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**(2012) 06 MP CK 0087**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 13029 of 2009**

Brajesh Kumar Singh and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision : 27-06-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2013) 1 MPJR 13**

**Hon'ble Judges : K.K. Trivedi, J**

**Bench : Single Bench**

**Advocate : Rajendra Pandey, for the Appellant; Piyush Dharmadhikari, Govt. Advocate and Ms. Amrit Ruprah, Advocate, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

K.K. Trivedi, J.—This petition under Article 226 of the Constitution of India is in fact the second round of litigation before this court by the petitioners (two in number) claiming payment of salary from the head of grant-in-aid. It is contended that the petitioners were engaged in a school established by the respondent No. 3. The said school was receiving grant-in-aid but the salary was not being paid to the petitioners as was payable under the provisions of the relevant Act. The petitioners were, therefore, left with no option but to approach this Court by way of filing of writ petition being W.P. No. 94/1999. The said writ petition was allowed and an order was issued in favour of the petitioners. Despite passing of order, since payment of salary was not made and non-compliance of the order passed by this Court was done, a Contempt petition No. 665/2009 was filed before this court. Certain statements were made by the respondents, therefore, an observation was made by this court in the said contempt petition and the same was disposed of finally, as a result the petitioners were entitled to be paid the amount. However, again the amount was not being paid, therefore, the petitioners were required to file this writ petition. In reply to the notices issued, the respondent No. 3 has filed a return and has contended that the

petitioners were not entitled to the amount from the head of grant-in-aid as for them no grant whatsoever was paid by the State Government. It is contended that a proposal was sent by the respondent No. 3 for giving the grant for payment of salary to the persons like the petitioners. The names of the petitioners were included in this proposal. However, the state Government granted the grant for payment of salary to only on Headmaster, 13 Assistant Teachers and one Peon. The grant was never paid for the purposes of payment of salary to the petitioners as the names of the petitioners were included in the list of those, who were not to be paid the wages from grant-in-aid. The salary of the petitioners was calculated in terms of the order of their appointment and since calculation was done, the arrears of salary was already paid to the petitioners. Since this has been done, the institution itself has been closed, the petitioners are not entitled to any relief in the present writ petition.

2. A rejoinder is filed by the petitioners stating that the amount of salary was not rightly paid to the petitioners. In fact the petitioners were entitled to be paid the salary treating as if the petitioners were also appointed on regular establishment in the pay scale applicable to the post on which they were appointed. The petitioners are to receive a heavy amount from the respondent No. 3 towards the arrears of salary but this amount has not been paid. Therefore, it is contended that the averments and statements made in the return filed by the respondent No. 3 are totally false to the knowledge of the authorities of respondents No. 3. The State has filed no return.

3. Heard learned Counsel for the parties at length and examined the record.

4. The fact remains that the controversy was raised before this Court in the first writ petition filed by the petitioners being W.P. No. 94/1999. At that time, there were three petitioners. This Court considered the claim made by the petitioners against the respondent No. 1, though the respondent No. 1 was served but was not represented on the date of hearing. Only the Government Advocate was present, who was heard. Even there was no representation of the petitioners. From the record made available to the Court in the aforesaid writ petition, it was found that the very same documents were produced by the respondent No. 1 in the said case, who is respondent No. 3 in the present case. It was pointed out that the grant-in-aid is granted only for 15 employees working in the school of respondent No. 3 and for rest of the employees, the grant-in-aid was not paid. This fact was also supported by a return filed by the respondent state in the said case and it was stated that vide order dated 05.02.1996, the State Government has granted the grant for payment of salary to respondent No. 3 herein only for 15 employees. How could it be said that petitioners were also not amongst those 15 employees, who were to be paid the salary from the grant-in-aid without there being any documentary evidence to this effect produced by the respondents. The documents were not filed by the petitioners in the said case indicating that they were paid the salary from grant-in-aid at any point of time or their names were approved by the State Government for the purposes of making

payment of salary by grant-in-aid. Therefore, no definite finding in this respect was given by this Court while deciding W.P. No. 94/1999 vide order dated 09.08.2007. The fact remains that because the petitioners were not being paid any salary at that time, this court has passed the order aforesaid directing that the salary be paid to the petitioners within three months from the date of furnishing the certified copy of the order passed by this Court. Again this Court has not dwelled upon the issue whether the petitioners were to be paid the salary at par with those, who were being paid the salary by respondent No. 3 on grant-in-aid or not. Most probably this was not done because none was there for the petitioners or the respondent Society to prosecute the petition.

5. Since this order was not being complied with, first contempt petition No. 547/2008 was filed by the petitioners. It was found by this Court in the said contempt petition that the directions issued by this Court in W.P. No. 94/1999 were being complied with inasmuch as the recovery of the amount of salary payable to the petitioners was initiated by the Tahsildar, Shahdol, by issuing a revenue recovery certificate. In fact this was the direction issued by this Court in the writ petition. This being so, the first contempt petition was disposed of. Again till the year 2009 salary was not paid to the petitioners and, therefore, they have approached again this Court by filing Contempt case No. 665/2009. This Court came to the conclusion after going through the entire record that in fact the amount payable to the petitioners was not quantified in the order passed in the earlier writ petition nor any responsibility was fixed for payment of the said quantified amount, therefore, it cannot be said that the order of the Court was violated by the respondents. The Management of the Society and the school were not available before the Court nor were impleaded as a party in the said contempt petition, therefore, this Court was of the opinion that action for committing contempt of this Court by not complying with the orders passed by this Court could not be taken against those official respondents, who were arrayed as contemnors in the said contempt petition. This Court. Therefore, discharged the respondents in the said case and dropped the proceedings against them by dismissing the application for contempt but granted liberty to the petitioners to seek quantification of recoverable amount of salary, if not paid by the respondent No. 3. This being so, the present petition is required to be adjudicated only for the said purpose. The specific claim is made by the petitioners that the petitioner No. 1 is entitled to an amount of Rs. 2,43,200/- and petitioner No. 2 is entitled to an amount of Rs. 1,16,158/- as arrears of salary, which is to be paid by the respondent No. 3. The entire pleadings in the writ petition are respect to such a claim.

