(2005) 08 DEL CK 0042

In the Delhi High Court

Case No : WP (C) No''s. 19653-72 of 2004

Mrs. Veena Sharma and Others — APPELLANT

Vs

The Manager, No. 1 Air Force School and Others — RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Delhi School Education Act, 1973 — Section 10, 10(1), 10(2), 4(1)
Delhi School Education Rules, 1973 — Rule 180

Citation : (2005) 84 DRJ 306

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sandeep Sethi and P.S. Bindra, for the Appellant; Rekha Palli and Amit Andley, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—These petitioners claim a common relief of grant of pay scale and allowances applicable to teachers of corresponding status in other schools recognized and administered by Directorate of Education, from the date of recognition of the first respondent (hereinafter called ''the School''). Further directions requiring the school to supply to each of the petitioners copies of statement of their Provident Fund Account and also to disclose the amounts of contribution standing to their credit, their entitlements to leave etc have been claimed.

2. The School was established in 1969, apparently to cater to the educational need of children of defense personnel of certain units of the Indian Air Force. The petitioners have been working in the school for varying periods of time between about 2 years to 27 years. All the petitioners except five are drawing salary in the Pay Scale of Rs. 4125-7525. The five petitioners are drawing salary in the Pay Scale of Rs. 3350-Rs. 6270/-. All are working as teachers in the school. The petitioners aver that the school was recognized, by the Directorate of Education, under the Delhi School Education Act, 1973, (hereinafter called ''the Act'') in the

year 1986. Formerly it was known as the ''Gyan Jyoti School''. Subsequently, it''s name was changed; it was affiliated to Central Board of Secondary Education (CBSE) in the year 2002.

3. The petitioners aver that they repeatedly, though unavailingly made representations to secure compliance with Section 10 of the Act which mandates parity in pay and allowances of teachers and staff of working in all private/ recognized schools with those working in schools established and managed by the appropriate authority. It is submitted that as against the present levels of salaries being paid to the petitioners the salary structure of other teachers of similar status in schools managed by the appropriate authority/ Government are much higher.

4. It is averred that after several unsuccessful attempts a final representation was made, to the Directorate of Education on 1.9.2004 outlining the entire grievances regarding non-compliance of provisions of Section 10 of the Act. When no positive response was forthcoming the petitioners approached this Court seeking relief.

5. The school in its counter affidavit has not denied that it was recognized in 1986; it, however, disputes its liability on two counts. It avers that the school is being managed purely as a welfare measure and the amounts recovered as fees are just about adequate to meet the expenditure. It is further averred that the present pay scales were approved by the CBSE at the time of affiliation of the school with that body. The pay scales of the teaching staff were formulated by IAF Children Cultural Society in consultation with CBSE which was approved by the Department of Secondary Education and Higher Education, Government of India, some time in October, 2000. The school also avers that it is a Category-B school as per the criteria defined by the said Society (IAF Children Cultural Society) and it cannot be compared with private unaided recognized schools in Delhi. It is further stated that admission to the school is open to a very restricted and limited category of students, who are from amongst the wards and children of Air Force, defense and Central Government Personnel, particularly the children of Air Force Employees at Palam.

6. The School has filed the Income and Expenditure Statement fee structure applicable to it. The total yearly collection of tuition fees is in the range of about Rs. 22.33 Lakhs. The documents produced along with the counter affidavit disclose that the pay scale of primary teachers is Rs. 3350-6270; the pay scale of TGT is Rs. 4125-7525 and that of PGTs is Rs. 4825-8875.

7. The Directorate of Education, in its return, has taken the position is that the school is under an obligation, to comply with Section 10 of the Act and that it is not just and fair for its Management to deprive the staff and teachers the same salaries and allowances paid to staff and employees of other schools. It also avers that the staff and employees of the school fulfill the educational requirements prescribed under the Act and the Rules for the posts to which they

have been recruited. In addition it is stated that as per returns filed under Rule 180, the School has sufficient funds and is earning handsome interest on the amounts lying in deposit. As per the documents produced with the counter affidavit it emerges that the general reserve fund of the school, as on 31.3.2004 was Rs. 65,65,436/86 as against Rs. 59,04077.86 for the previous year. This document also shows that the school generated an excess income to the tune of Rs. 3,77,399/- over expenditure as on 31.3.2004. The Directorate has relied upon a letter, dated 15.4.1997 by which the school was upgraded to from middle to secondary level where the condition of having to comply with Section 10 of the Act was spelt out. The Directorate has further relied upon several letters including the one dated 28.2.2005 asking the school to pay salaries and other benefits to its employees in the light of Section 10 and other provisions of the Act and Rules.

