

(1997) 09 PAT CK 0058
In the Patna High Court
Case No : C.W.J.C. No. 5336 of 1996

Madhav Mahaseth and Others APPELLANT
Vs
State of Bihar and Others RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (1998) 1 PLJR 803

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Tej Bahadur Singh, Ram Kishore Singh, Jagdnar Prasad and Binod Kumar, for the Appellant; Mayanand Jha, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The Petitioners are Assistant Teachers of Government Aided Middle School, namely, Marwari Middle School, Sitamarhi, except Petitioner No. 1, who is head master and the Petitioner No.6, who has retired from the post of peon. They have preferred this writ petition against the resolution No. 3268 dated 5.11.93 issued by the Secretary, Department of Primary-Secondary and Mass Education Government of Bihar, Patna (Annexure-2), so far as the cut-off date fixed for the purpose of payment of arrears of salary is concerned.

2. It is no necessary to go into the details facts of the case, except the relevant one.

3. The Respondent-State has recognised certain schools, including the school in question for the purpose of grant of aid. Such aid is granted to the private managing committee of the schools for the purpose of payment of salary in favour of teaching and non-teaching employees appointed against duly sanctioned post. The scale of pay of the teaching and nonteaching employees is also being fixed by the State of Bihar.

4. Admittedly, the State Government earlier fixed scale of pay of Teachers and

other employees of such aided mode schools providing same scale of pay as provided to the teacher and other employees of Government Middle Schools. Subsequently, on the recommendation of the Fifth Pay Revision Committee/Fitment Committee, the scale of pay of State Government employees including teachers and peons of Government Middle Schools were revised by Finance Departments Resolution dated 18.12.89. Such revision was made with effect from 1.1.86. However, with respect to arrears of salary it was stipulated therein (Resolution dated 18.12.89) that the arrears of salary that be paid to the State Government employees, including the teachers and peons of middle schools, with effect from 1.5.89 though the fixation of pay will be made with effect from 1.1.86.

5. Subsequently, the State Government decided to revise the scale of pay of teachers and other employees of (sic) primary/middle schools in parity with by and scale of pay as provided to the teacher and others employees of middle schools of the State Government to implement the decision of the Fifth Pay Revision Committee/Fitment Committee. The same has been done by the impugned resolution dated 5.11.93 (Annexure-2). By the impugned resolution, while same rate of (sic) pay has been provided to teachers and other employees of aided primary/middle schools like the teachers and other employees of the Government primary/middle schools, but for the purpose of arrears of salary the effective date has been fixed to 1.4.1993, instead of 1.3.89. It was in the aforesaid circumstances, the Petitioners have preferred this writ petition so that they may also be paid arrears of salary with effect from 1.3.89, after fixation of pay with effect from 1.1.1986.

6. A counter-affidavit has been filed on behalf of the Respondent No. 4. in the counter-affidavit, it has been stated that the schools are being managed by private managing committee and for such aided private schools, the State Government has taken decision to pay the monetary benefit in the revised scale of pay with effect from 1.4.93 and there is nothing wrong with the same.

7. I have heard the parties and perused the writ petition, counter-affidavit, as well as, the enclosures attached thereto.

8. The Supreme Court in the case of K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, held that employees of a private institution had enforceable right there being an element of public interest, because of right to education and the writ petition is maintainable against the State.

9. In fact, similar case like the case of these Petitioners fell for consideration before the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, . The Supreme Court held therein that the pay scales and other emoluments of teachers of aided private schools must be in parity with the teachers of Government schools. In the said case, in fact, the State of Harayana also revised the scale of pay and dearness allowance on

the recommendation of Pay Revision Committee. While the benefit of such revision was provided to the teacher of Government schools with effect from earlier date, such benefit was provided to the teachers of the aided schools from a later date. The Supreme Court held that the same was not permissible being violative of Article 39(d) of the Constitution of India and directed to pay such revised scale of pay from the date, the State Government's teachers were so provided. The aforesaid decision was reiterated and clarified by the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, .

10. The case of these Petitioners being similar to the case of Haryana State Adhyapak Sangh (supra), I set aside the portion of the impugned resolution dated 5.11.93, by which it has been ordered to pay monetary benefits to the teachers and other employees of aided primary/middle schools with effect from 1.4.93. I hold that the Petitioners and other similarly situated teachers and employees of aided primary/middle schools are entitled for revised scale of pay, of which fixation is to be made with effect from 1.1.1986 and arrears of salary is to be made with effect from 1.3.1989. The Respondents are, accordingly, directed to fix the salary of the Petitioners and other teaching and non-teaching employees of aided schools in the revised scale of pay, in terms with resolution dated 5.11.95 with the arrears of salary with effect from 1.3.1989. This order is to be complied by the Respondents within a period of four months from the date of receipt/production of a copy of this order with respect to these Petitioners and all, similarly situated teaching and non-teaching employees of different aided primary middle schools.

11. So far as individual grievance of the Petitioners are concerned, they may move before the appropriate authority with respect to the same.

12. The writ petition is allowed, with the aforementioned observations/directions.