
(2013) 08 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Special Appeal No. 665 of 2004

Adarsh Vidya Mandir Samiti and Another

APPELLANT

Vs

Raju Lal and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2014) LabIC 1478 : (2014) 2 RLW 1753

Hon'ble Judges : N.K. Jain-II, J;Ajay Rastogi, J

Bench : Division Bench

Judgement

Ajay Rastogi, J.—Instant intra Court appeal has been filed against the order of the learned single Judge dated 31.5.2004 while rejecting the writ petition preferred by the appellant confirmed the order of the Rajasthan Non Government Education Institutions Tribunal (Tribunal) dated 3.3.2004 directed the appellants' managing committee which is a recognized non aided education institution to grant scale of pay and allowances to the employee as admissible to the employees of the Govt. institution. At the outset, it has been informed to this Court that the respondent employee remained willful absent from duty from 6.7.2008 and despite notice being published in the newspaper since he failed to report for duty and no explanation from his side came forward after publishing the final public notice on 23.6.2009 being remained willful absent from duty his services are dispensed with vide order dated 29.6.2009 and that was never made subject-matter of challenge and according to the appellant he is no more in service of the institution w.e.f. 29.6.2009.

2. The facts which culled out in nutshell are that the Managing Committee of the appellant, Adarsh Vidya Mandir Samiti, Bharatpur is a Managing Committee of the educational institution in Bharatpur District which are administered, controlled and managed by it and Educational Institution are not receiving any aid in any form of grant in aid from the Govt.

3. The respondent No. 1 was appointed as untrained Teacher in unaided recognized institution on 3.7.1997 and was transferred from one institution to

the other vide order dated 1.7.2002 and while assailing the order of his transfer it was further prayed that he may be paid the scale of pay & allowances which are being paid to the similarly employed teacher in Govt. controlled and administered education institution by filing application before the learned Non Govt. Education Tribunal u/S. 21 of the Rajasthan Non-Government Educational Institutions Act, 1989 (Act 1989) and the learned Tribunal while upholding the order dated 1.7.2002 by which the employee was transferred which was primarily the subject-matter of dispute further observed that the employee is entitled for scale of pay & allowances administered to the employees of the Govt. institution in terms of Sec. 29 of the Act 1989 vide order dated 3.3.2004 and that came to be assailed by the appellant by filing writ petition before the learned single Judge of this Court and that came to be dismissed on 31.5.2004 holding that the employee of unaided education institution are also entitled on the principles of equal pay for equal work being a teacher as enshrined under Art. 39(d) of the Constitution which is subject-matter for challenge in the instant intra Court appeal.

4. Counsel for appellant submits that the State Legislature with the assent of the President for better organization and development of education in the Non Govt. education institutions enacted the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc.) Act, 1989 and for carrying into effect the provisions of the Act in exercise of power u/Sec. 43 of the Act, 1989 framed The Raj. Non Government Educational Institution (Recognition, Grant in Aid & Service Conditions etc.) Rules, 1993 but as regards scale of pay & allowances of employees are concerned, the legislature in its wisdom u/S. 29 of the Act, 1989 restricted the scale of pay and allowances to the employees of aided institution to be not less than those prescribed for the staff belonging to similar categories in Government institution and Sec. 29 read with section 31 and the scheme of Rules, 1993 as regards pay and allowances if are conjointly read together that remain unequivocal that it remain confined to aided institution which are receiving grant-in-aid from the State Government but the learned Tribunal and also the learned single Judge of this Court have committed error of law in extending the benefit of pay and allowances to the employees of Non-Government unaided institution.

5. However, further submits that the State Government being competent to give such directions for removing the difficulties and interpretation of the Scheme or Rules, 1993 issued Circular dated 29.7.1998 where the State Govt. made its intention clear that as regards pay & allowances of the employees of education institutions is concerned as provided under R. 34 of Rules, 1993 that remains confined to the employees of aided educational institution similar to the employees of Govt. institution and it was further made clear in terms that these provisions are not applicable regarding pay & allowances to the employees of Non Government unaided institution.

