

State of W. B. and Others

Vs

Monirujjaman Mullick and Others

Civil Appeal No. 4195 of 1994

(S, Saghir Ahmed, Kuldip Singh JJ)

19.07.1996

JUDGMENT

KULDIP SINGH, J. –

Monirujjaman Mullick and other private respondents, in the appeal herein, were working as Instructors in various non-formal education centres in different districts in the State of West Bengal. They approached the High Court by way of a petition under Article 226 of the Constitution of India seeking a direction - based on the principle of "equal pay for equal work" - that they were entitled to the same scales of pay and allowances as were admissible and being paid to the primary school teachers. A learned Single Judge of the High Court allowed the writ petition. Appeal filed by the State of West Bengal was disposed of with the following directions :

"The writ petitioners who are not in regular employment elsewhere and who have the minimum qualification prescribed for the primary school teachers are entitled to the same scale of pay and allowances as admissible to the primary school teachers from the date of their initial appointment and further that they are also entitled to annual increments in the pay scale in accordance with law; but their claim for absorption in the department as regular primary school teachers cannot be sustained and therefore stands rejected.

It is made clear that the services of such non-formal teachers will be liable to stand automatically terminated as and when the non-formal education scheme is discontinued in this State.

Persons similarly placed should also be given the same benefit to avoid further litigation in regard to the selfsame issue."

This appeal by the State of West Bengal is against the judgment of the learned Single Judge and of the Division Bench of the High Court dated 28-6-1993.

2. We may briefly state the facts of the case. Government of India introduced a scheme in the year 1974-75 for imparting non-formal education to the children in the age group of 9/11 years who were either school dropouts or did not go to school. The scheme provided for the opening of non-formal education centres (part-time) by the State Government with the help of Central Government grant. West Bengal Government took a policy decision on 8-12-1978 to implement the scheme. Subsequently the State Government formulated a new scheme regarding non-formal education, which became operative with effect from 4-10-1989. The non-formal centres were part-time

institutions. The instructors were given a fixed honorarium of Rs 105 per month at the primary level and Rs 125 per month at the upper primary level. Persons with a motivation to serve the community - particularly the weaker sections - were appointed instructors. They were required to teach the children for two hours a day. The centres were run by the Panchayat Samitis in rural areas and by the Municipal Committees/Corporations in urban areas. There were no specific buildings or sites for the centres. The instructors could use any site or building belonging to a social organisation or a local authority.

3. The Division Bench of the High Court applied the doctrine of "equal pay for equal work" on the following reasoning :

"From the booklet published and distributed by the Primary Education Directorate regarding formal (Prathamik Shiksha) and non-formal (Bidhijukta Shiksha), it appears that the purposes of both the streams being to help attain human values through practical literacy in language, elementary arithmetic, awareness for maintaining personal and public health and good environment, social awareness, scientific outlook to get rid of prejudices, etc., the syllabus and the books prescribed for formal and non-formal education are almost same with the ultimate goal of equipping the boys and girls for entry into class V in regular High or Junior High School.

It is thus clear and we are also of considered opinion that neither stream is inferior to the other and that the duties, functions and responsibilities of the teachers of the formal and non-formal education are alike, if not heavier on the side of the non-formal stream."

4. Mr Dipankar Gupta, learned Solicitor General, appearing for the State of West Bengal has contended that the non-formal education centres were not a part of the regular educational system of the State of West Bengal. These centres were started under a policy decision of the Central Government, which was implemented by the State of West Bengal to help educate the children belonging to weaker sections of the society. These centres were part-time by nature and the instructors were paid an honorarium. They were not appointed to a regular pay scale and were not paid any salary. Even the teaching in the centres was not for a full educational day, it was only for two hours. According to Mr Gupta when the scheme provided for two hours of non-formal teaching at the part-time centres by the part-time instructors, who were paid a mere honorarium the High Court was not justified in enlarging the scope of the scheme in the exercise of its power of judicial review under Article 226 of the Constitution of India. Mr Gupta relied upon the judgment of this Court in *Delhi Development Horticulture Employees' Union v. Delhi Admn.* [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386] P.B. Sawant, J. speaking for the Court observed as under : (SCC p. 111, para 22)

"Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep

them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources."

We are of the view that the non-formal educational centres cannot be equated with the primary schools which are regularly run by the Education Department of the State Government. Apart from the basic qualitative differences between the two institutions even the nature of work of the non-formal instructors and the primary school teachers is not identical. The method of appointment, the source of recruitment, method of teaching, hours of teaching and the mode of payment are entirely different. In the facts and circumstances of this case the High Court fell into patent error in applying the principle of "equal pay for equal work".

5. The appeal is allowed and the judgment of the learned Single Judge of the High Court and the impugned judgment of the Division Bench of the High Court are set aside. The writ petitions filed by the respondents before the High Court shall stand dismissed. No costs.

6. All the IAs are disposed of.