

(2000) 02 BOM CK 0045
In the Bombay High Court
Case No : Writ Petition No. 364 of 1995

All Goa Private Schools Pre-Primary and Primary Teachers Association and Others APPELLANT

Vs

State of Goa and Others RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Goa, Daman and Diu School Education Act, 1984 — Section 11, 13, 14
Goa, Daman and Diu School Education Rules, 1986 — Rule 102, 103, 47, 48, 49

Citation : (2000) 3 ALLMR 620 : (2000) 3 BomCR 17

Hon'ble Judges : R.M.S. Khandeparkar, J; R.K. Batta, J

Bench : Division Bench

Advocate : D.B. Ambekar, for the Appellant; A.N.S. Nadkarni, General, H.R. Bharne and J. Godinho, for the Respondent

Judgement

R.K. Batta, J.—The petitioner No. 1 is an Association of Pre-Primary and Primary Teachers of Private Schools of Goa. The petitioners had earlier filed Writ Petition No. 302 of 1988, which was disposed of by Oral Judgment dated November 7/8, 1989 by Division bench of this Court. In the said petition the question which was raised by the petitioner No. 1 Association on behalf of the employees of the unpaid minority schools was whether section 14 of the Goa, Daman and Diu School Education Act, 1984 (hereinafter called "the said Act") was arbitrary/discriminatory and, therefore, violative of Article 14 of the Constitution of India. Vide & oral judgment in the said writ petition section 14 of the said Act was struck down as ultra vires of Article 14 of the Constitution except to the extent it makes inapplicable section 11(2) to unaided minority school. In addition, the State of Goa was directed to enforce the provisions of sub-sections (1), (3) (4) and (5) of section 11 and section 13 as against respondents 2 to 5 therein. The directions were ordered to be enforced from the date of judgment and relief relating to enforcement for the earlier period was declined on account of unanticipated financial burden on the management, who might have bona fide

planned their affairs and budget u/s 14 of the said Act. In pursuance of the oral judgment referred to above, respondent No. 1 State of Goa vide Circular No. 97 dated 25th July 1990 directed the Managements of the Non-Government Primary Schools to bring the scale of pay and allowances of the employees of the recognised Non-Government Primary Schools to the level of those employees of the corresponding status of the schools run by the Government. According to the petitioners, respondent No. 1 has failed to enforce the provisions of sections 11 and 13 of the said Act in case of primary schools. The petitioners filed many representations. The grievance of the petitioners is that by Circular No. 97 dated 25th July 1990, respondent No. 1 had enforced only provisions of section 13 pertaining to scale of pay and allowances but did not enforce provisions relating to Pension, Gratuity, Provident Fund and other benefits and there was no enforcement of section 11 of the said Act pertaining to terms and conditions of services of employees of recognised primary schools. The petitioners' further grievance is relating to Clauses 4 and 7 of Annexure to order dated 14th November 1990, Circular No. 74 dated 20th January 1992, Circular No. 75 dated 10th February 1992 Circular No. 81 dated 25th June 1992. The last grievance of the petitioners relates to pupil-teacher ratio and in this connection, the case of teacher Mrs. Martha Fernandes working in the Primary section of Our Lady of Health High School, Cuncolim Salcete Goa, has been cited. It may be mentioned here that the said Mrs. Martha Fernandes has independently filed a separate Writ Petition No. 476 of 1996 on this aspect. The petitioners seek appropriate directions with reference to the grievances enlisted in the writ petition.

2. We have heard learned Advocate for the petitioners, learned Government Advocate for respondent No. 1 and learned Advocate for respondent 2, 4 and 5. We had also asked learned Advocate General to assist us in the matter.

3. Learned Advocate for the petitioners has urged before us that respondent No. 1 has enforced the provisions of section 13 only to a limited extent, that is to say, with reference to scale of pay and allowances alone vide Circular No. 97 dated 25th July 1990 (Exhibit "C" at page 115) but did not enforce the other benefits prescribed under Rule 102 of the Goa, Daman and Diu School Education Rules, 1986 (hereinafter called "the said Rules") as well as other allowances referred to in Rule 103 of the said Rules. In the meantime policy decision was taken by the Government to release grants to Non-Government Recognised Primary Schools which had switched over to the regional language/mother tongue as medium of instruction. The release of grant to such schools was on terms and conditions specified in Annexure to order dated 14th November 1990. The Government also took a policy decision that grants will be released to meet expenditure on pay and allowances of the teachers at the rate of 100% on the actual expenditure incurred according to the approved scales laid down by the Government from time to time; staffing pattern will be the same as applicable to Government Primary Schools as specified in the Annexure attached and that no other expenditure of the schools shall be an admissible item for the purpose of releasing grant. The petitioners challenge Clauses 4 and 7 of the Annexure to

order dated 14th November 1990 (Exhibit "K" which is at page 165). The said Clauses read as under :-

"4. Every appointment of a teacher should be duly approved by the Education Department and the entitlement of the teachers will be in accordance to the Government Circular No. 46/31/72-Adm-II/31 dated 21-10-1982 and as amended from time to time, and made applicable to Government Primary Schools.

7. Non-Government Aided Elementary School Teachers will not be entitled to any other benefits prescribed under Education Act and Rules."

