

Haryana State Adhyapak Sangh and Others

Vs

State of Haryana

C. M. P. No. 15049 of 1989 on Civil Appeal No. 2366 of 1988

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

21.02.1990

ORDER

S. C. AGRAWAL, J. –

1. By this application, the applicants are seeking implementation of the directions given by this Court in judgment dated July 28, 1988 in Civil Appeals Nos. 2366-67 of 1988 and Writ Petitions Nos. 91-92 and 551-61 of 1986. The appellants and the petitioners in these cases were teachers employed in various government aided private schools in the State of Haryana who had approached aided private schools are entitled to parity with the teachers employed in government schools in the matter of pay scales and other emoluments, such as dearness allowance, house rent allowance, city compensatory allowance, medical reimbursement and gratuity, etc.

2. In judgment dated July, 28, 1988 this Court, while considering the said claim, has taken note that prior to 1967 there was considerable disparity in the emoluments of teachers employed in the same State and the Kothari Commission was appointed by the Government of India to examine the conditions of service of teachers with the object of improving the standards of education in the country, and that among other things, the standards of educations in the country, and that, among other things, the Kothari Commission recommended 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 organisations, should be the same. This Court has also observed that almost all the States, including the State of Haryana, decided to implement the recommendations of the Kothari Commission and that the State of Haryana declared in January 1968 that the revised rates suggested by the Kothari Commission would be made effective from December 1, 1967 and that the grades of teachers of privately managed schools would be revised on the pattern of the grades of teachers working in government schools and as the deficit between the original grades and the revised grades was found too burdensome for the managements of the aided schools to bear, the State decided to meet the increased expenditure entirely in regard to pay and dearness allowance. It was also observed by this Court that the State Government of Haryana followed the principle of parity between the teachers working in government schools and aided schools until 1979 and that in 1979, the pay scale of teachers in government schools was revised by the State after the report of the Pay Commission, but in the case of the teachers of aided schools the revision was effected two years later and as a result the salary and other emoluments paid to the teachers of aided schools ad fallen far behind the emoluments paid to the teachers in government schools. In the said judgment of this Court, it is stated that there was general agreement between the parties that there is no reasons for discrimination between the teachers employed in the aided schools and those employed in government schools so far as the salaries and additional dearness allowance are concerned and that the State Government was not accepting the claim to parity in respect of others heads of allowance

put forward by the petitioners in these respect of other heads of allowance put forward took note of the readiness expressed by the State Government to reimburse the payment of ten instalments of the additional dearness allowance but not the 25 additional dearness allowance instalments released after April 1, 1981 and that the grant-in-aid given by the State Government to these aided schools covers the deficit to the extent of 75 per cent of the approved expenditure and that the approved expenditure extends to the salaries paid to the teaching and non-teaching staff, which includes the pay and dearness allowance and interim relief before April includes the pay and dearness allowance and interim relief before April 1, 1981 and the pay and additional dearness allowance beyond April 1, 1981 but does not include house rent allowance, city compensatory allowance, medical allowance and the other heads claimed by the petitioners in these matters. In the light of the aforesaid considerations this Court has held as under : (SCC pp. 573-74, paras 3, 4 and 5)

"In our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the management in the same proportion in which they share the burden of the existing emoluments of the teachers. The State Government meets the dearness allowance liability to the extent of 75 per cent of the amount. Ten instalments representing the State Government's liability shall be paid by the state Government in two equal parts, the first part being payable within three months from today and the remaining part being payable by March 31, 1989. The State Government shall also pay the remaining 25 instalments, the entire amount being payable in five equal parts, each part being paid every six months, the first such part being payable by September 30, 1989. The State Government shall not be liable to pay for the period covered by these 35 instalments any amount on account of house rent allowance, city compensatory allowance and the other allowance claimed the petitioners.

The State Government will also take up with the managements of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of government schools for the period following that to which the aforesaid 35 instalments relate, so that a scheme for payment may be evolved after having regard to the different allowance claimed by the petitioners.

In the case of teachers who have retired or who have died in service during the pendency of these cases, payment of the first ten instalments shall be made to the retired teachers and to the legal representatives of the deceased teachers and to the legal representatives of the deceased teachers within three months from today".

