

All India Sainik Schools Employees' Association

Vs

Defence Minister-Cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and
Others

Writ Petition No. 1219 of 1987

(Ranganath Misra, M. N. Venkatachaliah JJ)

04.10.1988

JUDGMENT

RANGANATH MISRA, J. -

1. This application is under Article 32 of the Constitution. The All India Sainik Schools Employees' Association through its President is the petitioner. The Sainik School Society (hereinafter referred to as "the Society") is a society registered under the Societies Registration Act, 21 of 1860. The main object of the Society, as available from Clause 3(a) of the Memorandum of Association is :

to establish Sainik Schools in various parts of India, providing special school education of a high standard with the aim of preparing boys academically and physically for entry into National Defence Academy and other walks of life.

With a view to implementing this object 18 schools located in different States of the country have been established. The petitioner has impleaded the Chairman and Members of the Board of Governors of the Society as respondents 1 to 6 : Minister of Education of the seventeen States as respondents 7 to 23 and Principals of the 18 school as respondents 24 to 41. The petitioner has asked for a writ of mandamus to the Union of India as also respondent 1 :

(1) to implement the recommendations of the Fourth Pay Commission in the Sainik Schools and to extend all the benefits already given to employees of the Kendriya Vidyalayas by way of implementing the recommendations of the Chattopadhyay Commission;

(2) to give to the employees of the Sainik Schools the differential wages in terms of the Third Pay Commission between 1973 (when it applied to government institutions) and 1978 (when the benefits were extended to the employees of the Sainik Schools);

(3) to direct that the employees of the Sainik Schools shall have the benefits of leave travel concession, house rent, pension, group insurance, contributory provident fund, pensionary benefits and gratuity in the same pattern as obtaining in Kendriya Vidyalaya Sangathan or given to Defence Services Officers working in the Sainik Schools, and

(4) enhance the age of superannuation to 60 years as in the case of Kendriya

Vidyalaya employees.

2. When notice was issued to the respondents, respondent 1 alone entered appearance and made a return. Apart from raising certain technical pleas against the maintainability of the petition, it has pleaded that the Society was not an instrumentality of the State. According to respondent 1, the entire capital expenditure on land, buildings, furniture and educational equipment and major portion of the recurring expenditure is borne by the concerned State Government/Union Territory administration of the places where the school is located. Maintenance, additions and replacements are also the obligation of the respective State Governments. The Principal, the Head Master, the Registrar and an Army Physical Training Corps/National Cadet Corps Instructor posted in every school are paid out of the defence budget. All other expenses are met out of the fees payable by the parents or taken out of the scholarships paid by the State/Central Governments to the students. The quantum of the fees/scholarships is fixed by the Board of Governors from time to time taking into consideration the financial position.

3. The counter-affidavit accepted the petitioner's plea that several Committees had been established for bringing about improvement in the functioning of the Sainik Schools and improvement of conditions of service such as the High Power Committee, Sahara Committee, Balaram Committee and the Academic Study Group. Though in essence the Kendriya Vidyalayas and the other establishments of the Central Government differ from the Sainik Schools, many of the benefits admissible to government servants and Vidyalaya teachers have already been extended to employees of the Sainik Schools. The counter-affidavit traversed the petitioner's averment that the guideline of Kendriya Vidyalayas has to be adopted and the benefits admissible to the employees of such Vidyalayas should be extended to the employees of Sainik Schools. According to the respondent, the Sainik Schools are of a different pattern; the historical background of their creation, the purpose for which they are founded and the other benefits which are admissible to the employees should also be borne in mind when considering the claim raised by the petitioner. According to the respondents the claim based on the concept of equal pay for equal work contained in Article 39(d) of the Constitution is misconceived inasmuch as unless the nature and the status of the service is the same there can be no equality.

4. On behalf of the petitioner a rejoinder has been filed reiterating some of the averments in the main petition and meeting some of the pleadings in the counter-affidavit of respondents 1.

5. During the pendency of this application, the Board of Governors decided to extend certain advantages and benefits to the employees of the Sainik Schools. Some of these benefits had been claimed in the writ petition. An affidavit has been filed on behalf of the petitioner indicating what are the claims still in issue on the basis of the respondents' affidavit dated July 29, 1988. It is not necessary to recount the concessions extended by the Society and in our view what is claimed as subsisting items may now be dealt with. These are :

(1) The age of retirement should be 60 years applicable to all categories of employees being the same as obtaining in the case of employees of the Kendriya Vidyalaya Sangathan (KVS) /

(2) Bonus and gratuity should be effective from January 1, 1986 and employees who have either retired or resigned after that date should be given benefit of the contributory provident fund and gratuity at Central Government rates.

