
(2002) 12 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 53 (K) of 2002

Kenneleisa Neikha

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

University Grants Commission (Fitness of Institution for Grant) Rules, 1975 — Rule 2
University Grants Commission Act, 1956 — Section 12B, 2

Citation : (2003) 1 GLT 326

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : R.P. Sarma, for the Appellant; I. Jamir, for the Respondent

Final Decision : Allowed

Judgement

B. Lamare, J.—Heard Mr. R.P. Sharma, learned Counsel for the Petitioners' Association and Mr. I. Jamir, learned Additional Advocate General, Nagaland for the Respondents.

2. The Kohima College was established in the year 1967 and it was affiliated to the Gauhati University. Thereafter, the college was affiliated to the North Eastern Hill University (NEHU). After the establishment of the Nagaland University, the college was affiliated to the Nagaland University. The college was recognised by the University Grants Commission (UGC) in terms of Section 2(f) of the University Grants Commission Act, 1956.

3. The State Government issued a Notification No. EDS/3-21/73 dated 23rd Nov '76 in pursuance to the Government of India later dated 2.11.74 for consideration of grants of UGC Pay Scales to the College Teachers of Colleges in Nagaland affiliated at that point of time to the NEHU. In response to the said Govt. Notification, the Principal Kohima College in his letter dated 6.1.77 conveyed unanimous decision of the teaching staff of the college to accept the UGC pay scales. In the said letter he has also stated that this decision will have

to be approved by the Governing Body of the College. Subsequently the Principal of Kohima College in his letter No. KCK/UGC/II/77-78/1 dated 9.8.1977 conveyed the approval of the Governing Body for implementation of UGC pay scales to the teachers of the college including the Principal and the Vice-Principal.

4. The Joint Director, Department of Education, Nagaland in his letter dated 14.7.1977 addressed to the Principals of 5 colleges in the State including the Kohima College has informed the Principal of Kohima College to convey the decision of the Governing Body of the college regarding their acceptance of the UGC pay scales. This decision of the Governing Body was conveyed by the Principal to the Director of Education, Nagaland in his letter dated 9.8.1977. Since then the UGC pay scales of 1976 were granted to the teachers of the Kohima College.

5. By Notification No. EDS(c)/83/87 dated 31.10.1987, the Government of Nagaland again issued a notification for introduction of the revised pay scales of 1986 to the colleges in Nagaland. Since the teachers of the Kohima College were already granted the UGC pay scales in 1976 pay revision, they were also allowed to continue in the revised pay scales of 1986.

6. The Government of Nagaland again issued a notification No. EDS/HTE/1-14/98 dated 29th September, 1999 for implementation of the revised UGC pay scales of 1996. But the 1996 revised UGC pay scales were denied to the teachers of the Kohima College. The ground for such denial of the 1996 revised UGC pay scales was that out of the 4 colleges enjoying the UGC pay scales, 3 colleges were converted into Govt. colleges and only Kohima College remained as a private college.

7. The Respondents resisted the contention of the Petitioners' Association by filing affidavit-in-opposition and stated in paragraph 5 of the affidavit that in 1996 the 3 other colleges except the Kohima College was taken over by the Government and, therefore, the teachers of the Kohima College cannot be treated at par with other Govt. Colleges in the State for availing revised UGC pay scales or any other benefits that may be derived either from Central Government or State Government. It is also stated that the basic difference between the Govt. colleges and the private colleges is that the recruitment of teachers in Govt. colleges were made by the Nagaland Public Service Commission (NPSC) and in private colleges it was done by the Governing Body of the college which is not in accordance with the rules and guidelines of the UGC. The service conditions of the teachers of the Govt. colleges was also governed by the rules framed by the Government; whereas in the private colleges, those rules are not applicable. It is also the case of the Respondents that there are 29 private colleges in the State and that if the revised UGC pay scales is granted to the Kohima College, the other 28 private colleges also will claim the same benefit for which the State cannot bear the financial burden which will amount to more than Rs. 20 lakhs. Therefore, according to the Respondents, the Cabinet has taken a policy decision that after 1996 UGC pay revision, the Government will not

assume the responsibility for the teachers of the private colleges in the State.