3. The applicants, in this (who were amongst the appellants in Civil Appeal No. 2366 of 1988) have submitted that the respondents have failed to implement the aforesaid directions given by this court inasmuch as they have not revised the pay scales of the teachers and non-teaching staff employed in government aided private schools with effect from April 1, 1979 and again with effect from January 1, 1986 and have also not paid the instalments of the additional dearness allowance, as per the directions given by this Court. It has also been submitted by the applicants that no scheme has so far been framed by the respondents with regard to payment of other allowances, such as, house rent allowance, city compensatory allowance, medical reimbursement and retrial benefits claimed by the appellant in the aforesaid appeal. Notice was issued to the respondents on this petition and in response to the said notice counter-affidavits have been failed wherein it has been claimed that the

respondents have fully implemented the directions given by this Court in its judgment dated July 28, 1988.

4. The learned counsel for the applicants has urged that in the judgment dated July 28, 1988 this Court has given directions on three matters, namely :

- (i) revision of pay scales of the staff employment in recognised government aided private schools with effect from April 1, 1979;
- (ii) Payment of additional dearness allowance in respect of the period from April 1, 1979 to December 31, 1985; and
- (iii) Payment of other allowance, such as, house rent allowance, city compensatory allowance, medical reimbursement, gratuity, etc.

5. With regard to revision of pay scales, Shri Sachar, the learned counsel for the respondents, has contended that in the judgment dated July 28, 1988 this Court has not given any direction with regard to revision of pay scales and payment of arrears of salary with effect from April 1, 1979 and that the directions given by this Court are only confined to payment of 35 instalments of additional dearness allowance. The submission of Shri Sachar is that the financial burden of the arrears and recurring expenditure on account of revision of pay scales with effect from April 1, 1979 is much more than the amount payable by way of additional dearness allowance and the fact that this Court has permitted the payment of the arrears of additional dearness allowance in instalments and has not made any provision with regards to payment of arrears that would be payable as a result of the revision of pay scales, indicates that this Court has not given any direction with regard to revision of pay scales and payment of arrears as a result of such revision. We are unable to accept this contention. As mentioned earlier, in the judgment dated July 28, 1988 this Court has referred to the recommendations of the Kothari Commission with regard to parity in pay scales of school teachers belonging to the same category and the decision of the State of Haryana to implement the said recommendations of the Kothari Commission and to revise the grades of teachers working in government schools with effect from December 1, 1967 and the State Government having followed the principle of parity between the teachers working in government aided schools and government schools until 1979 and the pay scale of teachers in government schools having been revised by the State in 1979 after the schools such revision having been effected two years later. In the aforesaid context this Court has observed; (SCC p. 573, para 3)

"and we find general agreement between the parities that there is no reason for discrimination between the teachers employed in aided schools and those employed in government schools so far as the salaries and additional dearness allowance are concerned. The State Government does not accept the claim to parity in respect of other heads of allowances put forward by the petitioners."

6. These observations show that during the course of hearing before this Court there was no dispute on the matter of parity in the pay scales of teachers employed in aided schools and those employed in government schools so far as salaries and additional dearness allowance are concerned and the dispute was only on parity in respect of other heads of allowances put forward by the appellants and petitioners before this Court. As regards parity in pay scales and dearness allowance the position has been made clear in the following observations of this Court : (SCC p. 573, para 3)

"In our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance, as teachers in government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the management in the same proportion in which they share the burden of the existing emoluments of the teachers."

These observations leave no scope for doubt that this Court has directed that the teachers of aided schools must be paid the same scales of pay and dearness allowance as teachers in government schools and that the said payment must be made for the entire period claimed by the appellants and the petitioners in these cases. While giving this direction, this Court has also indicated how the expenditure on that account has to be apportioned between the State and the management. In the writ petition which was filed in the High Court by the appellants in Civil Appeal No. 2366 of 1988 prayer (b) (i) was for the following relief :

"The members of staff of the non-government recognised schools be paid salaried at the revised garden with effect from April 1, 1979."

This means that this Court, in the judgment dated July 28, 1988 has directed that the teachers of aided schools were entitled to be paid the same pay scale and dearness allowance, as paid in government schools with effect from April 1, 1979,

7. Shri Sachar has invited our attention to the following observations in the judgment of this Court : (SCC p. 575, para 3)

"We were at one time disposed to ruling on the question whether the responsibility for providing education in schools belongs to the State Government to ensure that in aided schools the teachers are entitled to the same emoluments as are provided for teachers in government schools. We do not, however, propose to enter upon this question in these cases as we are satisfied from the developments which have followed after the hearing on the merits that it would be more appropriate to dispose of these cases by a short order."

