
(1991) 02 CAL CK 0012
In the Calcutta High Court
Case No : Matter No. 2294 of 1989

Monirujjaman Mallick

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-02-1991

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (1994) 2 ILR (Cal) 122

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Gautam Chakraborty and P.K. Chandra, for the Appellant; L.K. Chatterjee, for Union of India and Samar Rudra, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by 1616 Teachers/Instructors of Non-Formal Education Centres in the different districts of West Bengal praying inter alia for an appropriate writ commanding the Respondents to put the Petitioners on regular pay scales to that of all Primary School Teachers in the Education Department of the State of West Bengal and to provide other consequential benefits from the date of their initial appointment and to give effect to Circular No. 667-ENG dated October 22, 1986 and Circular No. 175-NP/EMB-2D-108(sic) dated April 1, 1987, being Annex. "M" to the writ petition for absorption of the Petitioners as regular teachers and/or they may be treated as appointed teachers against sanctioned post of teachers/instructors. It is alleged that the Respondents have acted illegally in not considering the nature of the duty and the ultimate object of teaching of both the non-formal teachers and the primary teachers being same and identical. The Petitioners are allegedly entitled to pay at par with the pay of Assistant Teachers (Primary School.) run by the District School Boards under Article 39(d) of the Constitution of India on the principle of "equal work equal pay". It is further alleged that the Respondents have been acting arbitrarily in not considering that the Petitioners regularly working in the same posts from the date of institution of the scheme and yet they are treated as temporary employees and deliberately denied protection of

tenure of service and other consequential benefits of permanent employees like pension, leave salary, gratuity, medical benefits etc. specially when the Education Department and the Department controlling the services of the Petitioners are permanent. There is alleged to be utter discrimination between the Petitioners and the administrative employees of the same programme inasmuch as the administrative staff is given permanent employment and getting regular and higher pay scales and other consequential benefits, although it is admitted that the Petitioners play a permanent role in making the programme success. It is stated in details that in pursuance of a circular dated December 8, 1976, the President of the District School Board, 24-Parganas, issued a circular dated August 25, 1981, for establishment of part-time (non-formal) Education Centres with immediate effect out of the quota sanctioned in terms of Government Order No. 1556:Edn. dated September 5, 1989 and formed an Organising Committee with the approval of the District School Board. The State of West Bengal, in fact, introduced the scheme for Non-Formal Education in order to promote education amongst those children who could not avail themselves of education in the formal schools due to socio-economic condition. The children of age group of 6 to 11 and those which Group 11 to 14 (both boys and girls) come under (non-formal) Education Scheme with a view to educate themselves to the elementary stage of education in such non-formal education centres set up by various organisations and/or agencies. The Petitioners allege that they have been appointed as teachers/instructors being duly approved by the Director of School Education, Government of West Bengal with a fixed salary of Rs. 105 per month and Rs. 50 as contingency. The Directorate of Secondary Education, Government of West Bengal, had duly issued certificate of training to the teachers individually which indicate, inter alia, that the Petitioners are all trained teachers. The Petitioners claim that though the stream to which they belong, is in fact carrying the maximum burden in the policy implementation of the Government, yet the services have not been recognised in proper perspective and with proper perspective and with proper remuneration. There is alleged denial of the settled principle of "equal pay for equal work". The teachers similarly placed in primary schools run by the Government of West Bengal are with better pay scales and other service benefits whereas the Petitioners are suffering immensely. Elaborating all these points and demonstrating the various acts of utter discrimination the Petitioners have sought for the interference of the Writ Court and prayed for reliefs as indicated above.

2. The Respondents, Union of India and the State of West Bengal, are contesting the writ petitions vehemently. It is placed on record on behalf of the Union of India that the concept of the Non-Formal Education Scheme (Non-Formal Education) was started in 1979-80 on the recommendation of the working group set up by the Planning Commission in 1977 to consider universalisation of voluntary education. The working group held that children from economically disadvantaged sections of the community were not largely attracted towards whole day, full time formal schooling and that they would reconcile with their