6. Counsel for appellant submits that after the Government made its intention

clear regarding applicability of the provisions of the Act, 1989 and Rules, 1993 framed thereunder at least the employees Non-Government unaided educational institution are not entitled to claim the scale of pay & allowances in parity with the employees of the State Government institution u/Ss. 29 & 31 of the Act 1989.

7. In support of his submissions, counsel for the appellant placed reliance on the judgment of Apex Court in *Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others*, and submits that the teachers who are employed in private educational institution are not entitled to claim salary payable to Govt. teachers and the Division Bench which approved the judgment of the learned single Judge on which reliance has been placed failed to examine the scheme of the Act, 1989 and Rules, 1993 and mere dismissal of the appeal will not constitute affirmation of the order of learned single Judge by the Division Bench of this Court.

8. Counsel for respondent employee Mr. D.P. Sharma, on the other hand, while supporting the order of the learned Tribunal and affirmed by the learned single Judge dated 24.8.2001 submits that the decision of the learned single Judge in C.W.P. No. 6559/1997 (*Yashpal Sharma v. The Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors.*) has been affirmed by the Division Bench vide order dated 24.2.2002 in DB Civil Special Appeal No. 302/2002 while placing reliance on the judgment of Apex Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, and also Constitution Bench decision of Apex Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, further submits that under the Scheme of Rules, 1993 every education institution has to seek recognition from the State Govt. and have to abide by the conditions for grant of recognition and in regard to Para 14 under Schedule 2 appended to R. 5(1) of the Rules, 1993 such primary/secondary/higher secondary institutions have to pay salary & allowances to their employees as per the rules and regulations of the Government and every educational institution whether aided or seeking recognition from Govt. has to abide the terms and conditions thereof and even unaided institution is under obligation to pay salary & allowances to a teacher/employee as admissible to the employees of similar category of Govt. institution and that what Art. 39(d) of the Constitution mandates on the principle of equal pay for equal work and the teachers working either in unaided or aided institution are at par to the teachers of State Govt. institution and no distinction could be made in regard to pay & allowances of teachers/employees in different category and in support of his submission placed reliance on the judgment in *Shantiniketan Hindi Primary School Vs. Pal Hariram Ramavtar and Others*, and submits that no error has been committed in the order impugned which may requires interference of this Court.

9. We have considered the submissions of counsel for respective parties and with their assistance examined the material available on record.

10. Before examining the controversy on hand and for better appreciation it will be appropriate to take first the glance of Scheme of Act, 1989 and Rules, 1993 framed thereunder which has come up for consideration.

11. The State Government with the object for better organization and development of education in the Non Govt. education institution in the State of Rajasthan with assent of the President enacted the Act, 1989 and for proper administration & control over the Non Government education institution with certain checks and balances over recognized institution like constitution of managing committee, administration, control over properties, transfer & closure of the institution, conditions of service and penalties etc. under certain provisions of the Act 1989.

12. As regard recognition of institution is concerned it needs recognition except in cases of institution which are affiliated to University or recognized or to be recognized by the Board has to submit their application before the competent authority seeking recognition of Non Government institution on fulfillment of certain terms and conditions and such of the recognized institution have to abide conditions for grant of recognition. The relevant provisions of the Act 1989 & Rules 1993 read ad infra:

16. Power of the State Government to regulate the terms and conditions of employment -- (1) The State Government may regulate the recruitment and conditions of service, including conditions relating to qualifications, pay, gratuity, insurance, age of retirement, entitlement of leave, conduct and discipline, of persons appointed as employees of aided institutions in the State:

Provided that the rights and benefits accruing to an employee of an existing institution under the grant-in-aid rules in force at the commencement of this Act shall not be varied to the disadvantage of such employee:

Provided further that every such employee shall be entitled to opt for such terms and conditions of service as were applicable to him immediately before the commencement of this Act.

Provided also that, irrespective of the age of retirement prescribed, action may be taken for compulsory retirement of such an employee after completion of 25 years of service or on attainment of the age of 50 years whichever is earlier, in accordance with the procedure as may be prescribed.

(2) Every recognised institution shall constitute a provident fund for the benefit of its employees in such manner and subject to such conditions as may be prescribed and contribute to such fund and pay interest on the deposited amount at such rate as may be prescribed from time to time.