The submission of Shri Sachar is that these observations show that this Court has not dealt with the question, as to whether the teachers in aided schools are entitled to the same emoluments as are provided for teachers in government schools. In our view the above referred observations have to be read along with the preceding observations wherein this Court has pointed out that there was general agreement between the parties that there is no reason for discrimination between the teachers employed in aided schools and those employed in government schools so far as the salaries and additional dearness allowance are concerned, and that the State Government does not accept the claim of parity in respect of other heads of allowances put forward by the petitioners. This would show that the controversy which was not decided by this Court was with regard to the claim of the teachers employed in aided schools to parity in respect of other heads of allowances, such as, house rent allowance, city compensatory allowance, medical reimbursement, gratuity, etc. which claim was not accepted by the State Government. In this context, it may be mentioned that with regard to house rent allowance, city compensatory allowance and other allowances claimed by the appellants and petitioners in these cases this Court directed that the State Government shall not be liable to pay the said allowances for the period covered by 35 instalments of the additional dearness allowance and with regard to the period following that to which the said 35 instalments relate this Court directed that the State Governments will take up with the managements of the aided schools the

question of bringing about parity between the teachers of aided schools and the teachers of government schools so that a scheme for payment may be evolved after having regard to the different allowances claimed by the appellants and the petitioners. We are, therefore, of the opinion that the respondents are not right in proceeding on the basis that no directions have been given by this Court in the judgment dated July 28, 1988, with regard to the revision of pay scales of the teachers employed in aided schools with effect from April 1, 1979. In view of the directions given by this Court in the judgment dated July 28, 1988, the respondents are required to revise, with effect from April 1, 1979, the pay scales of the teachers employed in aided schools and bring the said pay scales at par with those of teachers employed in government schools and to pay to the teachers employed in aided schools the amount payable as a result of said revision. The expenditure that would be incurred on account of such revision has to be apportioned between the State and the management in the same proportion in which they share the burden of the existing emoluments of the teachers.

8. As regards additional dearness allowance, this Court in the judgment dated July 28, 1988, has directed that out of the 35 instalments which had fallen due, ten instalments should be paid in two equal parts, the first part being payable in three months from the date of the judgment and the remaining part being payable by March 31, 1989 and that the remaining 25 instalments should be paid in five equal parts, each part being paid every six months, and the first such part being payable by September 30, 1989. From the affidavit dated January 26, 1990, Shri Roshan Lal, filed on behalf of the respondents, it appears that ten out of the 35 instalments of additional dearness allowance were already being paid with the revised grades with effect from April 1, 1981 and that out of the remaining 25 instalments of additional dearness allowance three parts of five instalments each were released in September 1988, March 1989 and September 1989 and the remaining ten instalments comprising of two parts of five instalments each will be released by March 1990 and September 1990 respectively. The submission of the learned counsel for the applicants is that, in view of the revision of pay scales with effect from April 1, 1979, some further amount would be payable by way of additional dearness allowance on the revised scales with effect from April 1, 1979. The said claim of the applicants is justified and the respondents are bound to pay additional dearness allowance to the teachers of aided schools on the basis of revised pay scales with effect from April 1, 1979.

9. With regard to the claim of the applicants, for other allowances viz. house rent allowance, city compensatory allowance, medical reimbursement and gratuity, etc. we have already indicated that this claim was not accepted by this Court in respect of the period covered by the 35 instalments of additional dearness allowance referred to above. For the subsequent period, this Court has directed that the State Government will take up with the managements of the aided schools the question of bringing the parity between the teachers of aided schools and the teachers of government schools, so that a scheme for payment may be evolved after having regard to the different allowances claimed by petitioners. It appears that, by orders dated January 6, 1989 the Government of Haryana has constituted a Committee under the Chairmanship of Deputy Chief Minister-cum-Finance Minister, Haryana, which has been asked to give its report with regard to the implementation of the judgment of this court and evolve a formula for bringing about parity between the teachers of private aided schools and teachers of government schools. In the additional affidavit of Shri Roshan Lal, Dated January 26, 1990 it has been stated that meeting of the said Committee have been held and that the deliberations were inconclusive and no agreement could be reached and that after discussion all the pros and cons in a meeting attended by the Deputy Chief Minister, Education Minister, Financial Commissioner and Secretary of finance, Commissioner and Secretary of Education, Director Secondary Education and Joint Legal Remembrancer the Following decisions were taken :

(i) Besides additional dearness allowance instalments already release, government is willing to revise pay scales and dearness allowance of private schools employees with effect from January 1, 1990.

