

(2007) 11 KAR CK 0029
In the Karnataka High Court
Case No : Writ Petition No. 44103 of 2004

I. Rudrayya and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Citation : (2008) 116 FLR 971 : (2008) 1 KarLJ 541

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, for the Appellant; H.T. Narendra Prasad, HCGP,
for the Respondent

Judgement

N.K. Patil, J.—The petitioners assailing the correctness of the impugned order dated 1.9.2004 bearing No. 128 PMC 2004, vide Annexure-A and further sought a direction directing the respondent to extend five stagnation increment benefits to the petitioners from 1.4.1996 instead of from 25.6.1998, presented the instant writ petition.

2. The undisputed facts of the case is that earlier the petitioners herein have filed a writ petition No. 5377-97/2004, and the same had come up for consideration before this Court on 31.3.2004 wherein this Court had permitted the petitioners to file an appropriate representation within four weeks from the date of receipt of the copy of the order and directed the respondent - Government to consider the same in accordance with law and also in the light of the Judgment of the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, as expeditiously as possible but not later than four months from the date of receipt of the copy of the representation. After disposal of the writ petition as referred above, the first petitioner himself and on behalf of other petitioners submitted a representation vide Annexure-T to the respondent. In the light of the direction issued by this Court and the representation submitted by these petitioners, the respondent herein has passed the impugned order vide Annexure-A rejecting the request of the petitioners for extending five stagnation

increment benefits to the petitioners from 1.4.1996. Being aggrieved by the impugned order passed by the respondent, the petitioners herein felt necessitated to present the instant writ petition seeking appropriate relief as stated supra.

3. I have heard the learned Counsel appearing for the petitioners and the learned Government Pleader appearing for the respondent - State.

4. After careful perusal of the impugned order dated 1.9.2004 passed by the respondent vide Annexure-A, it is manifest on the face of the order that the respondent has committed a grave error much less material irregularity and instantly passed the order without reference to the relevant material which are available on the file and not in consonance with the directions issued by this Court in the Writ Petition, to consider their request in accordance with law and also in the light of the Judgment of the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, It is significant to note that the request of the petitioners has been rejected on two grounds. Firstly, the Government Pleader appearing for the respondent - State has submitted that the judgment of the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, is not applicable to the present case on hand on the ground that it does not relate to the revision of pay scales. Secondly, he has placed reliance on the Judgment of the Division Bench of this Court dated 11.3.2004 passed in Writ Appeal No. 4184-4191/2002 c/w. Writ Appeal No. 6091/2002. These two reasons are given for rejecting the representation of the petitioners in not compliance with the directions issued by this Court cannot be acceptable nor the said grounds taken and rejected the request of the petitioners on untenable grounds. It is pertinent to note that the Apex Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, as referred above, the direction with regard to implementation of the Judgment of the Apex Court dated 20.7.1988 is relevant for consideration of directions III and IV. The said directions III and IV has not been looked into nor considered by the respondent. Therefore, reliance placed holding that the judgment is not applicable to the present case cannot be acceptable. Hence, it is liable to be set aside as a whole in view of non application of mind. Secondly, they placed reliance on the Judgment of the SC may not be made applicable to the facts and circumstances of this case. The order passed by the Division Bench of this Court in an earlier round of litigation in the instant case, the Government has extended the benefit to the teachers who are working in Government schools from 1.4.1996 whereas, the petitioners are working in a aided school has extended the same benefit from 25.6.1998 instead of 1.4.1996. Therefore, they have expressed their grievance to extend five stagnation increments in par with the Government teachers working in the Government schools. It emerges after physical material evaluation of the record, the respondent has committed grave error in not considering the directions issued by this Court and not going through the well settled principles of law that the Apex Court and this Court in number of judgments. The authority first bear in

mind that 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 acted 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 that the standard of teaching does not suffer on account of parity of funds. It needs to 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 discrimination treatment meted out to teaching and non-teaching faculty in the Government schools and aided Educational institutions. It is specifically pointed out by the Haryana's case as referred above, the parity in the pay scale and Dearness Allowance to the teachers employed in aided school and those employed in Government school maintained and with that aid in future the pay scales of the teachers employed in Government school shall be revised and brought it par with the aided school and Dearness Allowance payable to the teachers employed in the Government School, the same benefit ought to have extended to the teachers who are working in this aided institutions. This aspect of the matter has not been looked into nor considered by the respondent competent authority. Therefore, in view of non conducting proper enquiry and in view of non compliance of the direction issued by this Court as referred above in the earlier round of litigation has proceeded to pass order contrary to the well settled principles laid down by the Apex Court and by this Court in catena of judgments, I am of the considered view at any stretch of imagination, the impugned order cannot be sustainable. Hence, it is liable to be set aside at the threshold.

5. In the light of the facts and circumstances of the case as stated above, the Writ Petition is allowed in part. The impugned order passed by the respondent dated 1.9.2004 bearing order No. 128 PMC 2004 vide Annexure-A is hereby set aside. The matter stands remitted back to the respondent to reconsider afresh and take appropriate decision in accordance with law in the light of the direction issued by this Court dated 31.3.2004 passed in Writ Petition No. 5377-97/2004 and also in the light of the well settled principles of law laid down by this Court in W.A.No.2673/1991 and dispose of the same as expeditiously as within six months from the date of receipt of this order. Further, the petitioners herein are directed to submit a joint representation or individual representation to the respondent with all the necessary document end the Judgments of the Apex Court and this Court to substantiate the relief sought for within four weeks from the date of receipt of this order. The respondent herein is directed to receive the same and pass appropriate order for compliance of the direction issued by this Court as stated supra.

The learned Government Pleader is permitted to file memo of appearance within four weeks.