

(2011) 08 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1288, 1292, 1943, 1291, 1289, 1940, 1942, 1941 and 1290 of 2011

Managing Committee DAV, Hr. Secondary School and Another APPELLANT
Vs

Rajasthan Non-Government Educational Institutions Tribunal RESPONDENT
and Others

Date of Decision : 11-08-2011

Acts Referred:

Constitution of India, 1950 — Article 21, 39A, 41, 45

Citation : (2013) 1 RLW 577

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Sandeep Pathak, for the Appellant; Ganesh Meena, G.C. and D.P. Sharma, for the Respondent

Judgement

M.N. Bhandari, J.—By these writ petitions, a challenge has been made to the order passed by the Rajasthan Non-government Educational Institutions Tribunal, Jaipur (hereinafter to be referred as "the Tribunal") whereby the application moved by the private respondents u/s 21 of Rajasthan Non-government Educational Institutions Act, 1989 (hereinafter to be referred as "the Act of 1989") was allowed. The matters pertain to grant of selection scale pursuant to the circular of State Government dated 25.01.1992.

2. Learned counsel for the petitioners submits that vide impugned order, benefit of selection scale has been granted to the respondents-employees from the date prior to what has been fixed by the State Government. The Govt. of Rajasthan issued two circulars. As per last circular, benefit of selection scale has been made admissible since 28.5.2002. The Tribunal thus committed error in allowing benefit of selection scale from the date prior to 28.5.2002.

3. Apart from the aforesaid, another ground urged is against a direction to make the payment of selection scale by the Institution and then to seek grant-in-aid against it from the Government. According to the learned counsel, 80% of grant-

in-aid was made admissible to the petitioner Institution by the State Government, thus the Tribunal should have restricted payment of selection scale only to the extent of 20% by the petitioner Institution and remaining by the State Government. However, while concluding the order, erroneously a direction has been given to the petitioner Institution to make entire payment. Accordingly, on both the grounds, writ petitions deserve to be allowed by the setting aside the impugned order or modifying it.

4. In S.B. Civil Writ Petition No. 1288/2011, it is further submitted that claim was barred by limitation as the employee therein retired in the year 1994, whereas the application before the Tribunal was preferred in the year 2005. He should not have extended benefit beyond a period of three years prior to the institution of the application. Thus, the impugned order in the aforesaid case deserves to be set aside on that count also.

5. Learned counsel for the respondent-employee submits that issue raised by the petitioner has already been settled by the Full Bench of this Court in the case of S.R. Higher Secondary School Vs. Rajasthan Non Government Educational Institutions Tribunal and Others, . The judgment of the Full Bench was then upheld by the Hon"ble Apex Court in the year 2004. Pursuant to the judgment of Full Bench, petitioner institution was under an obligation to advance benefit of selection scale as per the circular dated 25.01.1992. Since necessary benefit was not given to the employees, they were left with no option but to submit application before the Tribunal.

6. Coming to the circular issued by the Government, providing benefit of selection scale since 28.05.2002. It is urged that circulars have been issued in disregard to the direction of this Court, thus action of the State is contemptuous in nature. The judgment of the Full Bench cannot be circumvented by the State authority by issuing a circular and if any such circular is issued, it is to be treated as nullity. In the background aforesaid, the respondent-employees have rightly been allowed benefit of selection scale pursuant to the circular dated 25.01.1992. The controversy in regard to the circular issued by the respondents came Up for consideration before this Court in the case of Senior Higher Secondary School Managing Committee, Laxmangarh vs. C.K. Mathew & Ors. in D.B. Civil Contempt Petition No. 312/2006 in D.B. Civil Writ Petition No. 2565/1999. Therein, considering the judgment of Full Bench, circular dated 05.04.2007 was taken in violation of the direction of the Full Bench. In view of the judgment of the Division Bench on the issue, circular issued by the Government cannot be taken as a shelter by the petitioner institution.

7. So far as the issue of limitation in maintaining application by the employee involved in writ petition No. 1288/2011 is concerned, section 21 of the Act of 1989 does not provide limitation and otherwise the employee involved therein was bonafide in maintaining application in the year 2005 because the issue regarding admissibility of benefit of selection scale was decided by the Full Bench of this Court on 28.05.2002 and thereafter up-held by the Hon"ble Supreme

Court vide its judgment dated 15.09.2004, immediately thereupon, he preferred application. A period of three years' limitation is applicable where one prefers a suit and accordingly, the employee cannot be denied benefit of selection scale in the light of the judgment of the Full Bench, rather it was obligatory on the part of the petitioners to allow benefit of selection scale to ail the employees, as the judgment is to be treated. The petitioner institution should not be allowed to take benefit for their own lapse in not complying with the directions given by the Full Bench of this Court.

