(2014) 12 GAU CK 0014

In the Gauhati High Court

Case No : W.P.(C) No. 5594/2010

Partha Sarathi Chakraborty APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 2 GLD 470

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : R.P. Kakoti, Sr. Advocate and A.K. Dutta, Advocates for the Appellant; S. Chakraborty, CGC and B. Pathak, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. R.P. Kakoti, learned senior counsel assisted by Mr. A.K. Dutta, learned counsel for the petitioners. Also heard Mr. B. Pathak, learned counsel representing the respondent Nos. 4 and 5. I have also heard Mr. S. Chakraborty, learned CGC representing the respondent Nos. 1, 2 and 3.

2. The petitioners are the employees of Jan Shikshan Sansthans, Silchar. They are aggrieved by the reduction of their salary w.e.f. April, 2010, which is admittedly without any intimation and/or notice. Being aggrieved by such reduction of pay, they made a joint representation on 10.08.2010 to the respondent No. 5, but the same did not yield any result. Thereafter, they filed the instant writ petition. The case projected in the writ petition is as follows:--

"The Government of India, Ministry of Education established a programme of Adult Education for workers in urban and industrial areas in 1967 and pursuant to the same the first Shramik Vidyapeeth was set up in Bombay in 1967. Subsequently, similar Shramik Vidyapeeths were set up in the entire country in phase manner. In these Shramik Vidyapeeths the employees of various grades of officials, teachers, 3rd grade, 4th grade were appointed. These, employees are granted definite pay scales and they are full time staff. In 1981 the Ministry of Education suggested to all the Directors of Shramik Vidyapeeths to make CCS

Pension Rules, 1972, Discipline and Appeal Rules, Pension, Gratuity and PF Rules, applicable to the employees of the Shramik Vidyapeeths.

Shramik Vidyapeeth in Silchar was established in December, 1984. The petitioners were appointed at Silchar Vidyapeeth against different posts after being selected. They were granted definite pay scales and other allowances as per Rules. Since, 1998 the Dearness Allowances payable to the employees of the Shramik Vidyapeeths were enhanced as per the Notification of the Finance Department at par with the Central Government employees. The salaries of these employees were revised from 1989 as per the Recommendations of the 4th Central Pay Commission and subsequently, the benefits of the Recommendations of the 5th Central Pay Commission were also granted to them.

In 1999 the nomenclature of Shramik Vidyapeeths was changed to Jan Shikshan Sansthans and consequent upon the above change of the nomenclature the employees were re-designated in the same posts and services.

According to the petitioner, from the above nature of appointments and the service conditions of the petitioners and from the fact that they are having regular pay scales with the benefits of Central Pay Commission''s Recommendations, it is amply clear that they are treated at par with regular Central Government Employees.

It is the further case of the petitioners that they have already completed almost 25 years of service in their respective pay scales. To their utter surprise they found that their net salaries were suddenly reduced from April, 2010 without putting them any kind of Notice. It is the definite case of the petitioners that such reduction of salary was made without any order of any authority under Ministry of Human Resource Development. The petitioners have contended that such reduction has been made at the instance of the respondent No. 5, who is the Head of the Silchar Unit of Jan Shikshan Sansthans. The petitioners have also contended that the salaries being enjoyed by employees of other units'' throughout in India have not been reduced. It is in the aforesaid facts and circumstances, the petitioners have prayed for a direction to the respondents more particularly the respondent No. 5 not to make any reduction of the salaries of the petitioners and to pay them full salary as was being paid earlier."

3. The respondent Nos. 4 and 5 have filed counter affidavit, in which it has been contended that the employees of Jan Shikshan Sansthans are not governed by the Central Government Rules and guidelines. Referring to the mode of appointment of the petitioners, it has been contended that their appointments are only contractual and that the Jan Shikshan Sansthans is free to decide the quantum of emoluments to be paid to the members and the staffs. It has been stated that the affairs of the Jan Shikshan Sansthans are looked after by a Board of Management (BOM).

4. In paragraph-9 of the counter affidavit, it has been stated that the appropriate amount under emoluments head including GPF and Gratuity, Rs. 13,00,000/-

only being provided by the Government of India in the Ministry of Human Resource Development. Thus, according to the respondent Nos. 4 and 5, the salary is to be managed within this limit of Rs. 13 lakhs. However, it has also been admitted that some of the employees are getting salaries in the time scale of pay at par with the Central Government Employees. At the same time, it has also been contended that some of the employees are getting salary in the lower pay scales than their entitlement.

