aided schools) shall prepare a scheme afresh regarding parity in respect of the aforesaid allowances and benefits which are admissible to the teachers of Government schools but are not paid to the teachers of aided schools.

(Para 24)

Pankaj Kalra, Advocate T. Mahipal and V.P. Malik, Advocate with him *for the petitioner.*

Nitin Kumar, Advocate, *for the State of Haryana.*

JUDGMENT

N.K. Agrawal, J.

(1) This is a petition by the Association of teachers and 10 teachers under Article 226 of the Constitution, seeking a direction to the State of Haryana and its officers as well as the privately managed aided schools (for short, "aided schools") to grant the same allowances and retiral benefits to the petitioners as are given to the teachers of the Government schools. Some of the petitioners have retired from service and some are still serving. They want complete parity in matters of all the benefits of service.

(2) The petitioners case is that even after full time regular service against permanent posts sanctioned by the State Government, they are not being given the same allowances, pension and other retiral benefits as are admissible to the teachers of Government schools. Denial of such benefits is arbitrary and discriminatory. It has been pleaded that the teachers of aided schools and those of Government schools perform identical functions. Both are equally qualified. Performance of aided schools has often been found better.

(3) The matter was examined by the Supreme Court in *Haryana State Adhyapak Sangh and others, vs. State of Haryana and others* (1). Their Lordships of the Supreme Court gave direction that the teachers of aided schools must be given the same pay scale and dearness allowance as are admissible to the teachers of Government schools. So far as other allowances are concerned. Their Lordships asked the State Government to take up the matter with the managements of the aided schools and thereafter to formulate a scheme relating to parity.

(4) The State Government did not proceed any further with regard to the formulation of the scheme. The matter, therefore, again came up before the Supreme Court in *Haryana State Adhyapak Sangh and others vs. State of Haryana* (2). Certain further directions were given with regard to the implementation of the judgement of the Supreme Court dated 28th July, 1988 so far as the payment of arrears of pay and additional dearness allowance was concerned. Since no scheme had been framed by the State Government, the following direction was given in para 11 of the judgement dated 21st February, 1990 :—

"In view of the direction given by this Court in the judgement dated 28th July, 1988 that the respondents should evolve a scheme to bring about parity between the teachers of aided

(1) 1988 (4) Supreme Court Cases 571

(2) 1990 (Supp) Supreme Court Cases 306

schools and teachers of government schools having regard to the different allowances claimed by the petitioners, it is necessary that the respondents should pursue the matter with the managements of the aided schools and a suitable scheme should be evolved at an early date.”

(5) The State Government did not proceed any further in the direction of the preparation of the scheme. Their Lordships of the Supreme Court,—*vide* order dated 13th July, 1990 in Civil Appeal No. 2366 of 1989 passed the following order :—

“The scheme to be prepared by the State as indicated in the order dated 21st February, 1990 shall be furnished by 31st December, 1990.”

(6) The State Government did not move an inch and the teachers of the aided schools again raised the matter before the Supreme Court. The following order was passed by their Lordships of the Supreme Court on 4th April, 1991 in Civil Appeal No. 2366 of 1989 :—

“By our order of 13th July, 1990, we had allowed time till 31st December, 1990, for the State of Haryana to frame a scheme and furnish the same. The State has again applied for extension of six months for complying with the directions. The prayer is seriously opposed by counsel for the appellants.

Having heard counsel and taking note of the prevailing political situation in the State, we allow a final extension till 30th June, 1991, in terms of the prayer. In case there is a default of compliance, it shall be assumed that the State of Haryana is not implementing the Court’s order.”

(7) A contempt petition (No. 206 of 1991) was filed by the teachers before the Supreme Court stating therein that the State Government had not complied with the order of the Supreme Court. Their Lordships of the Supreme Court held that the teachers of the aided schools are entitled to their claim on three heads, namely, city compensatory allowance, house rent allowance and gratuity. Payment was required to be made within two years of the entire amount in four equal half yearly instalments. Following observations were further made with regard to pension and other allowances,—*vide* order dated 22nd October, 1991 :—

“Whether pension and the other allownances which have not paid are payable for the future period are left open.”

(8) The teachers of aided schools once again went to the Supreme Court in Writ Petition (Civil No. 578 of 1994). The following order was

passed by their Lordships on 3rd October, 1994 :—

“The writ petition is dismissed but the dismissal will not pre-clude the petitioners from approaching the High Court.”

(9) The present writ petition has been filed in pursuance of the above observation made by their Lordships of the Supreme Court.