8. Learned counsel appearing for the State Government though supported the circular dated 05.04.2007 but could now show its justification to provide benefit of selection scale w.e.f. 28th May, 2002. The only argument is that aforesaid is the date of judgment of Full Bench of this Court and thereby benefit of selection scale was made admissible accordingly.

9. I have considered the submissions made by learned counsel for the parties and scanned the matter carefully.

10. It is not in dispute that the employees of aided institutions are entitled for the benefit of selection scale pursuant to the circular dated 25.01.1992. The only argument is in reference to the circular issued by the Government on 05.04.2007 for providing benefit of selection scale from 28.05.2002. Much emphasis has been laid by the petitioners on the direction of the Tribunal to provide benefit of selection scale for a period prior to 28.05.2002. I am not required to bother myself much on the issue as Division Bench of this Court has already made observations in regard to the aforesaid circular, which is quoted hereunder for ready reference:

Along with compliance reports, the Government Circular dated 05.04.2007 has been placed on record revealing that the Government had decided to make payment in terms of direction only w.e.f. 19.5.2005 but be benefit of selection scale to be released only notionally w.e.f. 28.5.2002.

It appears to us that those directions flies in the face of mandamus issued by this Court and affirmed by the Hon''ble Supreme Court. The teachers of Non-government Educational Institution became entitled for selection scale while discharging their functions and nothing is being paid for the period during which they have not worked. There was no direction for fixation of selection scale on notional basis. This is an indirect methodology by the government to deny the benefit arising out of orders of the Court by executive directions, which cannot be countenanced.

An opportunity is given to the respondents to make the compliance of the direction of the Hon''ble Supreme Court within one month without circumventing the direction of this Court as affirmed by the Hon''ble Supreme Court, failing which the respondent shall remain present on the next date of hearing to explain the issuance of circular dated 05.07.2007 which prima facie appears to be in violation of direction of the Court.

11. Perusal of the para quoted above clearly shows that when the judgment of Full Bench was up-held by the Hon"ble Apex Court, the State Government cannot circumvent the direction of the High Court and it was otherwise taken in violation of direction of this Court. In fact, therein the officers of the Government could have been punished for committing contempt. However, contempt petition therein was later on decided, thus without going in that issue, I am of the opinion that circular dated 05.04.2007 cannot circumvent or nullify the judgment of this Court. Para Nos. 17, 19 and 20 of the Full Bench judgment in the case of S.R. Higher Secondary School & Anr. (Supra) are quote hereunder for ready reference:

17. The Apex Court while laying down the principles on consideration of the question of right to education expressed that in the matter of providing sole and spirit to fundamental rights conferred on the individuals, the directive principles of the State policy to achieve the goal of the Constitution for building the egalitarian society free from exploration were laid in Part IV. Article 41 in the context of the present controversy invites attention which says that the State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. The need to provide free education to the children until they complete the age of fourteen years, as matter of compulsory obligation of the State and to endeavour to secure the right to education thereafter to its citizens subject to financial resources available to it as envisaged under Article 45 of the Constitution of India. With this constitutional scheme, we find that the teachers of aided educational institutions must be paid the same pay scale and allowances as that of the teachers in government educational institutions. We are, therefore, of the view, after reading it, along Section 29 of the Act and Rule 34 of the Rules, and circular dated 25.1.1992, that selection scale is not a promotion to higher post but a higher pay scale in the same post. Once it is held that the aforesaid circular provides pay scales to the teachers of government educational institutions, by virtue of the statutory provisions, it shall also be payable to teachers of NGEIs.

19. Now, it brings us to the question as to whether the State is obliged to contribute grant-in-aid for the selection scale provided under the circular dated 25.1.1992. The Act of 1989 has been enacted to provide for better organisation and development of education in the Non-Government educational institution in the State of Rajasthan Section 7 of the Act provides for grant of aid. Only a recognised institution run by a Society registered under the Societies Registration Act would be given the grant in aid, subject to such terms as may be prescribed. The sanctioning authority may sanction and distribute aid to a recognised institution from time to time in accordance with the procedure as may be prescribed. In exercise of the powers conferred by Rule 43 of the Rules, the State Government framed Rules regulating recognition, grant of aid and service conditions etc. of the NGEIs. Rule 10 of the Rules provide for general conditions

governing grant-in-aid. Rule 11 deals with procedure, for grant-in-aid. Rule 12 is for finalisation of maintenance or recurring grant. Rule 13 is in regard to assessment of annual recurring grant on the basis of estimated expenditure of the current year and will be subject to adjustment of grant payable in the next year Rule 14 deals with approved expenditures. Rule 15 is for payment of recurring grant. Rule 16 deals with non-recurring grant. Section 7 of the Act reads as under:-