8. Mr. R.P. Sharma, learned Counsel appearing for the Petitioners' Association submitted that the Petitioners' Association has no grievances against the Kohima College, but the grievance is with regard to the non-implementation of the 1996 UGC revised pay scales to the teachers of the college and, therefore, the writ petition is filed against the State of Nagaland only. According to the learned Counsel, the stand taken by the Respondents that the writ petition does not lie against the private college has no application in the instant case. With regard to this point even if the grievances against the college which imparted education to the students at large and got grants and scholarships from the Central and State Governments, the Apex Court in a catena of cases and this Court also in the case of Dipankar Roy Vs. Principal and Secretary, Public College of Commerce, Dimapur, and also in the case of Parimal Chakraborty Vs. State of Meghalaya and Others, had held that an institution which imparted education and got financial benefits as aforesaid is an instrumentality of the State and therefore writ lies against such institution.

9. The next contention of Mr. Sharma, learned Counsel for the Petitioners' Association is that the college has been discriminated as against the other 3 colleges which were taken over by the Government, as the said 3 colleges and the Kohima College were enjoying the same pay scales till the 1986 UGC revised pay scales was granted by the UGC. Therefore, according to the learned Counsel, the action of the Respondents are totally discriminatory and that the Petitioners' Association were denied of their right which they have been enjoying since 1976 UGC pay scales and the subsequent revision of 1986 UGC pay scales.

10. Mr I. Jamir, learned Additional Advocate General, Nagaland on the other hand contended that the teachers of Kohima College are not entitled to enjoy the 1996 UGC pay revision as this was decided by Cabinet by taking a policy decision. According to Mr. Jamir, if the 1996 UGC pay revision is granted to the Petitioners' Association, the other private colleges in the State numbering of 29 would also claim the same and the Government cannot bear such financial burden as at present the State Government is facing financial crunch.

11. From the perusal of the records it is admitted position that the teachers of Kohima College were granted 1976 UGC pay scales and thereafter they have also enjoyed the 1986 UGC revised pay scales till the 1996 UGC pay revision was made after which the Petitioners' Association were denied the UGC pay scales. It is also not disputed that the Kohima College is recognised by the University Grants Commission under Clause(f) of Section 2 of the UGC Act, 1956 and the college is also permanently affiliated to the Gauhati University, then to the NEHU and at present to the Nagaland University. Under the Rule 2 of the University Grants Commission (Fitness of Institution for Grant) Rules, 1975, the conditions were laid for fitness for receiving grants from the Central Govt. and the Commission. Rule 2 read as follows:

2. Fitness for Grant

No institution to which these rules apply shall be declared to be fit to receive grants from the Central Government, the Commission or any other organisation receiving any fund from the Central Government unless the Commission is satisfied that the institution:

(i) Provides instruction up to a Bachelor's degree or up to a post-graduate degree or for a post-graduate degree only or provides instructions for a diploma course of a duration of not less than one academic year and for which the minimum qualification for admission is a Bachelor's degree;

(ii) Is registered as a society under the Societies Registration Act, 1860 (21 of 1860) or is a body corporate established or incorporated under a Central Act, a Provincial Act or a State Act, for the time being in force or is a Trust with Trustees being appointed and vested with legal powers and duties; and

(iii) Is permanently affiliated to a University which has been declared fit u/s 12-B of the University Grants Commission Act, 1956 (3 of 1956) for receiving grants.

12. From the facts as enumerated above, the Kohima College being recognised by the UGC as well as permanently affiliated to Nagaland University is entitled to such benefits from the Central Govt. and the UGC. This fact was further clarified by the University Grants Commission in their letter dated 11.3.1999 addressed to the Principal of Kohima College which reads as follows:

Sh. H. Saiborne Principal 11 Mar 1999 Kohima College Kohima-797001. Sir,

I am directed to refer to your letter dated 14.9.98 regarding UGC scale of pay and to inform you that UGC regulations and pay scales are applicable to all colleges u/s 2(f) of the UGC Act and UGC provides assistance to those colleges which are u/s 2(f) and 12B of the UGC Act.