29. Pay and allowance of employees -- (1) The scales of pay and allowances except compensatory allowances, with respect to all the employees of an aided institution shall not be less than those prescribed, for the staff belonging to similar categories in Government institutions.

(2) Notwithstanding any contract to the contrary, the salary of an employee of a recognised institution, for any period after the commencement of this Act, shall be paid to him by the management before the expiry of the fifteenth day or such

earlier day, as the State Government may, by general or special order appoint, of the month next following the month in respect of which or part of which it is payable:

Provided that if at any time the State Government deems it fit, it may prescribe a different procedure for payment of salary and allowances.

(3) The salary shall be paid without deductions of any kind except those authorised by the rules made under this Act or by any other law for the time being in force.

31. Payment of salaries -- (1) The management of an aided institution shall disburse the salaries of its employees by account payee cheques:

Provided that the Director of Education may, in special circumstances, direct, by general or special order, to disburse the salaries of employees in any other manner as he thinks fit.

(2) In case the management of an aided institution fails to pay the salary of its employees as referred to in sub-section (1) or in section 29, the Director of Education or any officer authorized by him may deduct such salary from the amount payable as the next grant-in-aid, or if necessary, from the amount of any subsequent grant-in-aid and pay to the staff such salary on behalf of the management. Such payment shall be deemed to be a payment of money to the management of the institution itself.

13. At the same time, the relevant provisions of Rules 1993 are read ad-infra-
Rule 34--

Pay and allowances-- The scales of pay and allowances of the staff of the aided educational institutions shall not be less than those prescribed by the Government for the staff of similar category in the Government educational institutions.

The service of all such temporary teachers appointed before 1st January against leave vacancies or by Authorities not competent to make such appointments and of all temporary teachers appointed after 31st December shall be terminated on the last working day of the session.

35- Payment of pay and allowance -- (1) The payment of pay and allowance to the employees of the institutions shall be made by A/c payee cheque only, failing which the expenditure made on this account shall not be admitted for grant-in-aid.

93- Removal of Doubts--

Where a doubt arises as to the interpretation of any of the provisions of these rules or their applicability, the matter shall be referred to the Government in the Education Department, whose decision thereon shall be final.

14. From the relevant provisions of the Act & Rules referred to supra it envisage that Sec. 16 of the Act 1989 while regulate the recruitment and conditions of service, including qualifications, Pay, gratuity, insurance etc. of aided institutions in the State and at the same time sec. 29 further mandates that the scales of pay and allowances except compensatory allowances shall be admissible to the employees of the aided institution which may not be less than those prescribed for the staff belonging to similar categories in Government institutions and Sec. 31 ensures regarding payment of salary to the employees of aided institutions and if Sec. 16 and Sec. 29 with Sec. 31 are read conjointly it makes explicitly clear that while the State regulate the terms and conditions of employment of recognized institution but the State intends to ensure the scale of pay & allowances for employees of aided institutions which may not be less than those prescribed for employees of Govt. institutions and at the same time, the rules were framed by the State Government in exercise of power conferred by sec. 43 of the Act 1989 regulating the recognition, grant-in-aid and service conditions etc. of the Non-Government Educational Institutions for better implementation and for giving effect to the provisions of the Act in furtherance thereof the State Govt. intended to monitor and lay down procedure for recognition of the institution and to regulate their grant-in-aid, accounts, audit and general conditions of service which includes recruitment, disciplinary enquiries and the procedure to be adopted for inflicting penalty and at the same time for meeting out the removal of difficulties R. 93 take note of doubts arising in regard to interpretation of any of the provisions of the Scheme of rules or their applicability, the State Govt. reserves its authority and its decision is final, however, for recognition of an institution the procedure has been provided in Schedule 2 to R. 5(1) of Rules 1993 which indicates various requirement for an educational institution to comply with for grant of recognition of a Non Govt. institution and Clause 14 relates to pay and allowances to be paid as per the Government rule but no such rules if any framed by the State Govt. regarding payment of scale of pay to the employees of a recognized unaided institution has been placed before the Court. However, the provisions of the Act 1989 and Rules 1993 framed thereunder clearly mandates such scale of pay and allowances are payable to the employee of aided institution which shall not be less than those prescribed for the staff belonging to similar category in the Govt. institution. Relevant Para 14 of Schedule 2 appended to Rules 1993 reads ad infra.

