

**(2005) 02 KAR CK 0086**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 47662 to 47699 of 2005 and 675 to 682 of 2005

Kotrappa Byali and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 25-02-2005

**Acts Referred:**

Karnataka Education Act, 1983 — Section 49, 87

**Citation :** (2006) 3 KarLJ 138 : (2005) 3 KCCR 236 SN

**Hon'ble Judges :** K. Sreedhar Rao, J

**Bench :** Single Bench

**Advocate :** Maheshwaraswamy Hiremath, M.S. Parthasarathi and M.P. Srikanth, for the Appellant; Rosa Paramel, High Court Government Pleader, for the Respondent

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## **Judgement**

K. Sreedhar Roa, J.—The petitioners are lecturers and teachers of the private aided educational institutions, some of them are in service and some are retired. The State Government vide order at No. FD SRP 96, Bangalore, granted the benefit of 5 stagnation increments to the civil servants who had no prospectus of promotion after reaching the maximum pay scales vide Annexure-C with effect from 1-4-1996. The State Government passed an order vide Annexure-A, dated 2-12-1998 to extend the benefit of stagnation increments to the employees of the private aided education institutions with effect from 25-6-1998.

2. It is the contention of the petitioners that benefit of stagnation increment have to be accorded to them on par with the Government servants and with effect from 1-1-1996. The denial or delayed grant would contravene the provisions of Sections 49 and 87 and Annexure-II of Rule 3 of the Karnataka Educational Institutions (Grant-in-Aid for Primary, Secondary and Pre-University Educational Institutions) Rules, 1998 and amounts to discrimination in payment of pensionary benefits.

3. The State Government revised the pay scales of the civil servants by Government Order No. FD 2 SSRP 99 181/99 the existing pay scales as on

1-4-1998. The Counsel for the petitioners has furnished under a memo with a tabular column working out the specific cases to show the discrimination of the pay scales between the Government employees and the employees of the private aided institutions and further to show that such discrimination would result in discriminatory pensionary benefits.

4. The learned Government Pleader strenuously argued that the grant of aid and salaries to the employees in the private educational institutions is dependent upon the financial resources of the Government as envisaged u/s 49. Therefore, as a matter of right, the petitioners cannot insist the pay parity with the civil servants in strict sense. The provisions of Section 49 reads thus:

49. Government to set apart sum for giving grant-in-aid to certain recognised institutions.?(1) The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid (hereinafter in this Act referred to as grant) to local authority institutions and private institutions in the State recognised for this purpose in accordance with rules made in this behalf.

(2) The rules made under Sub-section (1) may also require the institution receiving the grant to comply with any provision for the reservation of appointments or posts in favour of Scheduled Castes, Scheduled Tribes and any Backward Class subject to such modification, if any which the State Government may make in the application of such provision to any class or classes of such institutions.

No doubt, the provisions of Section 49 and Rule 3 of the Karnataka Education Act and Rules lays down that the grant-in-aid and the benefits to the private aided institutions is dependent on the financial resources of the Government. But the proviso to Section 87 mandates that "the minimum qualification for recruitment, age of recruitment and retirement and benefits of retirement of the employees in the educational institutions receiving maintenance grant from the State Government shall be the same for the corresponding category of employees, if any, in State Institutions unless otherwise prescribed.

5. Annexure-II pertaining to the Rule 3 lays down the benefits which are excluded to the employees in the private educational institutions. Grant of increments, D.A. additional increments stagnation increment etc., are not prescribed in, the Annexure-II of Rule. Therefore, the legislative mandate demands that the State shall extend the parity in the matter of retirement benefits between the State employees and the employer working in the Private Educational Institutions. The provisions of Section 49 is general in nature. The State before extending the aid to private institutions, it should bear in its mind the financial constraints, but when once aid is granted, there shall not be discrimination between the employees of such aided institutions and civil servants in respect of retirement benefits as mandated u/s 87.

6. In that view of the matter, it is impermissible for the Government to contend

that the petitioners would be entitled to stagnation increments with effect from 26-5-1998 and not from 1-4-1996. Therefore, it is directed that the petitioners shall be accorded stagnation increments with effect from 1-4-1996. Accordingly, the petitioners are allowed. The impugned orders are quashed.