SUPREME COURT OF INDIA

M. Raja

Vs

Ceeri Educational Society Pilani and Another

Appeal (Civil) 4614 of 2006 (Arising Out of Slp (C) No. 1242 of 2006)

(S. B. Sinha and Markandeya Katju, JJ)

31.10.2006

JUDGMENT

S. B. SINHA, J.

Leave granted.

Appellant was working as a Trained Graduate Teacher (TGT for short) (English) in Atomic Energy Central School, Rawatbhata in the State of Rajasthan. An advertisement was issued by Respondent No. 1 Society for recruitment and appointment to the post of TGT in its school. The appellant applied therefor. An interview was held. Allegedly, he asked for pay protection. It was assured that his pay would be protected.

An offer of appointment was made to him on 17.12.1996 wherein it was stated:

"2. You will be paid salary which includes Basic Pay + DA as per CES Rules.

14. You shall abide by the service rules of CEERI Educational Society as decided from time to time."

The respondent, however, by a letter dated 8.01.1997 offered a basic salary of Rs. 1700/- with seven advance increments as also accommodation, etc. to the appellant as he did not join and demanded for settlement of terms and conditions in service to be spelt out clearly. It appears that the wife of the appellant was also offered an appointment. In his letter dated 15.01.1997, the appellant contended:

"I was promised pay protection till the implementation of Pay Commission Report by way of personal pay (by the Interview Committee, of which you were also a member). There is no mention about it in both your letters i.e. dated 17.12.96 and 8.1.97.

I am greatly obliged that you have offered me seven advance increments in the pay scale of Rs. 1400-40-1600-50-2300-EB-60-2600, but I wish to bring to your kind notice that I would be drawing 1600/- basic pay in the same grade in March, 1997. Henceforth my request to you is that you have to protect my last drawn pay of Atomic Energy Central School (under AEES), as agreed upon by the Committee."

In response thereto, Respondent No. 1 Society by a letter dated 21.01.1997 clarified the queries raised by the appellant inter alia in the following terms:

"Your basic salary of Rs. 1600/- in March, 1997 with your present employer has been well protected by offering you Rs. 1700/- basic pay as soon as you join us at CVM. As the pay commission report is likely to be implemented in our school from April, 1997 after its announcement, therefore, your pay will be automatically protected at that time. However, if you are joining us earlier than the implementation of pay commission report the difference in your last drawn salary and the salary at CVM on joining would be given to you as additional personal pay as per rules."

Yet again by a letter dated 25.01.1997, pay protection was assured stating:

"Yes, your pay will be protected in any way either providing personal pay or fixing basic pay at suitably higher level. The appointment letter sent to you is not supposed to carry all these details.

Principal, CVM has already written to you in this regard in detail. If you have further any query please feel free to contact Principal, CVM."

The appellant joined the services in Respondent No. 1 School on 30.04.1997. It is not in dispute that the Fifth Central Pay Commission revised the scale of pay with effect from 1.01.1996 pursuant whereto the appellant claimed that he was entitled to the scale of pay Rs. 5500-9000 whereas he was put in the pay scale of Rs. 5000-8000. The recommendations of the Fifth Central Pay Commission, however, were applied by the respondent with effect from 1.07.1999.

Inter alia on the premise that the respondents were bound to protect his scale of pay keeping in view the promises made and the Management Committee backtracked therefrom, he moved the Rajasthan Non- Government Educational Institutions Tribunal, Jaipur. The Tribunal allowed the said application in part holding the appellant to be entitled to pay as per the recommendations of the Fifth Central Pay Commission with effect from the date of appointment and directing the respondents to calculate the amount of difference and pay the same to him within three months. A writ petition filed by the respondents thereagainst was dismissed by a learned Single Judge of the High Court. The respondents preferred an intra-court appeal and the Division Bench by reason of the impugned judgment allowed the same.

The appellant is, thus, before us.

A limited notice was issued by an order dated 23.01.2006 only in regard to the question as to whether the revised pay is being paid to the appellant with effect from 1.07.1999. In its counter affidavit, the respondents contend that the appellant is entitled thereto but he must give his consent therefor by way of a written agreement. It is, thus, not in dispute that once the appellant signs the agreement, he would be given benefits of the revised scale of pay. Our attention in this connection has also been drawn to a letter of the appellant dated 4.02.1997 wherein he stated:

"I have gone through the following and I am pleased to accept the terms and conditions of appointment stated through the above said offer and letters.

I have resigned from my present job/ assignment on 28.1.1997, giving three months notice, which expires on 28.4.1997.

I have requested them to relieve me at the earliest, if they could do the same, by waiving the notice pay/ period.

I would join your organization as and when I am relieved, but I assure you that I would join CEERI VIDYA MANDIR latest by 30.04.1997 (i.e. on or before 30.04.1997)."

The learned counsel appearing on behalf of the appellant would submit that the respondents are bound by the doctrine of promissory estoppel and keeping in view the stand taken by the then Managing Committee regarding benefit of the revised scale of pay by way of pay protection, the new Managing Committee could not have resiled therefrom.

The learned counsel appearing on behalf of the respondents, on the other hand, submitted that whereas the appellant was entitled to protection of pay, he had never been assured that the benefit of the revised scale of pay would also be given to him with retrospective effect.

The appellant had been given the benefit of pay protection. He accepted the same. He had moreover been given also additional benefits. However, the offer of appointment cannot be read so as to

extend such benefits in regard to the applicability of the recommendations of the Fifth Central Pay Commission which would come in force in future. The respondents in that sense are right in contending that their being no commitment in that behalf, the question of being bound by the purported commitment did not arise. Revision of pay took place subsequently. It was, therefore, a subsequent development.