Grant of aid to recognised institutions.-

- (1) No aid shall be claimed by an institution as a matter of right.
- (2) Unrecognised institutions shall not be eligible to receive any aid.
- (3) Subject to such terms and conditions as may be prescribed, the sanctioning authority may sanction and distribute aid to recognised institutions from time to time in accordance with the procedure as may be prescribed.
- (4) The aid may cover such part of the expenditure of the institution as may be prescribed.
- (5) No amount out of aid given for salary of the employees of an institution shall be used for any other purpose.
- (6) The sanctioning authority may stop, reduce or suspend aid on breach of any of the terms and conditions prescribed in this behalf.
- (7) The amount of aid may normally be paid to the secretary of the managing committee of an institution but, in special circumstances and for reasons to be recorded in writing, such amount may be paid to any person authorised by the Director of Education or by any other officer empowered by him in this behalf.

On the basis of Section 7 it is contended by the counsel for State that no aid can be claimed as a matter of right. It is for the government to decided not only whether the grant-in-aid is to be given to recognised institution but also as to how much and under what heads the grant is to be sanctioned to the NGEIs. In counter it is submitted by the counsel for petitioners that once educational institution is registered, it is entitled to grant-in-aid from government as a matter of right and for this proposition reliance was placed on the decision of State of Maharashtra Vs. Manubhai Pragaji Vashi and others, . This case, in our opinion, does not assist the petitioners in contending that they are entitled as a matter of right to get the grant-in-aid from the State. It was a case in which the Govt. of Maharashtra denied grant-in-aid to the recognised private law colleges while the same was extended to other faculties of the private colleges. The court emphasised upon the necessity of giving legal education and to fulfil the obligation under Article 390A of the Constitution of providing free legal aid and held that the faculty of law in the matter of (sic) grant-in-aid run by private recognised colleges cannot be discriminated on the ground of being a professional course falling upon the economic resources. The court emphasising

upon the necessity of maintaining status of legal education held that these aspects necessarily flowing from Articles 21 and 39-A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognised private law colleges as was afforded to other faculties. The State has abdicated the duty enjoined on it by the relevant provisions of the Constitution as aforesaid. Accordingly, the Court directed the Government to extend grant-in-aid scheme to Govt. recognised private law colleges on the same criteria on which such grants were given to other faculties viz. Arts, Science, Commerce, Engineering and Medicine from the Academic Year 1995.

Under Sub-section (1) of Section 7, educational institutions cannot claim grant-in-aid from the government as a matter of right i.e. to say on an application moved by an NGEI for grant of aid, it is not incumbent on the government to grant aid to such an institution if reasonable ground exists for not granting aid to such an institution. However, the government cannot refuse grant arbitrarily or without there being any justifiable reason. In the present case all the petitioners have been allocated grant-in-aid. The question really is whether once the aid is sanctioned, the sanctioning authority has a power to fix it exercising its own discretion or the grant has to be made as provided under Sub-sees. (3) and (4) of Section 7 of the Act read with the Rules and in the matter of quantum of grant in aid no discretion is left with the sanctioning authority. It is an admitted fact that the petitioners are enjoying grant-in-aid from the government. From the scheme of the Rules, it appears that the assessment of annual recurring grant would be sanctioned on the basis of estimated expenditure of the current year, and the institutions shall be categorised under advice of the grant-in-aid Committee and would be allowed grant-in-aid.

20. Rule 13(2) speaks of Approved expenditure to be arrived at according to these Rules and such other instructions that may be issued from time to time. Rule 13(3) speaks of categorisations of the institutions under advice of the grant-in-aid Committee and to be allowed grant-in-aid as

Rule 14(a) includes actual salary, and provident fund contribution not exceeding 8.33% in respect of teaching and non-teaching staff, apart from the other approved expenditures as laid down in Rule 14. "Salary" is defined in Section 2(r) of the Act which means the aggregate of the emoluments of an employee including dearness allowance or any other allowance or relief for the time being payable to him, but does not include compensatory allowance. The extended definition of salary provides for aggregate of emoluments received by the teacher which also includes all allowances excluding the compensatory allowance and also extended to the relief for the time being payable to the teacher. The selection scale given to the teacher shall certainly fall within the four corners of the definition of "Salary". Although Section 7 of the Act provides that no aid shall be claimed by an institution as a matter of right, once it is decided to grant aid under Section 7(3) of the Act, the sanctioning authority is to sanction and distribute to a recognised institution aid from time to time in accordance with the