6. The return of the respondents nowhere proves the fact that the petitioners were appointed with a clear understanding that they will get lesser salary from the employer, the respondent No. 3. On the contrary, it is admitted by the respondent No. 3 that the petitioners were appointed as Upper Division Teacher and peon respectively. For the post of Upper Division Teacher it is said that the petitioner No. 1 was entitled to payment of Rs. 740/- only. How and why this

amount was to be paid at such a rate has not been explained anywhere. Admittedly, the post of Upper Division Teacher was having a pay scale at the relevant time when the petitioner No. 1 was appointed. For petitioner No. 2 it is said that he too was appointed on fixed Salary. No order of appointment has been placed on record in proof of such a fact by the respondent No. 3, though the entire records relating to services of the petitioners should be available with the respondent No. 3. Undisputedly, respondent No. 3 has established the School. If the society is constituted for the said purposes and if the Society establishes a school, the same cannot be done without the approval of the State Government and without getting a recognition from the Madhya Pradesh Board of Secondary Education. For both the purposes, instructions have been issued and it has been categorically provided that such institutions should maintain the same staffing pattern in the school as is required by any school established by the State Government. If the staffing pattern was to be maintained in the same manner, it was necessary for respondent No. 3 to appoint the regular teachers. Looking to the number of students enrolled in the School if more number of teachers were required, the respondent No. 3 was required to obtain sanction for creation of such posts. It has been specifically provided in the Madhya Pradesh Ashaskiya Shikshan Sanstha Adhyapako Tatha Anaya Karmcharyon Ke Vetno Ka Sanday Kiya Jana Adhiniyam, 1978 that such a sanction is required to be obtained from the State Government by the Society. This being so, it was a necessary requirement of the act, which was to be fulfilled by the respondent No. 3 before obtaining any sanction to establish a school. Whether this was done or not, whether appointment of petitioners was done in the same manner or not and whether they were given any pay scale while appointed or not, is not clear nor has been specifically mentioned by the respondent No. 3 in its return. In fact such an amendment in the Act of 1978 was made only in the year 2000 and prior to the said year, all the requirements were to be fulfilled by the employer. Admittedly, the petitioners were appointed prior to coming into force the amendment in the Act of 1978 and this being so, the requirements as laid-down under the Act aforesaid as also under the regulations of the Board of secondary Education were to be fulfilled by the respondent No. 3.

7. A bald statement is made by the respondent No. 3 and it is said that though petitioners were appointed on their respective posts with effect from 26.02.1994 but it is not anywhere stated that they were appointed on any pay scale or not. How the minimum of the pay was granted to the petitioners and why the said pay was never increased by release of increments, has not been explained. Mere financial constraints of respondent No. 3 are not enough to hold that petitioners were not entitled to the similar pay and scales which were made available to the employees and teachers appointed by the respondent No. 3, who were receiving the salary from grant-in-aid. Even for the petitioners, the D.A. was also not added. This being so, the stand as taken by the respondent No. 3 cannot be accepted. The salary register, which is placed on record as Annexure R-1, is undated, unsigned document and the same cannot be relied on. This being so, it

is to be held that the petitioners were entitled to the pay as was available to the employees of respondent No. 3, who were receiving the salary from grant-in-aid. If the respondent No. 3 was not having such financial resources to run the institution, it was not authorized to establish such an institution.

8. In view of the aforesaid, the act of the respondent No. 3 cannot be said to be justified or correct. The petitioners would be entitled to payment of salary in the same manner as was granted to other employees of the school, who were being paid the salary from the grant-in-aid received from the State Government. The respondent No. 3 is, thus, liable to pay the amount of salary to the petitioners after calculation of the said amount from the date of appointment till the school has remained functional and till the employment of the petitioners continued in the society of respondent No. 3. This is being ordered because the respondent No. 3 has not produced any document to indicate that the petitioners were appointed on contract basis on a fixed salary, which has been calculated and paid to the petitioners.

9. Consequently, the writ petition is allowed. The respondent No. 3 is directed to grant the benefit of salary to the petitioners in the pay scale applicable to the post, at par with the pay scales made available to the employees, who were being paid salary from grant-in-aid received from the state Government. The amount of arrears of salary be calculated and the said amount be paid to the petitioners with interest at the rate of 6% per annum from the date of order till the date of realization. The Collector, Shahdol, is hereby directed to see that the amount of arrears of salary of the petitioners is calculated and paid to the petitioners within a period of four months from today. If this amount is not paid within the said period, the Collector, Shahdol, will take action to attach all the property of respondent No. 3 and put the same for sell for the purposes of recovery of the amount payable to the petitioners. With the aforesaid, the writ petition is allowed to the extent indicated herein above. There shall be no order as to cost.