(Vernacular matter omitted.... Ed.)

15. When the question arose regarding removal of difficulties giving effect to the provisions of the Act 1989 and Rules 1993 framed thereunder and various unaided education institutions raised objection and the litigation arose before various forums the State in exercise of powers under R. 93 of the Scheme of the Rules vide its Circular dated 29.7.1998 made a clarification that the scale of pay & allowances to recognized Non-Government unaided institution shall not be governed by the Scheme of Act 1989 and Rules 1993, it will be appropriate to quote the clarification made by the Govt. vide its circular dated 29.7.1998 as

under:

(Vernacular matter omitted.... Ed.)

16. The Circular dated 29.7.1998 issued by the State Govt. is self explanatory and needs no further clarification that the scale of pay & allowances as admissible to the employees of Govt. institution are applicable to the employees of the aided institutions alone and no parity of scale of pay can be claimed by the employees of unaided institution under the Scheme of the Act 1989 & Rules 1993. It is true that Ld. single Judge of this Court in C.W.P. No. 3893/1995 decided on 29.5.1997 held that even the untrained teacher of unaided institution is entitled for scale of pay & allowances similar to the employees of the Govt. institution and the Division Bench has dismissed the appeal preferred by the management but it appears from the perusal of the order of Division Bench that the Scheme of the Act 1989 and Rules 1993 framed thereunder are not brought to their notice as reflected from the order dated 24.2.2002 passed in DB Civil Special Appeal No. 302/2002.

16A. In Halsbury's Laws of England, 4th Edn., Vol. 26 it is stated:

A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of co-ordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

17. The Apex Court in Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao (Dead) by Lrs. and Others, has observed as follows:

The rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statute while deciding that issue.

18. In view of principles laid down and after we have examined the Scheme of the Act 1989 and Rule 1993 as indicated above certainly the decision of the Division Bench was given in ignorance of relevant statute and the view expressed by the Division Bench of this Court stands per incuriam and may not be of any assistance to the respondent employee.

19. The Apex Court in its judgment reported in Sushmita Basu & others referred to supra observed that the private schools cannot be compelled to pay salary to the teachers equal to the Government school teachers for want of any rules and after the Scheme of Act 1989 and Rules 1993 framed thereunder as have been examined in its terms we do not find that there is any provision which mandates the scale of pay & allowances of recognized unaided institution has to be in parity to the employees of Govt. institution and it will be appropriate to quote extract of judgment ad infra:

3. It was mainly complaining about the refusal of the management to implement the recommendations of the Third Pay Commission with effect from 1.1.1988 retrospectively, that the teachers went to Court. We asked learned Senior Counsel for the appellants as to whether there was any Act, statutory rule or even Government Order directing private unaided educational institutions to implement the recommendations of the Third Pay Commission especially in the context of the fact that the salaries and emoluments of teachers of private unaided institutions was not a subject-matter of reference to the Third Pay Commission. Learned Counsel fairly submitted that there was no statutory provision, Rule or binding Order, but referred to the decision of this Court in *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, and submitted that the principle recognized therein should be applied to teachers like the appellants as well. Learned Counsel conceded that there was no provision corresponding to Section 10 of the Delhi School Education Act, 1973 in the Bengal Act. But the submission was that the appellants were approved teachers and they were also doing the same work as teachers of Government schools and aided schools and in the circumstances "equal pay for equal work" principle could be directed to be implemented and in that context the appellants could be granted relief. This was met by learned Senior Counsel appearing for the respondents by pointing out that the institution had not only implemented the recommendations of the Third Pay Commission but has also implemented the recommendations of the Fourth and Fifth Pay Commissions, though it was not bound to do so and there could be no grievance that teachers are being paid salaries that are not comparable with that of the teachers of Government schools and aided schools. With reference to the pleadings, it was pointed out by the learned Senior Counsel that the teachers of the first respondent-Institution, in fact, were enjoying some additional benefits which are not available to teachers of Government institutions and aided institutions. It was also pointed out that out of the very many teachers in the school, only three of them, the appellants before us, have refused to enter into an agreement with the First Respondent and as observed by this Court in *Reserve Bank of India and Others Vs. C.N. Sahasranaman and Others*, a few are not satisfied, is no ground for interference by Court or for grant of relief in their favour when by and large the position adopted by the institution is found to be fair and just and is accepted by all other teachers. We find considerable merit in the submissions on behalf of the respondents. In the absence of a statutory provision, we are not in a position to agree with learned Counsel for the appellants that interference by the High Court under Article 226 of the Constitution is warranted in this case. We find on the whole that there has been just treatment of the teachers by the first respondent, institution and there is no reason to interfere even on the ground that the appellants are being treated unfairly by their employer, the educational institution, or on the basis that this is a case in which the conscience of the Court is shocked, compelling it to enter the arena to afford relief to the teachers.