(10) Learned counsel for the petitioner has argued that the petitioners now want this Court to adjudicate upon those issues which have been specifically left open by the Supreme Court. Those issues pertain to disparity in other allowances such as medical allowance, leave travel concession, bonus and the retiral benefits. It is pointed out by the learned counsel that the State Government has, in the month of May 1998, approved the scheme with regard to the payment of pension to the teachers of aided schools. However, other retiral benefits like leave encashment have not been allowed.

(11) The petitioners case is that the Kothari Commission constituted by the Central Government had examined the question of parity and had recommended that remuneration of the teachers working under different managements should be the same as is admissible to the teachers of Government schools. The Commission specifically recommended that the pay scales of school teachers pertaining to the same category but working under different managements such as Government, Local Bodies or private organisations should be the same. The State of Haryana decided to revise the grade of the teachers of the aided schools on the pattern of the grade of the teachers working in Government schools on the recommendation of the Kothari Commission and in pursuance of the direction by the Supreme Court. The State Government decided to meet the increased expenditure and sanctioned grant to the non-Government privately managed schools on account of revision of the pay scales. It is pointed out that the State Government gives other grants, namely, maintenance grant, Harijan grant, development grant etc. to the aided schools under Haryana Education Code. The State Government has the over-all control on all the activities of the aided schools. The Strength of the teachers and other staff is fixed by the management with the approval of the Government. Qualifications and other conditions of service are also prescribed by the State Government. The aided schools are always open for inspection by the authorities of the State Government. The aided schools received grant to the extent of 95%. It is, therefore, argued that the teachers of aided schools are entitled to parity in all respects. They as well as the teachers of the Government schools perform identical duties and functions. They have been placed in the same pay scales on the principle

of parity. Teachers of the aided schools cannot, therefore, be discriminated in matters of the remaining allowances and the retiral benefits. The Association of teachers of aided schools has taken up the matter with the State Government from time to time but the Government has always been apathetic in accepting complete parity. No final decision has yet been taken by the State Government, though the scheme of parity has been approved in principle. The State Government has shelved the scheme and has not implemented parity in all respects. Despite repeated representations, the State Government has not taken any decision regarding the remaining allowances, namely, medical allowance, bonus, leave travel concession, leave encashment etc. It is also stated that the teachers of the aided schools have not been granted the standard pay scale and the additional increments on completion of 10 and 20 years of service as admissible to the teachers of Government schools. They have also been denied higher pay scale on the basis of higher qualification.

(12) The Haryana Aided Schools (Security of Service) Act, 1971, aims at providing a uniform Code of service rules for the employees of the aided schools. It is also stated by the petitioners that the teachers of aided schools in the State of Punjab have been granted benefit of pension as admissible to the teachers of Government schools. The petitioners are, therefore, entitled to complete parity. Since the scheme of pension has now been approved by the State Government, the question which now remains open relates to the remaining benefits. Their Lordships of the Supreme Court had left open these matters,— *vide* their order 22nd October, 1991. A period of 8 years has passed. The State Government has approved the scheme relating to pension in May 1998. Nothing has been said about the other allowances and retiral benefits.

(13) The learned counsel for the petitioners has, therefore, argued that this Court must give a clear direction to the State Government to implement the order of the Supreme Court in letter and spirit with regard to the parity in all allowances.

(14) Respondents No. 1 to 3 (State Government and its officers) have, in their reply, stated that the petitioners, being the teachers of aided schools, are not employees of the State Government. They are employees of privately managed schools. They can, therefore, demand any benefit from their employers only. The State Government only gives grant to the managements of the aided schools. Matters relating to medical reimbursement, leave travel concession, bonus, leave encashment etc, are the matters within the control of the management of privately managed schools. Incentives by way of additional

increments on completion of 10 and 20 years of service are also to be given by the managements of the privately managed schools. These increments are part of the promotion scheme. It is, therefore, the responsibility of the employer to provide for promotional avenues to its employees.

(15) Learned counsel for the respondents has submitted that a High Powered Committee was constituted by the State Government to take a decision with regard to the parity in other allowances. It was decided that the managements of privately managed schools may be asked to take a final decision. The benefit of parity in the pay scale and dearness allowance has already been given to the teachers of aided schools. Further, there is parity in H.R.A., C.C.A. and gratuity also. Decision to grant pension to the teachers of aided schools has also been taken by the State Government. Thus, parity has been implemented to the extent it is possible within the resources of the State Government.

(16) Learned counsel for the petitioner has argued that once the principle of parity has been accepted, it should be carried to its logical end. The teachers form a class as a whole. There cannot be any micro-classification by any arbitrary and unreasonable criteria as has been held in *D.S. Nakara and others vs. Union of India* (3)

(17) In *Olga Tellis and others vs. Bombay Municipal Corporation and others* (4) their Lordships of the Supreme Court examined the rights flowing from Articles 19 and 21 of the Constitution. It was held that it was the Government's obligation to act upon its assurances regarding providing alternative accommodation to the evicted persons. Learned counsel for the petitioners has, on the strength of this decision, argued that once the Government has agreed in principle to implement parity, it cannot leave the scheme half way. Government has an obligation to act upon its assurances.