2. Financial assistance for revision of pay scale of college teachers is paid by the Ministry of Human Resource Development, Government of India to State Government.

3. UGC pay scales have to be given to all existing teachers.

4. The matter of getting adequate funding for revision of pay scale may be taken up with the State Government.

Yours faithfully, Sd/- (Mrs.) Pankaj Mittal Deputy Secretary.

13. A further perusal of records also shows that the Junior Director of Higher and Technical Education, Nagaland in his letter dated 17.10.2000 has sought opinion of the Government for fixation of scale of pay of 26 teachers of Kohima College with effect from 1.1.1996. The letter reads as follows:

Government of Nagaland Department of Higher and Technical Education Nagaland: Kohima. No. HTE/ADMN-1/MISC-J.D/2000-2001 Dated Kohima the

17th Oct, 2000

To

The Commissioner and Secretary to the Government of Nagaland, Department of Higher and Technical Education, Nagaland, Kohima.

Sub: R.O.P. Arrear (UGC) to Kohima College w.e.f. 1.1.1996

Madam,

On the subject cited above, I have the honour to submit herewith the detail additional financial implications in respect of 26 (twenty six) Lecturers of Kohima College w.e.f. 1st of January, 1996. In this connection, I am to state that the Kohima College does not grant Dearness Allowance and Interim Relief as per the Central rate, therefore, the practical problem of pay fixation exists in respect of the said Lecturers of the college. However, as per your verbal directive, three notional fixation has been propounded for your examination and comments please. The three notional fixations are as follows:

1. Notion one: As per Central formula.
2. Notion two: As per the rate of Government College teachers.
3. Notion three: As per 1986 formula framed by Directorate.

This is for your kind perusal and further necessary action.

Yours faithfully Sd/- A.M. Toshi Jamir. 17.10.2000 Joint Director and H.O.D. Higher and Tech. Education, Nagaland Kohima.

The above letter indicates that in principle the teachers of the Kohima College are entitled to the 1996 UGC revised pay scales, but only the formula for fixation their pay was to be sorted out.

14. The Apex Court in the case of Haryana State Adhyapak Sangh and Ors. Appellants v. State of Haryana and Ors. Respondents reported in (1988) 4 Supreme Court Cases 571, in paragraph 3 of the judgment has held as follows:

3. We have heard learned Counsel for the parties at considerable length, and we find general agreement between the parties that there is no reason for discrimination between the teachers employed in aided schools and those employed in Government schools so far as the salaries and additional dearness allowance are concerned. The State Government does not accept the claim to parity in respect of other heads of allowance put forward by the Petitioners. We are at one time disposed to ruling on the question whether the responsibility for providing education in schools belongs to the State Government, and therefore whether there is a corresponding responsibility on the State Government to ensure that in aided schools the teachers are entitled to the same emoluments as are provided for teachers in government schools.

15. The question, therefore, is as to whether there is any discrimination to the teachers of Kohima College in granting them the same parity of scales with the teachers of Government Colleges. It is not disputed that all the teachers of the 4 colleges enjoyed the same scale of pay till the 1996 UGC revised scales were granted. All the 4 colleges stands on the same position and imparting the education in the same manner. There is no difference in imparting education between the 3 colleges which were taken over by the Government and the Kohima College which is still remains a private college. Therefore, the policy decision taken by the Government to leave aside the teachers of the Kohima College is found to be discriminatory.

16. From the facts and circumstances as discussed above, I am of the view that an interference by this Court is called for. Accordingly, I allow this writ petition and direct the State Respondents to grant the benefits of 1996 UGC revised pay scales to the members of the Petitioners' Association and this shall be done within a period of 3 (three) months from the date a copy of this order is served on the Respondent No. 2. As regards payment of arrears, the matter be sorted out between the management of the college and the Respondents.

It is made clear that this order shall not be applicable to the other private colleges which have not been granted the UGC scale of pay.