4. In this context, we must also notice that the Writ Petition in the High Court is

filed for the issue of a writ of mandamus directing a private educational institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by learned Counsel for the appellants, namely, K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, shows that interference under Article 226 of the Constitution of India to issue a writ of mandamus by the Court against a private educational institution like the first respondent herein, would be justified only if a public law element is involved and if it is only a private law remedy no Writ Petition would lie. We think that even going by the ratio of that decision, a writ of mandamus could not have been issued to the first respondent in this case.

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the "guru". It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they should be the cause for putting education beyond the ken of children of parents of average families with average income. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

20. However, Hon"ble Apex Court in its latter judgment reported in Mrs. Satimbla Sharma and Others Vs. St. Paul's Senior Secondary School and Others, . taking note of Sushmita Basu observed that no mandamus can be issued to the respondents regarding scale of pay & allowances on the ground that the conditions of affiliation/recognition of schools has not been carried out and observed ad infra:

13. We cannot also issue a mandamus to Respondent Nos. 1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the report of Education Commission 1964-66 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 managements should be the same, unless the recommendations are incorporated in an executive instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

21. In the instant Scheme of Rule 1993 Schedule 2 on which emphasis was made by the counsel for respondent appended to R. 5(1) of the Rules Para 14 suffice it to say that the State Government has highlighted for making payment of scale of pay & allowances for recognized institution as per rules of the State Govt. but as noticed there are no rules to this effect framed by the State Government so far prescribing scale of pay & allowances for employees of unaided educational institution and what being urged by counsel for respondent if still has been violated it may be within the institution and the State Government but employee of unaided institution cannot seek mandamus regarding scale of pay & allowances equal to and in parity to the employees of Government institution moreso when the legislature has confined as regards scale of pay & allowances of employees of the aided institution similar to the employees of Govt. institution but we make it further clear that for other purpose as regards recruitment, recognition, condition of service, leave, accounts & audit, conduct & discipline, constitution of managing committee etc. the legislative in its wisdom has put its control over the recognized institutions irrespective of the fact whether the institution is aided or unaided but in the instant matter scale of pay & allowances is the subject-matter in our considered view under the scheme of Act 1989 & Rules 1993 it is confined to the employees of Non Govt. aided institution and not for the employees of Non Government recognized unaided institutions. As regards judgment on which learned single Judge has placed reliance of the Apex Court in K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, it was based on principles of equal pay for equal work enshrined in, Art. 39(d) of the Constitution but that could always be referred in reference to the scope of the relevant Act and Rules framed thereunder but under the present Scheme of the Act 1989 & Rules 1993 it does not provide scale of pay & allowance to such of the employees of the unaided institution and the teacher of unaided institution cannot seek mandamus in isolation u/Art. 39(d) of the Constitution and parity with the employees of the Govt. institution and apart from it the respondent employee was an untrained teacher and there is no provision under the Scheme of Govt. rules to recruit untrained teacher and the fact is that the Government does not recognize untrained teacher in its establishment and under these facts and circumstances parity even otherwise cannot be claimed by the respondent employee for scale of pay & allowances admissible to the employee of the Government institution as prayed for and accordingly, in our considered view the judgment of the learned single Judge and so also of the Educational Tribunal are not illegally sustainable. Consequently, the appeal deserves acceptance and accordingly allowed and the order of the learned single Judge dt. 31.5.2004 & of the Educational Tribunal dated 3.3.2004 are

hereby quashed and set aside. No cost.