(18) In *Frank Anthony Public School Employees Association vs. Union of India and others* (5), it has been held that the teachers and employees of a recognised unaided private minority schools are entitled to parity in pay scales and other conditions of service with those available to their counter parts in the Governments schools of Delhi.

(19) In *Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and others* (6). It has been held that the prevailing social conditions

- (3) (1983) 1 Supreme Court Cases 305
- (4) (1985) 3 Supreme Court Cases 545
- (5) (1986) 4 Supreme Court Cases 707
- (6) 1991 Supp (1) Supreme Court Cases 600

and actualities of life are to be taken into account to determine whether a legislation subserves the purpose of the Society.

(20) In *State of H.P. vs. H.P. State Recognised and Aided Schools Managing Committees and others* (7), It has been held by the Supreme Court in a case arising from Himachal Pradesh that the aided schools are entitled to grants-in-aid from the State Government so as to enable them to pay salaries to the teachers employed by them equal to that paid to the teachers in Government schools.

(21) On a consideration of the matter and in the light of the observations made by the Supreme Court in the aforesaid cases, it is found that the petitioners have a justifiable case in their favour while seeking parity in respect of remaining allowances and the retiral benefits. Learned counsel for the State Government has, however, argued that parity has been implemented in respect of most of the allowances and the petitioners have, therefore, no cause of grievance. Reliance is placed on a decision of This Court in *Hindu College Governing Council and another vs. Shri N.D. Malhotra and another* (8) That was a case where a College wanted aid from the State Government to meet its liability towards gratuity payable to its employees. It was held that the College had no case for the issuance of any direction from the Court. This case, however, does not help the respondents inasmuch as the question of grant-in-aid is not an issue at the moment. Once the question of parity is decided in respect of other allowances, the amount of grant-in-aid may be determined in consultation with the managements of the privately managed schools.

(22) Learned counsel for the respondents has also placed reliance on a decision of the Supreme Court in *State of Haryana vs. Jasmer Singh* (9). It has been held therein that the principle of equal pay for equal work did not apply to the daily wagers. This judgement has also no relevancy to the controversy which has arisen in the present case.

(23) It may be concluded that the petitioners are entitled to parity in respect of other allowances and other retiral benefits also. The matter has already been examined by the Supreme Court and a scheme was required to be formulated by the State Government in consultation with the managements of the privately managed schools. It appears that the State Government has done little in this direction. The reasons are not known. The scheme regarding pension has been prepared and implemented 7 years after their Lordships of the Supreme Court directed

(7) (1995) 4 Supreme Court Cases 507

(8) 1993 (1) R.S.J. 757

(9) 1997 (2) S.C.T. 151

the State Government to evolve the scheme in this behalf. Thus, the State Government has shown little interest in the matter. There is found no valid reason. Once the principle of parity has been accepted, it should not be left half way. It must be given full effect.

(24) In the result the writ petition is allowed with a direction to the respondents to prepare a scheme with regard to the remaining other allowances like medical allowances, bonus, leave travel concession and the retiral benefits like leave encashment etc. Respondents No. 4 to 12 (managements of the aided schools) shall prepare a scheme afresh regarding parity in respect of the aforesaid allowances and benefits which are admissible to the teachers of Government schools but are not paid to the teachers of aided schools. The scheme shall be furnished to the State Government within six months from the date of this order. The scheme shall be prepared in consultation with the Association of teachers of the aided schools. The State Government shall thereafter take a decision thereon within three months from the date of submission of the scheme to it by respondents No 4 and 12.

(25) No order as to costs.

J.S.T.

Before Jawahar Lal Gupta & V. M Jain, JJ

RAM KISHAN,—*Petitioner*

versus

THE FARIDABAD COMPLEX ADMINISTRATION & OTHERS,—
Respondents

C.W.P. No. 8103 of 1997

17th December, 1999

Constitution of India, 1950—Arts. 21 & 226—Disciplinary & criminal proceedings initiated placing the petitioners under suspension in 1986 on the charge of embezzlement—Trial Court acquitted the petitioner as no evidence produced before it till 1994—Petitioner reinstated without prejudice to pending departmental proceedings—Department failed to produce any material to prove the charge despite the lapse of 13 years—Merely because a charge sheet has been served it cannot be assumed that the charge is proved—Disciplinary proceedings against the petitioner quashed directing payment of full arrears of salary during his suspension period besides awarding an amount of Rs. 25,000 as compensation.