5. In paragraph-21 of the counter affidavit, referring to the gross salaries viz net salaries received by the staffs in March, 2008, April, 2008 and March, 2010 and April, 2010, a comparative statement has been given to show that there could be variation in payment of salary. However, it has also been admitted that the impugned resolution of the BOM dated 17.04.2010 in which decision to reduce the salary was adopted, was subject of acceptance of Ministry of Human Resource Development. In the same paragraph, it has further been stated thus:--

"During the financial year 2009-2010 the gross expenses towards emolument head has been Rs. 12,99,285.00 (Net salary for 11 months) + Rs. 1,72,566.00 (EPF) + Rs. 79,500.00 (PPF) + Rs. 60,000.00 (Gratuity) + Rs. 31,255.00 (Salary Savings) + Rs. 3,899.00 (GSLI) = Rs. 16,46,505.00 (Rupees Sixteen Lakhs Forty Six Thousand Five Hundred and Five) only as per the certified Audit report. The sanctioned amount as per guidance of Government of India is Rs. 13,00,000.00 (Rupees Thirteen Lakh) only. The emolument for 11 months thus exceeded by Rs. 3,46,505.00 (Rupees Three Lakhs Forty Six Thousand Five Hundred and Five) only. The respondent No. 5 who is also worst affected for the aforesaid deduction for himself, only executed the instruction of the BOM. The petitioners did not make any representation to Respondent No. 4 and 5 on 10.08.2010 as claimed by them. It is also pertinent to state here that the Government of India vide letter F No. 12-5/2003-AE-8/1 dated 23.07.2010 communicated its decision to participate in the next meeting of BOM to resolve the matter and the same was communicated to the staff. As such the present writ petition has been filed prematurely and is liable to be dismissed."

6. In the counter affidavit filed by the Union Government, the stand taken is that the Jan Shikshan Sansthan which was earlier named as Shramik Vidyapeeth is an autonomous body having separate identity set up by the Central Government under centrally sponsored scheme. The Central Government through the Ministry of Education and Culture and under the guidance of Directorate of Adult Education provided the Shramik Vidyapeeths financial assistance to run the literacy programme. According to this affidavit, the Government of India being only the funding agency is not connected with the employment, non-employment, payment of salary, fixation of pay etc. It has also been stated that the Government of India is no way involved in selection and appointment of persons in Jan Shikshan Sansthan. In a nutshell, the contention of the Union of India is that the dispute being a dispute between the petitioners and the Jan Shikshan Sansthan, the Central Government has got nothing to do with it.

7. I have considered the submissions made by the learned counsels for the parties and have also considered the materials on record. When the matter was last taken up on 04.11.2014, the following order was passed:--

"Heard the learned counsel appearing for the parties at some length. Hearing remain inconclusive.

In Paragraph 21 of the counter affidavit filed by the respondent Nos. 4 and 5, it has been stated that reduction in pay of the petitioners became essential for the Board of Management as the Government of India obtained an affidavit from the Chairman and the Director of Jan Shikshan Sansthan, Silchar to reduce the emolument expenses accordingly. Apart from the fact that no documents pertaining to the same have been produced, the affidavit further states that the BOM resolved to provisionally reduce the salaries subject to acceptance by MHRD. In this connection, the respondents have referred to the resolution No. 10(a) dated 17th April, 2010. The learned counsel for the petitioner submits that austerity measures directed by the Union Government cannot lead to a situation in which the salaries enjoyed by the employees of the Jan Shikshan Sansthan for the last several years should be reduced and that too without the acceptance of the MHRD.

Mr. S. Chakraborty, learned Central Government Counsel may obtain instruction in this regard.

List again on 4th December, 2014.

A copy of this order be furnished to Mr. Chakraborty, learned Central Government Counsel."

8. As noted in the said order, in paragraph 21 of the counter affidavit filed by the respondent Nos. 4 and 5, the particular resolution of the BOM by which the salaries of the petitioners have been provisionally reduced was subject to approval of the Ministry of Human Resource Development. For a ready reference, the relevant portion in this regard of the impugned resolution dated 17.04.2010 of the BOM is quoted below:--

"The BOM thus adopted a resolution to restructure the salaries temporarily and till the situation permits for payment of their salaries as per GOI pay scales so that the emoluments of the staffs are within the ceiling as per the guideline of JSS and subject to the approval of MHRD. The Director i/c has been directed to convince the staffs so that they agree to the re- structured salary temporarily."