necessity for augmenting present income and helping in household course. A need was, therefore, perceived to develop a programme of primary education on part-time basis. The group identified 9 (nine) educationally backward States, viz. Andhra Pradesh, Assam, Bihar, M.P., Orissa, Jammu and Kashmir, Rajasthan, U.P. and West Bengal having 3/4th of the total uncontrolled and enrolled children and very high drop out rates and besides to give special support to these 9 (nine) States of introducing a massive programme of Non-Formal System of Education among the children in the age group of 9 (nine) to 14 (fourteen). Accordingly the scheme was initially introduced in these 9 (nine) educationally backward States. Subsequently, the N.F.E. Scheme was extended to the State of Arunachal Pradesh. Under the revised scheme though the pattern of central assistance remains the same, the costs of per centre have since been increased. Administrative strategies have been strengthened, management and supervision have been decentralized and greater technical academic support had been provided. It is further placed on record that when the Scheme began in 1979-80, instructors were paid @ Rs. 50 per pupil per annum for a centre of 25 learners which worked out to Rs. 1,250 per instructor per annum, i.e. at about Rs. 104 per instructor at the primary level and at Rs. 60 per pupil per annum which worked out to Rs. 1500 per annum and about Rs. 125 per month per instructor at the upper primary level. The scheme was revised in 1982 under which one instructor was provided for each centre, whether primary or upper primary and the instructor received an honorarium of Rs. 105 per month at primary levels and Rs. 125 per month at upper primary level. The scheme also provided for contingent expenses including teaching and learning material and equipment. The revised scheme makes the provision for 2 (two) instructors at the upward primary level, i.e. @ Rs. 25 each as honorarium though only the primary level one instructor is provided. It is claimed that as regard qualification and selections, the scheme of N.F.E., aims to utilize persons motivated to serve the community. This approach is spelt out in the documents containing these schemes and the programme of action. The instructor, in a N.F.E. centre is, according to the Respondents, is essentially rendering a voluntary service to take work in addition to his or her other occupations. The daily work of running the centre is likely to be 1? hours. It is further placed on record that minimum educational qualifications for improvement is those who have had education upto Class X but failed to pass the Matriculation examination are considered for appointment. There is room for further realization. With regard to the administrative control the earlier pattern of the Scheme before 1987 provided for funds for staff at State Directorate level. Under the revised scheme the centres are run in the form of projects of about 100 centres each in a compact and contiguous area. Under the revised scheme funds are provided for a separate administrative machinery for the scheme with staff at State Directorate, a SCERT, District and Block levels. At the block level, a Project Management Cell has been created and Supervisors are appointed for every 10-12 centres. Centre's cost includes instructors' salary, lighting, teaching and learning materials, training, supervision equipment, petromax and lanterns. A clear stand has been taken

that the sum of Rs. 105 payable to the Instructor is not a salary but an honorarium. Similarly, Rs. 50 per contingency is not an addition to the honorarium but is meant for running Non-Formal Education Centre. The allegations of the writ Petitioners have been refuted.

3. A separate affidavit-in-opposition has been filed by the State of West Bengal supported by an affidavit sworn by the Special Officer of School Education (Non-Formal), Education Directorate of the Government of West Bengal. It is stated that in or about 1974-75 the Government of India introduced Scheme/Plan for imparting non-formal education to the children of the age group 9 to 11 years who either dropped out of the school or did not go to the school at all. The Central Government prepared an elaborate scheme for providing assistance to the State Government for opening part-time non-formal Education Centres and the State Government, accordingly, has prepared broad guidelines. The broad principle regarding setting up and functioning of the said part-time non-formal Education Centres were originally for:

(i) Average number of students per centre Rs. 1,920., Besides, to start with, a centre may be granted a nonrecurring expenditure towards furniture, equipment, goods etc. @ Rs. 60 per centre.

(vii) Administrative Control : In respect of rural areas, the ad hoc committee of the District School Board shall control the non-formal centres, draw necessary grants from Government, give appointment to part-time teachers and make payment as admissible. The District Inspector of Schools (Primary Education) shall discharge function in consultation with the Urban Advisory Committee so far as areas are concerned.

4. It is stated in details that as the said Non-Formal Education Centres were/are part-time by nature, the instructors in the said centres were/are being paid merely an honorarium and not salary. As alleged, the said instructors were/are and/or can never be equated with the primary, secondary school teachers. In fact, the persons interested in social welfare activities are being encouraged to take up the job of instructing the uneducated children through these Non-Formal Education Centres and they are being paid honorarium. It is, further, placed on record that the Department of School Education was looking after, the non-formal education, adult education and different segments of school education in addition to formal school education. Under the Department of School Education a State Level Committee and a District Level Committee for each district were set up to recommend opening and sitting of Non-Formal Education Centres. The proposal for meeting up Non-Formal Education Centres is initiated through the local Panchayat Samity. The proposal is placed before the District Level Committee. After the District Level Committee approved the same, it is sent to the State Level Committee for approval. If the State Level Committee approves, the Non-Formal Education Centre is permitted to be opened. The Instructor is chosen by the Panchayat Samity which is conversant and acquainted with the local situation.

5. It is brought to the notice of the Court that subsequently, in October 1987, the Central Government revised the scheme for Non-Formal Education after acceptance of National Policy on Education. Under the said Policy, it was resolved that all children who would be attaining the age of 11 years would have 5 years of schooling through formal stream or its equivalent through the non-formal stream. Under the revised scheme, the Central Government maintained its financial assistance for running the Non-Formal Education Centre in the educationally backward States including West Bengal. The pattern of Central assistance is as follows:

(i) Central aid of N.F.E.--50 %. (ii) N.F.E. Centres for Girls--90 %.

(iii) Project of 100 Centres by State Government--50 %.

(iv) Project of 100 Centres by Voluntary Agency-100%.

(v) Innovative Project--100%.