(ii) Regarding other allowances like house rent allowance, city compensatory allowance, LTC, bonus etc. this is the responsibility of the managements concerned who should be asked to take a final decision in the matter.

(iii) The pattern giving grant-in-aid only on the pay and dearness allowance has been followed since 1968/1980-81 and keeping in view the financial constraints the government is not in a position to change the pattern by including other allowances for grant-in-aid.

10. The learned counsel for the applicants has urged that in view of the decision of this Court parity in pay scales and dearness allowance should be maintained throughout and there is no justification for revising the pay scales and dearness allowance of private school employees with effect from January 1, 1990 when the pay scales of government school employees have been revised with effect from January 1, 1986, on the basis of the report of the Pay Commission. The learned counsel for respondents had urged that the directions given by this Court in its judgment dated July 28, 1988 have to be confined to the reliefs sought in the writ petition and that the applicant cannot claim the reliefs of revision of pay scales in respect of period subsequent to December 31, 1985. In our opinion, the reliefs sought in the writ petitions as well as the judgment of this Court dated July 28, 1988 do not support this contention. As mentioned earlier in the writ petition which was filed in 1984 in the High Court, it was prayed that the members of staff of the non-government recognised schools be paid salaries at the revised grades with effect from April 1, 1979 which means that in the writ petition the petitioners were claiming parity in the salaries of staff employed in aided schools with the staff employed in government schools with effect from April 1, 1979 when the pay scales of teachers employed in government schools were revised but the pay scales of teachers employed in aided schools re not revised. the said prayed envisaged that the said parity shall the maintained in the future and it cannot be confined to maintaining the said parity up to December 31, 1985 only. The judgment of this Court dated 28, 1988 also accepts the principle of parity in the matter of salaries and dearness allowance of teachers employed in aided schools and those employed in government schools and there is nothing in the judgment which indicates that the said principle of parity is to be applied up to December 31, 1985 only, and not thereafter. In the circumstance we are of the view that the direction of this Court in the judgment dated July, 28 1988 must be construed to mean that the respondents are required to maintain such parity and to revise, from time to time, the pay scales and dearness allowance of the teachers employed in aided schools as and when the pay scales and dearness allowance of teachers employed in government schools are revised. It is, therefore, incumbent upon respondent to revise the pay scales of teachers employed in the aided schools so as to bring the same at par with the pay scales of the teachers employed in government schools with effect from January 1, 1986 and fix the salaries of the teachers employed in aided schools in the revised pay scales with effect from January 1, 1986 and pay the salaries and dearness allowance to these teachers in that basis.

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

12. We find that the respondents have been proceeding on the basis that no direction has been given by this Court in the judgment dated July 28, 1988 with regard to the revision of the pay scales of the teachers of government aided schools and that the only direction that was given was in regard to payment of instalments of the additional dearness allowance. In these circumstances, it cannot be said that the respondents have wilfully disobeyed the directions given by the Court. We, therefore, do not propose to take any action against the respondents. We, however, consider it appropriate to give the following directions with regard to implementation of this judgment of this Court dated July 28, 1988 :

(i) The pay scales of the teachers of government aided schools shall be revised so as to bring them at par with the pay scales of teachers of government schools with effect from April 1, 1979 and the differential amount as a result of such revision in pay scales shall be paid in four six monthly instalments, the first instalment being payable by June 30, 1990.

(ii) The teachers of the government aided schools shall be paid additional dearness allowance on the basis of the revised pay scales with effect from April 1, 1979 to December 31, 1985 and the arrears of such additional dearness allowance found payable as a result of such revision shall be paid along with the last part of the five instalments of additional dearness allowance which is to be paid in September 1990.

(iii) The parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in government schools shall be maintained and with that end in view the pay scales of teachers employed in government aided schools shall be revised and brought at par with the pay scales and dearness allowance payable to the teachers employed in government schools with effect from January 1, 1986.

(iv) As from April 1, 1990 the teachers employed in aided schools shall be paid the same salary and dearness allowance as is paid to teachers employed in government schools.

(v) The arrears of pay and dearness allowance payable as a result of such revision for the period from January 1, 1986 to March 31, 1990 shall be paid in four six monthly instalments, the first such instalment being payable by June 30, 1990.

13. There will be no order as to costs in this petition.

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