- (3) Medical reimbursement should be provided on the same basis as admissible to KVS and Central Government employees.
- (4) Leave travel concession including once in a block of four years to travel anywhere in India as available to employees of KVS and Central Government employees should be available.
- (5) Leave rules to all categories of employees should be placed at par with employees of KVS.
- (6) House Rent Allowance should be granted with effect from October 1, 1986, at par with Central Government employees.
- (7) The pay scale recommended by the Chattopadhyay Commission to teachers should be effective from January 1, 1986.
- (8) The Librarians should be given the benefit of pay revision as per the Chattopadhyay Commission pay scale with effect from January 1, 1986.
- (9) Office Superintendent, Accountants and Personal Assistants to the Principals should be given the same pay as their counterpart receive from the Central Government with effect from January 1, 1986.
- (10) Nursing Sister/Assistants/Compounders should be granted pay scales at par with Pharmacists in Central Government under Para-Medical Staff as per recommendations of the Fourth Pay Commission with effect from January 1, 1986.
- (11) House Construction Loan, Scooter and Car Purchase Loan should be granted at par with KVS/Central Government scheme.
- (12) 15 percent extra pay over and above scales admissible to KVS teachers should be admissible to the Sainik School teachers.
- (13) The difference in wages between January 1, 1973 and June 30, 1978 on account of delayed implementation of the Third Pay Commission's recommendations should be paid.
- (14) Bonus for 1984-85 and 1985-86 should also be paid at par with KVS.
- (15) All employees who have retired by now before completing 60 years of age and have not yet attained the age of 60 years should be called back to duty and given postings.

6. As we have already indicated, it is the contention of the petitioner that the Sainik School Society is 'State' within the meaning of Article 12 and is accordingly amenable to claim and enforcement of fundamental rights. It is also to be guided by what is provided in Part IV of the Constitution by way of Directive Principles of State Policy.

7. A Constitution Bench of this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* was considering whether a Society registered under the Societies Registration Act of 1861 could be "State" within

the meaning of Article 12. Bhagwati, J., as he then was, speaking for the unanimous Bench culled out six tests from the judgment of this Court in International Airport Authority case. Those tests are : (SCC p. 737, para 9)

- (1) One thing is clear that if the entire share capital of the corporation is held by government, it would go long way towards indicating that the corporation is an instrumentality or agency of government.
- (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.
- (3) It may also be relevant factor. whether the corporation enjoys monopoly status which is State conferred or State protected.
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.
- (5) If the functions of the Corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of government.
- (6) "Specifically, if a department of government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of government.

8. Applying those tests the Constitution Bench found that the Society which managed the Regional Engineering College at Srinagar and several others elsewhere was 'State'. Having said so, this Court pointed out : (SCC p. 738, para 12)

It is also necessary to add that merely because a juristic entity may be an "authority" and therefore "State" within the meaning for the purpose of Articles 309, 310 and 311 which find a place in Part XIV. The definition of "State" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is limited in its application only to Part III and by virtue of Article 36, to Part IV : it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution.

9. Applying the tests indicated at page 737 of the reports it cannot be doubted that the Sainik School Society is also 'State'. The entire funding is by the State Governments and the Central Government. The overall control vests in the governmental authority. The main object of the Society is to run schools and prepare students for the purpose of feeding the National Defence Academy. Defence of the country is one of the regal functions of the State.

10. Once it is held that the Sainik School Society is 'State' within the meaning of Article 12 of the Constitution, application of Article 14 is attracted. Similarly under the Directive Principles - the claim for equal pay for equal work becomes tenable.

11. The main plank for substantiating the petitioner's claim for relief is the allegation of discrimination founded upon the basis that the employees of the Sainik School Society though in

every respect comparable to employees of KVS and the Central Government are not being given the same treatment. KVS is a creation of the Government of India and is wholly financed out of the Central exchequer. Sainik School Society, as already pointed out, is not wholly funded by the Central Government. In fact substantial contribution for running Sainik School comes from the funds of the State where the school is located. The Central Government's contribution is minimal. The mode of funding is mainly through scholarship by the State payable to the students. It follows out of this fact that the employees of the Sainik School cannot be treated as Central Government employees - nor can they be treated as at par with the employees of KVS. They are a class by themselves and, therefore, the stand on the basis of Article 14 by pleading discrimination against the guarantee of equality is not available. To put unequals as equals is against the objective of Article 14, in the same way is to discriminate between equals. The later, however, is on the hypothesis that the two are equals. In view of the position that the employees of the Society are a distinct class by themselves, we do not think that there is any merit in the claim that there has been discrimination.