8. Mr. Sandeep Sethi, learned Senior Counsel for the petitioner submitted that Section 10 of the Act casts an absolute liability upon each recognized school, be it aided or unaided, to pay salary and allowances, at par with that disbursed/ paid to staff and teachers working in schools at the appropriate Government. This provision is aimed at ensuring, a minimum standard in pay scales of teachers working in Delhi. The petitioners were repeatedly making attempts to secure justice and in spite of the clear position the respondents did not heed to their just demands. He also relied upon the stand taken by the Directorate that repeated requests to comply with Section 10 were made but to no avail. He, Therefore, submitted that the school ought to be directed to pay all the salaries and allowances and also extend the terms and conditions being availed of by teachers and employees in other schools including those run by the appropriate Government.

9. Learned counsel for the petitioners further submitted that the school cannot state that it lacks of funds to pay full salary. Firstly, it was put to notice about the obligation to pay salary and allowances as per the Act, when it was recognized. Secondly, the record discloses that there is surplus income and also a considerable reserve fund.

10. Learned counsel for the Directorate reiterated the position taken in the counter affidavit and supported the stand of the petitioners.

11. Ms. Rekha Palli, learned counsel appearing for the petitioner had initially submitted that the pay scales in the school was approved by the Central Government and consequently, the CBSE also granted affiliation in the year 2002. It was also submitted that the school is one amongst more than 100 schools run by Air Force Society and, Therefore, its object basically is to ensure education to children of employees of Air Force. Being a welfare measure and having regard to the fact that fees chargeable cannot be at par what is charged in private schools, the pay scales offered to the petitioners cannot be called unreasonable. At one stage, she also attempted to submit that the school caters to the need of children of JCO''s (Junior Commissioned Officers) and as such it is

not in a position to bear the burden of parity in pay scales, with those enjoyed by teachers and staff in other schools.

12. During the course of hearing learned counsel for the the school could not deny that the school has surplus income and also enjoys as a reserve fund. She, however, submitted that if the directions sought are granted, it would be detrimental to the children and the employees themselves since the financial burden would be so crippling that the school might have to be closed.

13. Section 10(1) of the Act provides as follows :-

"the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority".

The proviso to Section 10(1) requires the appropriate authority to direct in writing the managing committee of any recognized private school to bring the scales of pay and allowances etc. of all the employees of such schools to the level of those of the employees of the corresponding status in schools run by the appropriate authority. The second proviso to Section 10(1) contemplates withdrawal of recognition if such direction is not complied with. Section 10(2) requires the managing committee of every aided school to deposit every month its share towards pay and allowances, medical facilities etc. with the Administrator and requires the Administrator to disburse, or cause to be disbursed, the salaries and allowances to the employees of aided schools. obliges the authorities under the Act to ensure that recognition is granted if the institution/school is possessed of sufficient funds to pay salary and allowances.

14. In the decision of the Supreme Court reported as Frank Anthony Public School Employees'' Association Vs. Union of India (UOI) and Others, it was held that the excellence of every school, whether aided or unaided would depend upon the quality of its teachers and that provisions which mandate payment of salary and allowances, like Section 10 cannot be characterized as unreasonable even in respect of unaided minority educational institutions. The inflexible nature of the liability of the every recognized school to follow the provisions of the Act and Rules framed under the Act, was again reiterated by the Supreme Court in the judgment reported as Miss Raj Soni Vs. Air Officer in Charge Administration and another, . It was in Raj Sonia''s case (supra) that :-

"The recognised private schools in Delhi whether aided or otherwise are governed by the provisions of the Act and the Rules. The respondent-management is under a statutory obligation to uniformly apply the provisions of the Act and the Rules to the teachers employed in the school. When an authority is required to act in a particular manner under a statute it has no option but to follow the statute."

15. Although the Minimum Wages Act does not apply in terms of teachers and

schools, nevertheless Section 10, to the extent it obligates managements of recognized schools to pay the same salary and allowances and grant the same terms and conditions, applicable to the staff of school of the appropriate authority, constitutes a minimum standard regarding pay/ salary. No management, of an aided or unaided school can legitimately claim exemption from applicability of this minimum standard.

16. It is a settled law that hardship to an employer to carry on its activity, on account of payment of minimum wages is an irrelevant consideration for the determination of minimum wages, see U. Unichoyi and Others Vs. The State of Kerala, ; Hydro (Engineers) Pvt. Ltd. Vs. The Workmen, . It is also been held that the State assumes that every employer must pay the minimum wage before he resorts to employment. These principles have been reiterated time and again, right down to the position in Air Freight Ltd. v. State of Karnataka 1999(6) SCC 547.