4. Learned Government Advocate drew our attention to section 7 of the said Act which relates to Aid to recognised schools and urged that grant of aid is a policy matter to be decided by the Government. Section 7 of the Act reads as under :---

"7. Aid to recognised schools,---(1) Any authority specified in Clause (c) of section 2 may grant, out of the funds made available to it for the purpose, after due appropriation made by law as aid to recognised schools such sums of money as it may consider necessary:

Provided that no existing school receiving aid, immediately before the commencement of this Act, shall be eligible for continuance of such aid unless it complies with, within such period as may be specified by the aforesaid authority, the conditions specified in the proviso to sub-section (1) of section 5 and the rules made under this Act relating to the grant or continuance of such aid.

(2) The authority competent to grant the aid may stop, reduce, or suspend aid for violation of any of the provisions of this Act or the Rules made thereunder;

Provided that no such aid shall be stopped, reduced or suspended unless on a reasonable opportunity of showing cause against such stoppage, reduction or suspension has been given to the management.

(3) The aid may cover such part of the expenditure of the schools as may be prescribed.

(4) No payment, out of the aid given for salary, allowance and provident fund of employees of the school, shall be made for any other purpose.

(5) No unrecognised school shall be eligible to receive any aid or any benefit made available to recognised schools by the authority specified in Clause (c) of section 2."

He then referred to Chapter VI of the said Rules which deals with Grant-in-Aid. Rule 47 provides that every aided school shall, so long as it fulfils the conditions for receiving aid, continue, subject to the provisions of these rules, to receive such aid. Rule 48 empowers the Director of Education to determine the total number of aided schools every year to whom grant-in-aid may be given. Rule 49, which has material bearing and in respect of which the learned Advocate General

was requested to address, reads as under :--

"49. Application for Grant-in-Aid,---Every application for Grant-in-aid by a School Management having a Society registered under Societies Registration Act, 1860 shall be made in Form II and shall be addressed to the Director of Education or any officer authorised by him in this behalf and every application for the yearly assessment of grants shall be made in Form prescribed by the Director of Education.

Provided that no pre-primary or primary school shall be held eligible for receiving grant-in-aid."

Proviso to Rule 49 categorically lays down that no pre-primary or primary school shall be held eligible for receiving grant-in-aid. In the light of the said proviso to Rule-49 it is not understood as to how the Government of Goa had issued order dated 14th November 1990 to release 100% grant in respect of pay and allowances of the teachers in the recognised private primary schools. Learned Advocate General made some effort to justify the release of grants as ordered in Order dated 14th November 1990 but ultimately had to concede that the Order in question dated 14th November 1990 could not have been issued in the light of proviso to Rule 49 of the said Rules unless Rule 49 was appropriately amended.

5. Be that as it may, we shall examine the challenge raised by the petitioners with reference to Clauses 4 and 7 of the Annexure to the said order dated 14th November 1990, which order prima facie is contrary to the proviso to Rule 49 of the said Rules. In this connection learned Government Advocate has placed before us orders dated 10th September 1999 of the Director of Education, which are at pages 299 and 301. Under one of the said orders the benefits prescribed under Rule 102 of the Rules and in addition to that leave travel concession as well as contribution to General Provident Fund as per General Provident Fund Rules have been extended to the primary school teachers working in recognised Non-Government Aided Primary Schools with effect from the dates shown therein. By another order dated 10th September 1999 Clause 7 to Annexure to Order dated 14th November 1990 has been deleted and the C.C.S. (Leave) Rules, 1972 and casual leave as applicable to Government Aided Secondary School teachers have been extended. Therefore, according to learned Government Advocate, the grievance of the petitioners in this petition do not survive any longer. Nevertheless, Clause 7 in the Annexure to order dated 14th November 1990 to the effect that "Non-Government Aided Elementary (Primary) School teachers will not be entitled to any other benefits prescribed under Education Act and Rules" has to be read in the context that grants would not be available for the benefits referred to in Clause 7. Obviously, such primary school teachers would be entitled to such benefits in view of directions of this Court contained in paragraph 17 of the judgment in Writ Petition No. 302 of 1988. Nonetheless, the effect of Clause 7 of Annexure to Order dated 14th November 1990 would be that corresponding maintenance grants for such benefits would not be available from the Government though such primary teachers would be

entitled to such benefits from the Management.

6. The other two Circulars, namely, Circular No. 75 dated 10th February 1992 (Exhibit "P" at page 199) and Circular No. 81 dated 25th June 1992 (Exhibit "Q" at page 203) deal with salary grants in the matter of leave, maternity leave and appointment of substitutes in leave vacancies under which the Government had taken policy decision not to release grant for the same. The Government has to take policy decision in the matter taking into consideration various aspects including finances available and, in our opinion, there is no ground for interference on this aspect.

7. Coming to the pupil-teacher ratio including challenge to Clause 4 of Annexure to order dated 14th November 1990 as well as Circular No. 72 dated 3rd October 1991, Circular No. 74 dated 20th January 1992, it is not necessary to decide this question in this petition since the challenge raised is of academic nature and besides that the petitioners have cited the case of Mrs. Martha Fernandes working in primary section of Our Lady of Health High School, Cuncolim, Salcete Goa, in this connection, who was declared surplus in view of Circular No. 72 dated 3rd October 1991. We have already pointed out that Mrs. Martha Fernandes has filed a separate Writ Petition No. 476 of 1996 and this question shall be dealt with in the said petition.

8. Subject to the observations made in paragraphs 4 to 7, we do not find any merit in this petition. The writ petition is, accordingly, rejected with no order as to costs. Rule, accordingly, stands discharged.

9. Heard. Learned advocate for the petitioners seeks leave to appeal. We do not find that there is any case for grant of leave. Leave refused.

10. Petition dismissed.