procedure as may be prescribed. Section 7(4) of the Act provides that the aid may cover such part of the expenditure of the institution as may be prescribed. Section 7(3) read with Section 7(4) makes it clear that the aid which has to be granted to a recognised institution shall cover the estimated expenditure of the current year and the approved expenditure as provided under Rule 14 of the Rules. Once it is decided by the Government to provide grant-in-aid in accordance with Sections 7(3) and 7(4) of the Act, it leaves no room for the sanctioning authority to exercise its discretion to grant or not to grant the aid in regard to the items covered u/s 7(3) and 7(4) of the Act. Selection scale being salary, once the State Government had decided to grant aid to an NGEI, it will form the part of the grant-in-aid and thus the State Government in the eventuality of sanctioning the grant will pay for the same in accordance with the percentage prescribed to the category in which the NGEIs is placed.

12. Perusal of the para 17 shows that circular dated 25.01.1992 has been made applicable to the teachers of Non-government Educational institution. Therein, observations have been made regarding entitlement of the teachers to receive amount in terms of the aforesaid circular. The aforesaid is coming out if last three lines of the para 17 are looked into. In the light of the judgment of Full Bench, the circular of the Government dated 05.04.2007 or any other circular circumventing the judgment of this Court so up-held by the Hon'ble Apex Court cannot be accepted or be given effect. The government authorities are expected to correct their action, otherwise they are committing contempt of the Court's order. Accordingly, it is expected that necessary withdrawal/modification in the circular would be made forthwith on the receipt of copy of this judgment.

13. In view of the discussion made above, I am not inclined to accept first ground raised by the petitioner.

14. Now comes to the issue as to whether a direction could have been given by the Tribunal to the petitioner institution to extend benefit of selection scale by making payment and thereafter claim it from the State to the extent of grant-in-aid. The admissibility of the benefit of grant-in-aid and procedure of that has been given under the Rules of 1993. From rule 11 onwards, procedure has been given as to how grant-in-aid would be fixed and thereupon to be reimbursed. The aforesaid has otherwise been discussed by the Full Bench of this Court, Hence, the petitioner institution cannot deny extension of benefit of selection scale to the respondent-employee till they are not paid grant-in-aid for it. In fact, petitioner institution should make the payment as admissible to the employee pursuant to the impugned order of Tribunal and thereupon get reimbursement of the amount in proportion to the grant-in-aid. In the light of the aforesaid, the issue raised by the petitioner is clarified with the direction that they should first make payment as directed by the Tribunal and thereupon seek reimbursement of the payment from the State Government. On receipt of claim from the institution, the Government is expected to reimburse the accrued expenditure as per the Rules of 1993 at the earliest and in not later than a period of six months.

The direction aforesaid will redress the grievance of the petitioner institution to some extent.

15. Now comes to the issue as raised in the Writ Petition No. 1288/2011. It is regarding the period of limitation for making claim for selection scale.

16. In the case aforesaid, employee retired in the year 1994 and an application for seeking selection scale was made in the year 2005. Section 21 of the Act of 1989 does not provide limitation to maintain an application though Section 19 provides 90 days limitation for maintaining appeal. In view of the aforesaid, it is not correct to state that application was maintained beyond the period of limitation. An application before the Tribunal is not a civil suit. It is otherwise a fact admitted by the petitioners themselves that issue as to whether selection scale would be admissible to the employees, was decided for the first time by the Full Bench on 28.05.2002 then an application preferred in the year 2005, cannot be said to be with delay. Rather petitioner institution was under an obligation to make payment towards selection scale to all the eligible employees pursuant to the judgment of Full Bench of this Court. Inaction on their part to make payment as per the decision of Full Bench cannot be to their benefit. In view of the above, the employees cannot be denied benefit of selection scale pursuant to the circular dated 25.01.1992.

17. Accordingly, I am not inclined to accept the last argument raised in the writ petition referred to above.

18. In view of the discussion made above, I do not find any illegality in the order passed by the Tribunal. Hence, the writ petitions are dismissed so as the stay applications. However, as per the observations made and directions issued, if the petitioner institution comply with the direction of the Tribunal now within a period of two months from today and make a claim for reimbursement by the State Government for aforesaid expenditure to the extent of grant-in-aid, the Government may undertake necessary exercise as per the Rules and reimburse the amount within a period of six months from the date of receipt of claim, if the payments are not made to the respondent-employee within a period of two months from today pursuant to the direction of the Tribunal, directions as given above would not be applicable.

Cost of the litigation is mad.