(1994) 09 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 897 of 1990

Brian O.D. Pasgon and Others — APPELLANT

Vs

Bombay Education Society and Others — RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 70 FLR 845

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Judgement

Per Pendse, J.—The short question which falls for determination in this petition filed under Article 226 of the Constitution is whether the Director of Education was justified in directing that the pay-scales and allowances are payable to the employees of the respondent No. 2 School only from April 1, 1989 in exercise of powers under sub-section (1) of section 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977. The facts which gave rise to the filing of this petition are not in dispute and are required to be briefly stated to appreciate the claim made by the petitioners.

The respondent No. 2 school is a primary and secondary school recognised by the State Government as an Anglo-Indian School. The service conditions of the employees are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 and the Rules framed thereunder. It is not in dispute that the management is bound to follow the provisions of the Act and the Rules. The School has enrolled over 2,000 students and prepares students for Indian Certificate of Schools Examination. The School conducts classes from K. G. to 10th Standard. The petitioners are the employees in the School and had complained to the Education Authorities that the management is not paying the scales of pay at the rate prescribed under the Rules. The complaint made by the petitioners did not receive any response and that gave rise to riling of writ petition No. 2322 of 1988 under Article 226 of the

Constitution of this Court. The writ petition was disposed of by order dated August 11, 1988 and the Director of Education was directed to hear the employees and the management and pass a speaking order. In accordance with the direction, the employees and the management appeared before the Director of Education and tendered documents and made submissions. The Director of Education by a speaking order dated February 22, 1989 held that the management should revise pay-scales suitably and bring them on par with those prescribed under the Rules. The Director of Education further held that the financial condition of the School is sound and the management is in a position to give the prescribed pay-scales and allowances without any extention of time limit. The Rules framed under the Act came into force with effect from July 16, 1981 and the employees were demanding pay-scales and allowances under the Act and the Rules with effect from that date. After recording the finding that the management is in sound financial condition to bear additional burden, the Director of Education observed that "however, since the management has to incur expenditure on this recurring type of item every year, it may not be reasonable to insist for payment of arrears due to revision of pay-scales etc. with retrospective effect. " The Director of Education issued direction to the management to revise the pay-scales and allowances of the employees and bring them on par with those prescribed by the Government under the Rules with effect from April 1, 1989. The Director of Education issued several other directions but it is not necessary to refer to those directions in the present petition.

2. Smt. Thadani, learned counsel appearing on behalf of the petitioners, submitted that the Director of Education was in error in holding that the pay-scales and allowances of the employees should be revised only from April 1, 1989 and not from July 16, 1981. The learned counsel submitted that after recording the finding that the management is in sound financial position to implement the pay-scales without any extention of time, the Director of Education was not justified in holding that the pay-scales should be effective only from April 1, 1989. We find considerable merit in the submission of the learned counsel. Shri Vasudeo, learned counsel appearing on behalf of the management, submitted that the Director that the Director of Education has sufficient powers under sub-section (3) of section 4 to prescribe that the pay-scales and allowances and other benefits of the employees should be made payable under the Rules from a future date and not from the date on which the Rules came into force. Sub-section (3) of section 4 of the Act reads as follows :-

" (3) If the scales of pay and allowances, post-retirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under sub-section (1), the Director shall direct in writing the Management of such school to bring the same upto the level provided by the said rules, within such provided by the said rules, within such period of extended period and may be specified by him."

The plain reading of the sub-section makes it clear that the Director can in exercise of powers, postpone the application of the Rules in regard to scales of pay and allowances and other benefits provided there is a sound reason for doing so. The statutory power conferred under the Act cannot be exercised in an arbitrary manner. Shri Vasudeo submitted that the total amount, if the pay scales are made applicable from July 16, 1981, would be approximately Rs. 10,00,000/- and the management may not be able to bear it. It is impossible to accede to the submission in face of the finding recorded by the Director of Education that the management is in a position to implement the pay scales with effect from July 1981. In these circumstances in our judgment, the direction given by the Director of Education that the revised pay scales and allowances of the employees should be brought on par with those laid down under the Rules with effect from April 1, 1988 is required to be set aside and the management is required to be directed that the pay scales and allowances should be brought on par in accordance with the Rules with effect from July 16, 1981.

Smt Thadani also complained that the management is not implementing the provisions of the Act and the Rules in respect of other conditions of service. It hardly requires to be stated that the management is bound to do so and in case the management fails to do so, then the Education Authority should take appropriate steps against the management. It is required to be made clear that other reliefs sought in the petition are not pressed.

3. Shri Vasudeo also submitted that the School management was providing the employees with benefit which were not prescribed under the Rules. The learned counsel urged that the employees were provided with staff quarters at the nominal compensation. The employees were also provided with facilities of tea and coffee and the children of the employees were given admission on priority basis. Shri Vasudeo submitted that these benefits could not be valued in terms of money and therefore the Director of Education should not have issued directions for revision of pay scales and allowances. There is no merit in the contention because Smt Thadani submitted that the facility of staff quarters was made available only to few employees and facility of tea and coffee is not one which could deprive the employees of the benefits under the Act and the Rules. In our judgment, the Director of Education was fully conscious of these facets and the impugned order reflects that aspect.

4. Accordingly, petition succeeds and the management of respondent No. 2 School is directed to revise the pay scales and allowances of the employees and bring them on par with those prescribed by the Government in accordance with the Rules with effect from July 16, 1981. The management shall pay the costs of the petition.