12. Similarly the claim of equal pay for equal work is indeed not tenable. No acceptable material has been placed before us to support the stand that the work in the two institution is equal. A bare statement that both the Kendriya Vidyalayas and the Sainik Schools impart education to the students cannot sustain the claim of equal work. To maintain a claim for equal pay on the allegation of equal work requires clear material to support the basis that the work in both the institutions is the same. Kendriya Vidyalayas popularly known as Central Schools, are more or less schools as understood in common parlance. A Sainik School intended essentially to draw young men for being recruited into the National Defence Academy is not an ordinary schools. Its curriculum, the pattern of teaching, the life style, the discipline and attention differ. The Sainik Schools are totally residential and the teacher is provided accommodation within the complex with a view to exposure of students to the teacher throughout the period and allow the teacher to exercise regulation over the students at all material times. The teacher is also expected to interact with the students beyond the classroom. The Principal of the Sainik School is a defence service officer; so is the Headmaster for the lower classes; the Physical Instructor is also drawn from the army. We are not in a position to accept the claim of the petitioner that the work in the two institutions is equal, and, therefore, the claim for equality of pay cannot be accepted. Even though that claim is not accepted, the Sainik Schools Society being 'State' is amenable to the jurisdiction of the court and it is open to the court to examine whether the conditions of service are of an acceptable pattern.

13. The age of retirement of teachers in the Sainik School is till 60 years but continuance beyond 58 years is subject to physical fitness and continued satisfactory performance of duties. For non-academic staff the age is 58 years which is same for most government employees. There is nothing unreasonable in this condition of service. There has been a switch over to pension and gratuity scheme with effect from July 29, 1988. The claim of the petitioner is that it should be with effect from January 1, 1986. Keeping the mode of funding in view, we do not think the liability that would arise by antedating the benefit from January 1, 1986 can be conveniently met. We, however, see no reason why the benefit should be extended only from July 29, 1988, which is said to be the date of the decision. It should be made operative from April 1, 1988, which is the commencement of the current financial year. We would accordingly direct that the pension and revised gratuity scheme should be made operative from April 1, 1988.

14. We see no reason to interfere in the matter of claim for medical reimbursement. The Society has extended the benefit of medical allowance which is a known form in respect of even government servants not covered under the CGH Scheme. But her again the benefit should be operative from April 1, 1988.

15. Coming to the Leave Travel Concession advantage, the same should be available from April 1, 1988, while permitting the visit to the home town once in a block of two years. In terms of the recommendation of the Academic Study Group, we are inclined to extend the benefit of Leave Travel Concession for visiting any place in India once in a block of four years. When such scheme is being accepted even by non-government employers on the basis that these visits improve the quality of service, we extend it to the Sainik School employees effective from April 1, 1988.

16. Most of the employees have accommodation provided by the Sainik Schools and according to respondent 1 free furnished accommodation is provided. There may be cases where in the absence of such accommodation the employees may be living in rented accommodation, but we do not think that we should interfere in respect of this claim.

17. The other claims raised do not appear to be reasonable except the prayer for providing house construction loan, scooter, car purchase loan. This is really not a heavy burden and out of the fund to be created loans are to be provided and the loan amounts are recoverable with concessional interest. According to modern thinking these advantages are normal service benefits. A residential accommodation adds to the security of the employee and a conveyance adds to his mobility. We are of the view that this benefit should be admissible to the employees. The Society shall, therefore, create an appropriate fund either to be operated through every college or through such method as may be found convenient for entertaining claims for house construction loan and loans for purchase of scooter, car etc. as may be admissible in terms of the scheme to be framed. We direct that the further benefits which we have granted by our present order should be made available to the employees by the end of March 31, 1989. The writ petition is accordingly disposed of. There shall be no order as to costs.

18. Before we part, we would like to place on record that learned Additional Solicitor General appearing for respondent 1 had candidly stated in court that if over and above what the Board of Governors had decided to sanction, if this Court was of the view that some more benefits should be given, the same may be ordered.

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