17. In respect of Section 10 of the Act itself, the argument of paucity of funds being an irrelevant consideration has been ruled against in the judgment reported as Samaj Shiksha Samiti v. Delhi State Saraswati Shishu Bal Mandir Karamchari Kalyan : 97(2002)DLT802 .

18. Two things clearly emerge, from the above position. The respondent school is under an obligation to comply with the provisions of Section 10. This obligation is not relieved in any manner; rather, Section 4 (1) reinforces this conclusion. Further, the Director and other authorities under the Act have no power to exempt any recognized school from its liability to comply with Section 10. The reliance of the school on the implied approval by the CBSE to its own pay scales or approval by the Central Government, is in my considered opinion of no consequence. There is no dispute about the fact that the Directorate itself has been insisting upon payment of salary and allowances in accordance with Section 10. Indeed that was the condition of recognition itself. The second issue is that financial hardship is also no consideration or ground to relieve an employer of his statutory obligation to pay what society has decreed as the minimum salary of teachers and staff, through the provisions of Section 10 of the Act.

19. The submission of learned counsel for the school that if the relief is granted and the pay scales have to be released in favor of the petitioners, a situation might arise leading to the closer of the school is somewhat similar to the apprehensions voiced by the Management in Frank Anthony?(tm)s case (supra). The Supreme Court dealt with arguments in the following terms :-

"We must refer to the submissions of Mr Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to ''put the teachers in their proper place''. The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised."

20. The submission of paucity of funds, has to be, Therefore, rejected. The subjective or individual hardship of a management, that too sponsored by no less an Organization of the stature of Indian Air Force, which even went to the extent of seeking to deny liability on the ground that the school caters to the children of JCOs (Junior Commissioned Officers) impliedly perhaps suggesting that the children of such employees can be taught without compliance with minimum standards imposed by law, cannot be countenanced.

21. I am, Therefore, of the considered opinion that the respondent school is bound by the terms of Section 10 and has to ensure payment of salary and allowances and also extend all terms and conditions of service to it?(tm)s employees at par with those of employees of corresponding status in schools run by the appropriate authority, as per Section 10 of the Act.

22. On the issue of relief, learned counsel for the petitioners had fervently urged that the liability of the respondents being absolute, there is no impediment in the grant of a direction that arrears of salary have to be paid from the date the school was recognized. It was submitted that all efforts were being made to secure compliance with Section 10 and only when the teachers and other employees were driven to the wall did they approach this Court. Reliance has also been placed upon the repeated orders of the Directorate. On the other hand, the school had taken the position that arrears ought to be restricted to the point in time from when the petitioners approached this Court as the only liability would work around Rs. 13 Lacs, per annum.

23. On the issue of relief although there can be no two opinions about the absolute nature of the schools liability, nevertheless, it has to be kept in mind that the relief would ultimately translate to a monetary liability. The Courts has to be alive to various factors such as when the petitioners sought relief, the likely financial impact on the institution, and also a public interest element such as possibility of a fee hike that can impact on students. The school was undoubtedly recognized in the year 1986 and upgraded in the year 1997. However, it sought the approval of CBSE and was granted permission in respect of the pay scales, which are being extended as of now some time in the year 2002. The

correspondence exchanged between the petitioner and the respondent school is of a recent vintage. Another factor that has to be kept in mind is that the respondent is an educational Institution and depends upon fee income. There are limits to which liability can and ought to be fastened in such cases. The Court cannot be completely oblivious to the fall out of a blanket direction to pay full arrears from the date of grant of recognition as it can, adversely impact the students. I am, Therefore, of the opinion that the payment of arrears in this case ought to be restricted from the commencement of the academic year 2003-04 namely, with effect from 1.4.2003.

24. In view of the foregoing discussion and findings, the writ petition is allowed. The respondent ''school is directed to ensure that the employees/teachers are given the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits, as mandated by Section 10 of the Delhi School Education Act, equal to those of employees of corresponding status in the schools run by the appropriate authority namely, the Government of NCT. Such employees/teachers shall be entitled to arrears in that respect with effect from 1.4.2003 and also appropriate fitment in the pay scales with effect from the date of up-gradation of the school namely, 15.4.1997. Arrears shall be calculated and paid to the petitioners within a period of 4 months from today. The necessary fitment in pay-scales shall be made within 2 months. The petitioners are also entitled to costs of Rs. 7500/- which too shall be paid within 6 weeks from today.

25. All interlocutory applications stand disposed off.

