

(2008) 05 MP CK 0007
In the Madhya Pradesh High Court

Brajesh Kumar Tiwari

APPELLANT

Vs

C.E.O., Zila Panchayat and Others

RESPONDENT

Date of Decision : 09-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) ILR (MP) 2292 : (2008) 4 MPHT 496 : (2008) 3 MPLJ 218

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.

Petitioner has filed this petition with regard to following reliefs:

(a) That, the direction be issued to the respondents to make the payment of Honorarium to the petitioner @ Rs. 2500/- per month as per Government Circular (Annexure P-1) and also direction be given to pay the difference of Honorarium with effect from 1st July, 2003.

(b) That direction be given to the respondents to make the payment of Honorarium from 22-10-1999 to June, 2002 @ Rs. 1000/- per month which has not been paid to the petitioner.

(c) That, direction be given to make payment as per prevailing revised rate along with all arrears.

(d) That, any other relief which this Hon'ble Court deem fit may kindly be granted.

The State Government issued a policy with regard to Education Guarantee for all students in the State of M.P. The aforesaid policy has been named as M.P. Education Guarantee Scheme (Annexure P-2). As per aforesaid policy, there will be a Centre named as EGS Centre where within one kilometre from the area no

school was available for teaching the students and there must be demand from the community for the teachers. For the aforesaid purpose teachers will be appointed at the EGS Centre and there will be one teacher for 40 students.

The petitioner was appointed as Shiksha Karmi vide appointment order dated 20-10-1999 at EGS Centre, Amarpura, copy of the appointment order has been filed as Annexure P-4. The petitioner had gone on training and passed the training successfully. Since then the petitioner has been working as Guruji at EGS Centre, Amarpura. As per petitioner, he was not paid the Honorarium at the rate of Rs. 1000/- per month upto June, 2002 and the same was further revised at the rate of Rs. 2,500/- w.e.f. 1-7-2003. As per petitioner, he has been teaching upto class Vth Standard at EGS Centre, Amarpura and the students have passed class Vth examination from the Centre.

The respondents in the written stated that the petitioner is not entitled to receive enhanced Honorarium because the enhanced Honorarium was paid only to those Guruji's who have fulfilled the condition mentioned in the Circular dated 26-7-2003, copy of the Circular has been filed as Annexure R-I and because the petitioner did not fulfil the requisite conditions mentioned in the Circular, hence, the petitioner has not been paid the enhanced rate of Honorarium.

Learned Counsel for the petitioner submitted that non-payment of enhanced rate of Honorarium to the petitioner is arbitrary and illegal and the same is in violation of Article 14 of the Constitution because the petitioner has been performing similar work and respondent could not be permitted to create class within class for the purpose of grant of Honorarium. In support of his contentions, the learned Counsel relied on the judgments of Hon'ble the Supreme Court in M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. and Another, , in Mew Ram Kanojia Vs. All India Institute of Medical Sciences and Others, , in V. Markendeya and Others Vs. State of Andhra Pradesh and Others, , in Lachhman Das on Behalf of Firm Tilak Ram Ram Bux Vs. State of Punjab and Others, and also in State of Mysore and Another Vs. P. Narasing Rao, .

Contrary to this, learned Deputy Advocate General for the State submitted that the conditions imposed by the impugned Circular are as per law and the Mission has right to fix different Honorarium of Gurujis in certain circumstances based on the basis of experience and working conditions.

Undisputed facts of the case are that the petitioner was appointed on the post of Guruji in accordance with M.P. Education Guarantee Scheme, Annexure P-2 vide order dated 20-10-1999. Since then the petitioner has been performing the work of Guruji at the EGS Centre, Amarpura. The petitioner stated in the petition that he is teaching upto 5th class students. In Education Guarantee Scheme there is a provision for Shiksha Karmi. Subsequently it has been designated as Guruji. It has further been mentioned in the policy that Shiksha Karmis shall be entitled for Honorarium or stipend which shall be paid to them every month. In the aforesaid scheme there is no provision to pay different Honorarium to different Gurujis.

Rajeev Gandhi Shiksha Mission issued another Circular dated 26-7-2003 Annexure R-1. It has been mentioned in the Circular that enhanced rate of Honorarium shall be paid to the Guruji who had been working at EGS Centre and fulfil following conditions:

- (1) That the education centre must have been sanctioned prior to 31-3-2001.
- (2) From the 1st standard to Vth standard classes shall be conducted at the centre.
- (3) There must be the agreement between Guruji and Palak Shikshak Sangh before 1-7-2001.

From the aforesaid Circular it is clear that Rajeev Gandhi Shiksha Mission had created two classes of Gurujis. One class is of those who fulfil the conditions as mentioned in Annexure R-1 and another class is of those who do not fulfil the conditions. However, there is no such condition mentioned in the scheme. Apart from this, it is clear that it is not within the control of the Guruji to fulfil the conditions. Although in the present case, petitioner fulfil all the conditions because he has been working at EGS Centre since 1999. The doctrine of Article 14 gives power for classification but it forbids class legislation.

The Constitutional Bench of Hon'ble the Supreme Court in *Lachhman Dass v. State of Punjab* (supra) has held as under:

...The law is now well settled that wide Article 14 prohibits discriminatory legislation directed against one individual or class of individuals, it does not forbid reasonable classification, and that for this purpose even one person or a group of persons can be a class. Professor Willis says in his *Constitutional Law* p. 580 "a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it." This statement of the law was approved by this Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . There the question was whether a law providing for the management and control by the Government of a named company the Sholapur Spinning and Weaving Company Ltd. was bad as offending Article 14. It was held that even a single Company might, having regard to its features, be a category in itself and that unless it was shown that there were other Companies similarly circumstanced, the legislation must be presumed to be constitutional and the attack under Article 14 must fail. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, this Court again examined in great detail the scope of Article 14 and in enunciating the principles applicable in deciding whether a law is in contravention of that Article observed:

that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as class by himself.

Further, another Constitution Bench of Hon'ble the Supreme Court in *State of Mysore v. P. Narsinga Rao* (supra), has held as under:

It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection.

The aforesaid principle of law as laid down by Hon'ble the Supreme Court has further been followed by subsequent Benches of Hon'ble the Supreme Court in *Markendeya v. State of A.P.* (supra) and also in *Mewa Ram Kanojia v. All India Institute of Medical Sciences* (supra).

From the above principle of law as laid down by Hon'ble the Supreme Court, it is crystal clear that under Article 14 a valid classification is permitted but class legislation is not permitted. In the present case, the respondents are trying to create two classes of Gurujis. However, it is neither in accordance with the Education Guarantee Scheme nor the respondents have mentioned sufficient reasons in the return for the same. Hence, the aforesaid classification and the conditions laid down by the Circular (Annexure R-1) dated 26-07-2003 are illegal and arbitrary. The arguments advanced by the learned Counsel for the State that there is delay and laches on the part of the petitioner cannot be accepted because this Court has struck down the Circular on the basis of arbitrariness.

Consequently, the petition of the petitioner is allowed. It is ordered that the petitioner is entitled enhanced rate of Honorarium from the date of his initial appointment as enhanced by the Government from time to time. The arrears be also paid to the petitioner. The order be complied with within a period of six weeks from the date of receipt of certified copy of this order.

No order as to cost.