9. Both Mr. S. Chakraborty, learned CGC and Mr. Pathak, learned counsel representing the respondent Nos. 4 and 5 have referred to the Annexure-6 communication dated 05.02.2009 of the Government of India, Ministry of Human Resource Development to the Director, Jan Shikshan Sansthan, Silchar, by which in reference to the accounts for the year 2007-08, it was emphasized that the expenditure of various head should be kept within the admissible limit in future. Prior to that by Annexure-7 letter dated 25.05.2004 addressed to the Chairman

of all Jan Shikshan Sansthan, various parameters and yardsticks were laid down towards use of development funds.

10. According to the respondent Nos. 4 and 5, recourse to reduction in salaries had to be taken in view of the limit fixed by the Central Government, which was Rs. 13 lakhs, within which the salary to the employees had to be paid. As indicated in the counter affidavit, during 2009-10, the said outer limit of Rs. 13 lakhs exceeded by Rs. 3,36,505/-. Thus, the plea of the respondents is that since the payment of salary exceeded the outer limit of fund provided for emoluments, the same had to be reduced temporarily and subject to approval of the Government of India in the Ministry of Human Resource Development (MHRD).

11. On the basis of the order passed on 04.11.2014, which is quoted above, Mr. Chakraborty, learned CGC has obtained instruction in writing from the Government of India, MHRD, which is dated 26.11.2014. Along with the letter, some other documents have also been enclosed. The letter has also stated about the fact that Rs. 13 Lakhs is earmarked for salary of the staffs. Along with the letter, the minutes of the meeting of the BOM dated 11.06.2010 has also been enclosed. In the said meeting, a resolution vide resolution No. 5 was adopted towards setting up of a Committee to review and finalize the restructure of staff salary. In reference to the said BOM, the Government of India, MHRD addressed a letter to the Chairman, Jan Shikshan Sansthan on 23.07.2010 stating therein that recommendation/decision of the Committee in respect of salary structure of staffs of Jan Shikshan Sansthan should be placed before the Government of India''s nominee for ratification in the next BOM. The stand of the Government of India in the MHRD run counter to the stand taken in the counter affidavit in which their stand is that it has got nothing to do with the salary structure with the employees and that it is purely a matter between the Jan Shikshan Sansthan and the employees.

12. Above apart, when the respondent Nos. 4 and 5 themselves in their resolution adopted through the BOM had resolved that change of salary pattern of the petitioners, which has the effect of down grading the pay scales will be subject to the approval to be accorded from the Ministry of Human Resource Development, Government of India, it was incumbent on their part to get the approval before effecting the reduction. As submitted by Mr. S. Chakraborty, learned CGC, no decision in the matter could be taken because of the ongoing proceeding.

13. The fact that the petitioners had been enjoying their salaries in the particular pay scales for the last about 20-25 years has not been denied by the respondents. The impugned action of reduction of salary was taken in April, 2010 without putting the employees to any kind of notice. Although the respondents have referred to the purported undertaking furnished by some of the employees on 13.05.2010 (Annexure-15) to receive salary in compliance of the BOM resolution, but the same cannot have any binding effect inasmuch as, such undertaking was furnished under compelling circumstances as will be evident

from the letter of undertaking itself. The signatories to the said undertaking agreed to the restructured salary with the request to release their salary which perhaps had been withheld in absence of any such undertakings. Moreover, as has been held by the Apex Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , an unconscionable bargain or contract is one which are so unfair and unreasonable that they shock the conscience of the Court. Dealing with the said proposition, the Apex Court in Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, , when found that while promoting the respondent, an undertaking was obtained from him not to claim salary of the higher post, held such undertaking was illegal.

14. From the above narration of fact what has emerged is that the BOM vide the impugned resolution although had decided to restructure the salaries of the employees temporarily and till the situation permitted for payment of their salaries as per Government of India''s pay scales, however, the same was subject to the approval of MHRD. The Ministry of Human Resource Development is yet to grant any such approval till date. It may not be out of place to mention here that the Government of India in the MHRD vide its above mention letter dated 23.07.2010 also stated about ratification of the subsequent resolution by the BOM in presence of GOI nominee. If that was the requirement on the subject of restructuring the staff salary, it is not understood as to why the same requirement should not be there in respect of the impugned resolution dated 17.04.2010.

15. For all the aforesaid reasons, the writ petition is allowed directing the respondents to restore the salary structure of the petitioners as it was in April, 2010, which however, will be subject to the further decision to be taken by the respondent Nos. 4 and 5 with the approval of the Government of India in the Ministry of Human Resource Development. Needless to say that any such decision of the respondent Nos. 4 and 5 with the approval of the Ministry of Human Resource Development will have only prospective effect and cannot have any retrospective application.

16. With the above, the writ petition stands disposed of.