
(2016) 03 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : WPPIL No. 36 of 2014 and CMA No.248 of 2014

Disabled Welfare Association

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 3 JKJ 267 : (2017) 1 LLN 159

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Tashi Rabstan, J.

Bench : Division Bench

Advocate : Mr. S.S. Ahmed, Advocate with M/s Suraj Singh & Rahul Raina, Advocates, for the Petitioner; Mr. Ranjit Singh, Dy. AG. Mr. M.A. Bhat, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

Category, No. of approved cases (getting pension)

Old Age, 146804

Widow, 133944

Handicapped, 141752

Total, 422500

year 2015-16. Even in the budgetary provisions for the year 2016-17 no steps have been taken for allocation of funds for enhancing the pension to,

the really deserving persons, namely widows, old aged persons, handicapped persons with more than 60% disability, the total numbers of",

pensioners, according to the respondents comes to 5,72,948 persons.",

9. In the case of State of Himachal Pradesh v. A. Parent of a Student of Medical College, Shimla, (1985) 3 SCC 169: (AIR 1985 SC 9),",

in para 4 of the judgment, the Hon'ble Supreme Court has held that, ""where the

court finds on being moved by an aggrieved party or by any public",
spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor",
and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that,
social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the court",
certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations"".",

10. The Hon'ble Supreme Court in the decision reported as 2012(7) SCC 402 (Samaj Parivartana Samudaya v. State of Karnataka) has,
held as under:-,

44. Wherever and whenever the State fails to perform its duties, the Court shall step in to ensure that Rule of Law prevails over the abuse of",
process of law. Such abuse may result from inaction or even arbitrary action of protecting the true offenders or failure by different authorities in,
discharging statutory or legal obligations in consonance with the procedural and penal statutes....""",

11. It is not in dispute that a welfare state is bound to consider welfare of the poor and deserving, who are unable to earn their livelihood for their",
decent living. The right to life guaranteed under Article 21 of the Constitution of India provides for life with minimum decency like food, shelter",
health and other minimum amenities of life. By paying a petty amount of Rs.500/- per month one cannot live a decent life and bearing in mind the,
said guaranteed right to the marginalized section of the society who are unable to sustain themselves and are already identified by the social welfare,
department are to be given enhanced pension as compared to the price index.,

12. It is a fact that in the year 1994 or 1995 the minimum wages fixed based on the price index was Rs.50/- per day by the Deputy,
Commissioners of the State and the said wage is raised by the State of Jammu and Kashmir at Rs.150/- per day, which means that there is three",
fold increase in the minimum wages to the daily wagers. Even though the same is not comparable as the Government is extracting work from the,
workers, considering the fact that beneficiaries of the pension schemes are unable to do any job on their own to earn their livelihood, the",

Government is bound to increase the pension at Rs.1,000/- per month as recommended by the Social Welfare Department of the State.",

13. The only reason stated by the Finance Department is the financial difficulty faced by the State. It is settled principle of law that for raising of,

funds for ensuring free education, speedy justice, health care facilities, clean environment, which are guaranteed under Article 21 of the Constitution",

of India, it is duty of the authorities running the administration to mobilize the funds and the responsible Government cannot shirk its responsibility",

and deny the said rights to the citizens on the ground of want of finance. In respect of free education, Hon'ble the Supreme Court considered the",

issue regarding the plea of paucity of funds raised by the State in the decision reported in AIR 2000 Sc 634 (Chandigarh Administration v.,

Rajni Vali) and in paragraph Nos.6 and 10 held thus:,

6.imparting primary and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that",

the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted",

Statutes and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State,

Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of,

teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non,

for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of,

cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class,

of institutions."",

.....,

10. Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden if the,

claim of the respondents 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected",

by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of,

resources. It is for the Authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it, necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected.....""",

14. The said plea being the only plea raised, which is being found erroneous, we are of the view that the pensioners who are getting Rs.500/- per", month under ISSS and NASP are entitled to get Rs.1000/- per month at-least from 01.04.2016. The respondents are directed to implement the, said direction i.e. to pay increased pension of Rs.1000/- per month from April 01, 2016 and orders to that effect is directed to be passed within a", period of four weeks from the date of receipt of copy of this order. It is made clear that in case any of the beneficiary is not receiving the said, amount of pension from the respondents, they are at liberty to approach the District Legal Services Authority/Tehsil Legal Service Authority and", the said Authority(s) on receipt of such application/request from the beneficiary shall take up the matter with the concerned authorities of the, Government and ensure that pensioner(s) receives pension in time. The beneficiaries are also granted liberty to file applications which are not, considered by the concerned officers/officials, before the concerned Legal Services Authority and the Authority shall forward the same to this", Court along with its report for listing of such application before the appropriate Bench(s) for necessary orders.,

15. The Writ Petition is disposed of with above directions.,