6. The break-up of the permissible cost per Primary and Upper Primary Centres in the Non-Formal Education Scheme has been specified by the Central Government and a detailed infrastructure has been indicated. Under the said revised scheme, the Central Government specifically highlighted that the greatest attention should be paid to the selection of the Instructors. It has been pointed out that the Instructors should be local persons who would be motivated to serve the community particularly the weaker section. The revised scheme also stressed the need of proper supervision of the Non-Formal Education Centres and a sum of Rs. 400 per centre has been provided as supervision cost. The revised scheme also pointed out that management structure of the Non-Formal Education should be recognised on project basis.

7. It is also brought to the notice of the Court that for recognition of the Non-Formal Education Scheme into projects of the Central Government instructed that all extensions of N.F.E. programme would be in the form of project, each project comprises about 100 N.F.E. Centres in a compact and contiguous area. The Central Government also gave clear instructions that wherever possible in administrative and supervisory structure for Non-Formal Education and adult education will be amalgamated including the programme to be taken up by Panchayati Raj bodies and voluntary agencies. It has also been laid down that the N.F.E. Centre running outside the project area should be shifted to the defined project area. Regarding staff selection and training the Central Government has laid down that the supervisors and instructors will be drawn from the local community and the main criterion for their selection would be their commitment to the cause of community service. In the revised scheme the Central Government is alleged to have indicated the staffing and funding pattern of the projects for management of the Non-Formal Education Centres. Under the said revised scheme, the Central Government stressed the need of strong administrative system for controlling, regulating or looking after the Non-Formal Education within the State. The scheme indicated that wherever possible

administrative and supervisory structure for N.F.E. and Adult Education would be amalgamated. The Central Government is also alleged to have indicated a sanctioned staffing pattern of separate Directorate for Non-Formal Education and Adult Education. The revised scheme of Non-Formal Education has been circulated through letter No. 1-22/87 N.F.E. dated October 8, 1987 by the Joint Secretary, School Education, Government of India. All other allegations of the Petitioners have however been controverted. There is also reply by the Petitioners reiterating the original stand taken in the writ petition.

8. With great anxieties, this Court has gone through the pleadings of the parties and considered the lengthy submissions made on behalf of contesting Respondents. The entire scheme has been examined by this Court in the proper perspective. The mode of appointment, the nature of the duty, the scope of the infrastructure of Non-Formal Teaching system and the teaching of the students convinced this Court that in a casual manner the matter cannot be treated and the questions of proper treatment to the teachers cannot be ignored by observing that the persons engaged are required to render voluntary services and instead of remuneration they should be satisfied with the honorarium. This approach appears to be thoroughly misconceived and erroneous. Every endeavour is being made to secure the services and the payment has to be made for the work done by the persons engaged in accordance with law. The theory of "equal pay for equal work" is no longer a dream. It is now an accomplished fact. The Hon'ble Supreme Court has clearly laid down the law that economic burden or for any other obvious reason a person engaged to do the duty should not be discriminated in a way that a same type of work is done by another man drawing higher scale of pay. The attention of the Court has been drawn to the cases, *Dhirendra Chamoli and Another Vs. State of U.P.*, *Bhagwan Dass and Others Vs. State of Haryana and Others*, *Jaipal and Others Vs. State of Haryana and Others*, and *State of U.P. and Ors. v. J.P. Chaurasia and Ors.* AIR 1989 S.C. 19. This Court does not appreciate the stand taken by the State Respondents and the Respondent Union of India that the salary of the teachers of Non-Formal Education should be treated as an honorarium, i.e., a paltry sum of Rs. 105 should be paid per head. At the present day economy, the payment of Rs. 105 per month for a person is not only unfair but such a payment is nothing but a practical joke with a person who is asked to do the duty. This Court has taken pains to go in between the lines of the pleadings and the materials placed before this Court and the conscience of the Court is satisfied that with the nature of duty done by the Petitioners warrants the principle of "equal pay for equal work" as equated to the benefits for all teachers appointed by the State Government in regular course of study in schools. It is absolutely erroneous to deny the rights of the Petitioners in the manner as prayed for. This Court finds sufficient merit in the writ petition to interfere and there is no bar and/or impediment to allow the writ Petitioner to grant the reliefs to the extent as indicated below. The writ petition is disposed of by issuing an appropriate writ commanding the Respondents to give effect to the Circular No. 667/ENG dated October 22, 1986

and Circular No. 175-MP/EMP-2D-108(sic) dated Calcutta April 1, 1987, for regularising the teachers who have been appointed against sanctioned posts of teachers/instructors and to give benefits of regular pay scales to the Petitioner to that of primary school teachers in Education Department of the Government of West Bengal. The benefit has to be given from the date of absorption and/or regularisation within 3 (three) months from the date of communication of the order. The Petitioner, however, will not be entitled to ask for any benefit retrospectively or for any arrear prior to the date of regularisation. There will be no order as to costs/There will be a stay of operation of this order for a period of fortnight from date.