

(2003) 12 GAU CK 0012
In the Gauhati High Court

Case No : Review Petition No. 1 of 1998 and W.A. No. 69 of 1996

Indian Council for Child Welfare and Another

APPELLANT

Vs

Bal Sevika Associations and Others

RESPONDENT

Date of Decision : 01-12-2003

Acts Referred:

Citation : (2005) 1 GLR 79 : (2005) GLT 436 Supp

Hon'ble Judges : T. Vaiphei, J;A.H. Saikia, J

Bench : Division Bench

Advocate : A.K. Bhowmik and A.K. Deb, for the Appellant; B. Das and S. Das, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Head Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. A.K. Deb, learned counsel appearing for the appellants. Also heard Mr. B. Das, learned senior counsel assisted by Miss S. Das, learned counsel on behalf of the respondent No. 2. None appears for the respondent No. 1.

2. This writ appeal has been directed against the impugned judgment and order dated 31.7.1996 passed by the learned Single Judge, by which the prayer of the writ petitioners/respondents has been allowed holding that the writ petitioners, being the Balsevikas appointed by the writ appellants, are entitled to the pay scales of Trained Primary or Secondary School Teachers and, accordingly, the appellants have been directed to implement the Government of India's Circular dated 13th August, 1963 within a period of six months from the date of passing of the judgment. It is also directed that till implementation of the recommendation, the respondents-appellants are directed to pay the writ petitioners a monthly honorarium of Rs. 1000/- per month. Key issue involved in this appeal is whether the Balsevikas appointed by the appellants on honorarium basis are entitled to the pay scales of Trained Primary or Secondary School Teachers as are given by the Delhi Administration and Madhya Pradesh Government, In order to decide this issue it would be appropriate and necessary

to refer the Central Government's Circular dated 13th August, 1963 which may be extracted as under :-

"No. F.18-3/63-SW-3

Government of India, Ministry of Education.

New Delhi -1, the 13th August, 1963
From : Shri P. C. Sharma,
Assistant Educational Adviser to the Govt of India.

To

All Education & Social Welfare Secretariats of State Governments and Union Territories

Subject: Recognition of balsevika training certificates awarded by Indian Council for Child Welfare.

Sir,

I am directed to refer to the correspondence resting with this Ministry's letter No. F.8-5/62-SW-3 dated 21st February, 1963 and to say that the following recommendation has been made by the Child Welfare Committee (Constituted by this Ministry) in its meeting held on the 11th and 12th July, 1963:-

"The salaries of trained Bal Sevikas should be the same as prescribed for the trained Primary or Secondary School teachers of the same qualifications in the State concerned."

I am further to say that necessary action to implement this recommendations, as far as possible, may kindly be taken under intimation to this Ministry."

3. It is admitted that the above circular is only a recommendation made by the Child Welfare Committee constituted by the Ministry of Education as regards fixation of salaries of Trained Bal Sevikas. It is also established that such recommendation is not binding upon the authorities until and unless the same is accepted or approved by the concerned authority. In the instant case, it is also admitted that when Delhi Administration as well as the Madhya Pradesh Government have accepted the said recommendation, the State of Tripura has not yet accepted such recommendation. Mr. A.K. Bhowmik, learned senior counsel has contended that since the Government of Tripura has not yet accepted such recommendation, the question of granting the pay scale of Trained Primary or Secondary School Teachers to the Balsevikas by the appellants being the Voluntary Organisations, does not arise at all. According to him, the appellants have neither any power nor any authority/capacity to sanction the pay scale as claimed by the respondents, as they were engaged in their services on purely honorarium basis under a Scheme launched by Govt. of India relating to nutrition for children on yearly basis.