It may be true that even the respondents expected that the recommendations of the Pay Commission would be implemented from April, 1997, but if for one reason or the other, the same was given effect to from 1.07.1999, a promise cannot be said to have been made out that irrespective of the implementation of the report of the Pay Commission, the appellant would be given the benefit thereof.

It may be that the respondents in its letter dated 21.01.1997 stated "as the Pay Commission Report is likely to be implemented in our school from April, 1997, after its announcement, therefore, your pay will be automatically", but the same cannot be said to be a clear promise which would attract the principle of promissory estoppel.

The appellant was not entitled to the benefit of the recommendations of the Fifth Central Pay Commission with effect from 1.01.1996. Recommendations of the Fifth Central Pay Commission were made applicable by the respondent in its school only from 1.07.1999.

Rights of the parties are not governed by any statutory provisions. They have to be considered having regard to the terms and conditions contained in the offer of appointment as also the subsequent correspondences of the parties. The letter dated 21.01.1997 speaks of payment of difference between the last drawn salary and salary payable to the appellant on his joining Respondent School on implementation of the Report of the Pay Commission. The same did not mean that the respondents were bound to implement the same with retrospective effect.

It is one thing to say that the benefit of pay protection was accorded to him on the basis of his last drawn pay but it is another thing to say that he should be given the benefit of revised scale of pay with effect from 1997. They stand on different footings. The matter which was never contemplated by the parties could not have been the subject matter of contract and, thus, could not have been the basis for making a promise.

We may notice that the appellant in Ground I of Special Leave Petition stated:

"Because the respondent in their special appeal have made a categorical statement that after the Vth Central Pay Commission recommendations were implemented in their school w.e.f. 1.7.1999, petitioner at par with other employees of the respondent school, has been paid salary in the scale revised in accordance with the Vth CPC recommendations"

Contention of the respondents in this behalf is:

"That the other staff of the appellant school, to whom benefit of Fifth Central Pay Commission has been given entered into contract with the appellants. These contracts were entered by staff as per CES, service rule. However, the respondent employee refused to sign such contract. Such contract needs to be signed as per CBSE (with whom appellant is affiliated) guidelines."

We may, however, notice that the appellant himself in paragraph 2C-D of the rejoinder affidavit stated:

"That it is submitted that it is not stated anywhere in the appointment letter that signing of the contract was essential for getting the pay revision. Though it is not a part of the appointment letter, signing of the contract would not have been a problem had the contract been in accordance with the CBSE Affiliation Bye-Laws. Further, the revised pay scale w.e.f. 01.07.1999 is neither as per the Fifth Central Pay Commission recommendations nor is it as per the State Government pay scale which is arbitrary and unreasonable"

The legality of the contract entered into by and between the parties is not in issue.

Respondent - School, as noticed hereinbefore, is ready and willing to extend the benefit of revised scale of pay with effect from the date when it was implemented by it. Respondent School, thus, has not treated the appellant very unfairly or unreasonably. A parity in payment of scale of pay between a private institution and the employees of the State cannot be directed as the same does not pertain to any legal right of a teacher.

We may notice that in Sushmita Basu and Others v. Ballygunge Siksha Samity and Others 2006 (9) SCALE 459 a Division Bench of this Court opined that for issuing such a direction an existence of a legal right in the teacher is imperative.

This Court clearly held that interference in the affairs of a private educational institution would be justified only if public law element is involved.

In this case, only a limited notice had been issued and as the respondents are ready and willing to extend the benefit of revised scale of pay to the appellant in the event he enters into an agreement, we are of the opinion that no further order need be passed.

Learned counsel for the appellant submitted that despite the fact that a limited notice had been issued, this Court should consider the applicability of the doctrine of promissory estoppel in this case. We do not find any reason so to do. Limited notice was issued by this Court so as to find out as to whether the appellant was being discriminately dealt with vis-'-vis other teachers. Once it is found

that he has been dealt with fairly and reasonably, then there is no reason as to why we would enlarge the scope of appeal at this stage.

Reliance placed by learned counsel on a decision of this Court in U.P. SRTC v. Mahendra Nath Tiwari & Anr. , does not lay any law in absolute terms. Even in that case, the Court refrained itself from doing so stating:-

"Of course, when we are hearing the appeal on grant of leave or the petition for special leave to appeal after notice, we are entitled to reopen the appeal in its entirety and consider the question of punishment and the legality of the reinstatement ordered by the Labour Court and affirmed by the High Court. This could be done by giving a notice in that behalf to the respondent and giving him an opportunity of being heard. But for the purpose of this case and at this distance of time, we do not think that it is necessary to do so. Therefore, somewhat reluctantly, we refrain from adopting that course, though, according to us, this is a fit case where neither the Labour Court nor the High Court had any justification in interfering with the order removing the respondent from service"

The jurisdiction of this Court in this behalf is not in dispute, but exercise thereof would depend on the facts and circumstances of each case.

It was also submitted that the Division Bench of the High Court failed to properly construe the respondent's letter dated 21.1.1997. We do not think so.

The applicability of the doctrine of promissory estoppel is a question of law in a given situation. The Division Bench for the said purpose did not enter into any question of fact, although it was entitled to do so.

In Management of Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan , this Court did not say that the High Court in exercise of its power of judicial review can never enter into questions of fact but merely stated that it has a limited jurisdiction in this regard stating:-

"Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact"

The Division Bench of the High Court in the impugned judgment has assigned reasons for interfering with the findings of the Tribunal and the learned Single Judge. We do not find any legal infirmity therein.

The appeal is dismissed. No costs.