(2010) 01 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C) No. 5046/99

Ms. Sadhna Payal and Others APPELLANT

Vs

Director of Education and Another RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Citation : (2010) 167 DLT 111 : (2010) 3 ILR Delhi 22

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ashok Aggarwal, for the Appellant; Sanjiv Sachdeva and Sujata Kashyap, for the Respondent

Judgement

Kailash Gambhir, J.—By this writ petition filed under Article 226 of the Constitution of India the petitioners seek directions to respondent No. 2 for the implementation of the recommendations of the 5th Pay Commission and for the payment of their revised salaries and other benefits w.e.f. 1.1.1996.

2. Brief facts relevant for deciding the present petition are that the petitioners are teachers in respondent No. 2 school which is affiliated to C.B.S.E. The Director of Education, GNCT issued order dated 21.10.1997 stating that the Government of India has implemented the recommendations of the 5th Pay Commission notifying the revised pay scales of various categories of teachers in Part-B, hereby endorsing the same and instructing all the concerned to fix the same and the same be effective from 1.1.1996. Earlier C.B.S.E had already issued a circular dated 22.07.1997 to the same effect. Therefore, as per the above mentioned two circulars read with Section 10 of the Delhi School Education Act, the petitioners are entitled to be paid their revised pay scales and other benefits from 1.1.1996. However, the respondent No. 2 school has implemented them from 1.4.1997 and not from 1.1.1996.

3. Mr. Sanjiv Sachdeva Counsel appearing for the respondent No. 2 submitted that the respondent No. 2 in fact has already implemented the recommendations

of the 5th Pay Commission w.e.f. 1.4.97 since no specific directions were given by the GNCT to the respondent No. 2 to implement the 5th Pay Commission from 1.1.1996 and therefore, the said recommendations were implemented when the fee hike was permitted by the High Court. Counsel also drew attention of this court to the Circular dated 21.10.1997 issued by the Directorate of Education, GNCT, which was made applicable only to the Govt. schools or Govt. aided schools and not to the public schools. Counsel further submitted that there will be a huge burden on the respondent No. 2 school, if now directions are given to the school to implement the said recommendations. Counsel further submitted that even other public schools have implemented the said recommendations after 1997.

4. Ms. Sujata Kashyap Counsel for respondent No. 1 submitted that the said circular dated 21.10.97 was applicable with all force to all the public schools. Counsel further submitted that there were 19 public schools under Zone 7 and out of these 19 schools, five public schools have already implemented the 5th Pay Commission w.e.f. 1st January, 1996 and one school has already paid arrears of the revised salary and other benefits w.e.f. 1.1.1996. Counsel further submitted that the Directorate of Education had already issued show cause notices to 11 schools vide letter dated 2.12.2009, calling upon them to show cause as to why they have not paid the revised salary w.e.f. 1.1.1996. Counsel further submitted that action against all the said defaulting schools is under consideration in terms of Section 24 of Delhi School Education Act 1973.

5. Refuting the contentions of the respondent, counsel for the petitioner submitted that it is not the choice of the public schools to take their own decision and decide the date as per their own whims and fancies, as under the mandate of Section 10 of Delhi School Education Act the implementation has to be at par so far all the recognized aided or unaided schools are concerned. In support of his arguments Counsel for the petitioner placed reliance on the judgment of the Apex Court in Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, , wherein the Apex Court took a view that even if a corporation is running under losses, the same cannot obviate its liability not to pay the revised salary w.e.f.1.1.86.

6. I have heard learned Counsel for the parties at considerable length and perused the records.

7. It is not in dispute that the recommendations made by the 5th Pay Commission were to be implemented w.e.f.1.1.1996. The Directorate of Education, GNCT vide their Circular dated 21.10.1997, notified all the concerned schools to implement the recommendations of the 5th Pay Commission w.e.f. 1.1.1996 and as per the copy of the Circular placed on record the same was not separately sent to the Heads of the various public schools which in fact should have been sent, but in any event of the matter, it is not in dispute that the respondent No. 2 has already implemented the recommendations of the 5th Pay Commission w.e.f. 1.4.1997 and not from 1.1.1996. The said period has been

selected by the respondent No. 2 school based on the fact that the fee hike was permitted by the High Court from the said date. Counsel for the respondent No. 2 did not place any document or material on record to show that any direction was given by the High Court to pay the revised salaries w.e.f. 1.4.1997 or any direction to link fee hike with the pay revision. I, therefore, do not find any justification in the decision of the respondent No. 2 to revise the salary from 1.4.1997 and not from the date stipulated by the Government in the 5th Pay Commission i.e. 1.1.1996.

8. Indisputably, u/s 10 of Delhi School Education Act and the Rules framed thereunder the scales of pay and allowances and other facilities payable to the Government or aided schools cannot be less than those of the employees or the teachers employed in the corresponding schools run by various trusts and managing committees. It would be worthwhile to produce the said section here:

10. Salaries of employees-

(1) 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 school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing, the managing committee of such bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly.

(2) The managing committee of every aided school shall deposit month, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools.

9. It is therefore, manifest from above that the teachers of respondent No. 2 school are also entitled to the benefit of the revision in their pay scale and other benefits at par with the other teachers employed in Government or aided schools as per the mandate of Section 10 of the Delhi School Education Act and the Rules framed there under.

10. The argument of the Counsel for respondent No. 2 that the revision of the salary was linked with the fee hike does not hold good as the recommendations

of the 5th Pay Commission are to be implemented in its entirety and more over once the Government has not taken any different stand with regard to the public schools, therefore, there was no option available to the respondent but to implement the said recommendations at par with the other schools. The Directorate of Education has already sent show cause notices to various such schools in Zone No. 7 calling upon them to implement the recommendations of the 5th Pay Commission effective from 1.1.1996 or to face action u/s 24 of the Delhi School Education Act 1973.

11. The argument of the Counsel for respondent No. 2 that there will be a huge burden on the respondent No. 2 school, if now directions are given to the school to implement the said recommendations can not sustain in the light of the judgment of the Apex Court in Haryana State Minor Irrigation Tubewells Corporation and Others Vs. G.S. Uppal and Others, where it held:

24. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in M.M.R. Khan and others etc. Vs. Union of India and others, etc., and Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers'' Union and Another, .

....

Thereafter, nothing appears to have happened which may justify the differential treatment. Thus, the Corporation cannot put forth financial loss as a ground only with regard to a limited category of employees. It cannot be said that the Corporation is financially sound insofar granting of revised pay scales to other employees, but finds financial constraints only when it comes to dealing with the respondents, who are similarly placed in the same category. Having regard to the well reasoned judgment of the Division Bench upholding the judgment and order of the learned Single Judge, we are of the view that the impugned judgment warrants no interference inasmuch as no illegality, infirmity or error of jurisdiction could be shown before us.

12. Hence, in the light of the above discussion, I am of the considered view that the petitioners are entitled to the revision in their salaries and other benefits as contemplated in the 5th Pay Commission. Accordingly, directions are given to the respondent No. 2 to re-fix the salaries of the petitioners in terms of the recommendations of the 5th Pay Commission and pay their arrears and other benefits within a period of three months from the date of this order.

With the above directions, the present petition stands disposed of.