4. On perusal of the records made available before us, we find that under the

Scheme of Government of India, namely, Nutrition Programmes through Balwadi and Day-care Centres for Pre-School Children (3-5 years), the Government of India, having realised the importance of nutrition for children during the pre-school age period, introduced the said programme since 1970-71 with the aim to provide food which would supply approximately one-fourth of the daily calorie requirement of the child to be implemented through 5045 Balwadis/ Day-Care Centres operating in different parts in the country being run by Central Social Welfare Board, a Society under the Department of Women and Child Development and four national level voluntary organisations, namely, Indian Council for Child Welfare, Bharatiya Adimjati Sevak Sangh, Harijan Sevak Sangh and Kasturba Gandhi National Memorial Trust. Be it noted herein that the appellant No. 2 Tripura Council for Child Welfare, is the State Branch of the Indian Council for Child Welfare, New Delhi, and as such it is also a voluntary organisation. Financial assistance for the implementation of the Scheme to those organisation is provided by the Government of India through the Development of Women and Child Development on the basis of coverage of children by way of yearly grant-in-aid and the services of the Balsevikas depend upon the renewal of grants for each financial year to be received by the appellants. The said scheme has envisaged the pattern of assistance to be rendered to the implementing agencies, like the appellants herein. Such pattern of assistance as prescribed in the said scheme may be quoted as under :-

"Pattern of Assistance.

Financial assistance is provided to the implementing agencies on the following pattern:

(i) Cost of Food (including administrative @ 50(fifty)paise per day per cost) child for 270 days in a year. (ii) Honorarium for Balsevika @ Rs. 200 (Rupees two hundred) p.m. per head (for trained). (iii) Honorarium for helper @ Rs. 150 (Rupees one hundred fifty) p.m. per head for untrained) @ Rs. 75/- (Rupees seventy five) p.m. per head."

5. From a close perusal of Annexure-3 enclosed by the appellants to the writ appeal it clearly appears that these Balsevikas are to be appointed on honorarium basis in terms of Pattern of Assistance as indicated above. Annexure-3 is a communication dated 22.4.1988 made by the appellant No. 1, the Indian Council for Child Welfare to the appellant No. 2, the Tripura Council for Child Welfare, clearly indicating the sanction of grant-in-aid to the Council for implementation of the scheme. In the said notification also it has been clearly indicated that the Balsevika will be paid their honorarium to the extent of Rs. 200/- per month (for trained Balsevikas) and Rs. 150/- per month for (Untrained Balsevikas). That being so, it can be clearly held that the Balsevikas are working in their respective job under the appellants on honorarium basis.

6. In State of West Bengal and Others Vs. Monirujjaman Mullick and Others, the Apex Court held that the doctrine of equal pay for equal work shall not be

applicable to the instructors who were paid honorarium working under a Scheme for imparting non-formal education to children observing that such Instructors working under the said scheme are not entitled to the same pay scale and allowance admissible to Primary Teachers in the regular school run by the State Education Department. It is settled law that to claim a right for equal pay for equal work, the case of the writ petitioners/respondents must be based on Constitutional or any other legal provisions. In the instant case there is no allegation of violation of any constitutional provision or any other provision of law. It appears that the scheme has been based on certain accepted policy of the Government in order to take proper care for the healthy growth and development of pre-school children keeping in view the malnutrition and under-nutrition condition of the children in the country. Each State has an individualistic way of governance under the Constitution and in such governance the State may or may not accept any recommendation so made by the certain authority/authorities. As already stated hereinabove, in the case in hand, the Government of Tripura has not yet accepted such recommendation and as such the appellants have no power or authority to implement such recommendation.

7. At this juncture Mr. Bhowmik, learned senior counsel has also informed this court that a scheme was already phased out by the year 2001. In support of his submission he has produced a copy of Circular dated 24.4.1998 which shows that this scheme had come to an end by 31.3.2001 with the information that there shall no further extension beyond the said period. The copy of the Circular be kept to form the part of records.

8. In views of what has been discussed and indicted above and having regard to Moinirujjatnan Mullick's case (supra), this court is of the view that the respondents are not entitled to the pay scales of Trained Primary or Secondary School Teachers and, as such, we are not inclined to agree with the finding arrived at by the learned Single Judge and consequently, the impugned judgment and order dated 31.7.1996 is hereby set aside and quashed.

9. In the result, the appeal succeeds and stands allowed. No costs.