
(1995) 12 P&H CK 0071
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14612 of 1993

Rajni Vali and Others

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

Date of Decision : 01-12-1995

Acts Referred:

Citation : (1997) 3 LLJ 566 : (1996) 113 PLR 483

Hon'ble Judges : V.S. Aggarwal, J; Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : G.K. Chatrath, Anu Chatrath, Alka Chatrath and Vikrant Sharma, for the Appellant; Ashok Aggarwal, Subhash Goyal and Rajinder Goyal, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—The Petitioners are Lecturers in Dev Samaj Girls Senior Secondary School, Chandigarh. Dev Samaj Educational Society had offered to establish educational institution at Chandigarh. A plot of land was allocated to it and Dev Samaj Girls School was set up. Since December 1, 1967 the school is getting 95% grant-in-aid. In the year, 1988 it was decided to start 10 + 1 and 10 + 2 classes in the school and up-grade the same to senior or secondary level. A request was made to the District Education Officer, Chandigarh, for starting 11th and 12th classes in 10+2. system in Humanities and Commerce from the session 1987-88. The Director, Public Instructions, Union Territory, Chandigarh granted permission to the management for starting 11th and 12th classes for Humanities only on the condition that no additional staff will be provided in grant-in-aid.

2. The school also applied for affiliation of the same with Central Board of Secondary Education, New Delhi. The case of the school was recommended by the Director, Public Instructions. It was granted affiliation by the Board of Secondary Education w.e.f., May 1, 1988. It was granted approval for subjects of Mathematics, Sanskrit, Sociology, Commerce and Accountancy in 10+2 system. The classes for 10 + 2 started in the school in the year 1988. The corresponding

classes in Dev Samaj Degree College, Chandigarh were closed because of the decision of the Chandigarh Administration that such education would be given in schools.

3. By virtue of the present writ petition, the petitioners seek a writ of mandamus to direct the respondents to pay the same salary which is being paid to their counterparts working in privately managed recognized aided schools and further respondents 1 to 3 be directed to afford the additional expenses in the same ratio which is being done between the Government and the management i.e. 95% of deficit is made by Chandigarh Administration and 5% by the management.

4. The petition has been contested in the reply filed by Director, Public Instructions, Union Territory, Chandigarh. It has been alleged that as per grant-in-aid Rules, only the posts which were in existence upto November 30, 1967 are required to be covered by 95% grant-in-aid. 10+2 classes were added by the management at its own level. Permission was simply granted subject to the condition that no additional staff would be provided. The staff position in the privately managed schools stood frozen on November 30, 1967 and it was decided that any teacher employed after the said date was not to be considered for the grant-in-aid purposes. The matter regarding providing staff in 10 + 2 system is still under correspondence with the Government. Another plea taken was that petitioners were appointed by the management and they have no right to ask for grant-in-aid which is being given to the institution and not to the individuals.

5. As regards the first prayer that petitioners should be paid the same salary which is being paid to their counterparts working in the privately managed recognized aided schools, there is little controversy. The principle of "equal pay for equal work" came up for consideration before the Supreme Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, . Of course the Supreme Court was concerned with Delhi School Education Act. Frank Anthony Public School was an unaided minority school. In face of the statutory provisions of Delhi School Education Act, the Supreme Court held that employees of the said school shall get the same pay scales as the other institutions namely the schools run by the appropriate authorities. Similar question came up for consideration before the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, . Therein there were teachers of various recognized privately managed schools in the State of Haryana. The schools were maintained by private managements. They received financial aid from the State Government. The teachers of the said private schools claimed parity of pay scales with the teachers employed in Government schools besides the other emoluments. The Supreme Court in paragraph 3 considering the plea of the teachers of privately aided schools held at P.712:

"In our opinion the teachers of aided schools must be paid the same pay scale

and Dearness Allowance as teachers in Government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the Management in the same proportion in which they share the burden of the existing emoluments of the teachers."

As an off shoot of the aforesaid an application was filed seeking implementation of the direction of the Court. In the subsequent decision in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, it was held so specifically directed in terms that they have to be paid the same pay scales as teachers of Government schools. The directions so given are elucidated in paragraph 12 in the following words :-

"(i) The pay scales of the teachers of Government aided schools shall be revised so as to bring them at par with the pay scales of teachers of Government schools with effect from April 1, 1979 and the differential amount as a result of such revision in pay scales shall be paid in four/six monthly, instalments, the first instalment being payable by June 30, 1990.

(ii) The teachers of the Government aided schools shall be paid additional dearness allowance on the basis of the revised pay scales with effect from April 1, 1979 to December 31, 1985 and the arrears of such additional dearness allowance found payable as a result of such revision shall be paid alongwith the last part of the five instalments of additional dearness allowance which is to be paid in September, 1990.

(iii) The parity in the pay scales and Dearness allowance of teachers employed in aided schools and those employed in Government schools shall be maintained and with that end in view the pay scales of teachers employed in Government aided schools shall be revised and brought at par with the pay scales and dearness allowance payable to the teachers employed in Government schools with effect from January 1, 1986.

(iv) As from April 1, 1990 the teachers employed in aided schools shall be paid the same salary and dearness allowance as is paid to teachers employed in Government schools.

(v) The arrears of pay and dearness allowance payable as a result of such revision for the period from January 1, 1986 to March 31, 1990 shall be paid in four/six monthly instalments, the first such instalment being payable by June 30, 1990."

There is no controversy that petitioners are employed in a private aided recognised school. They are all employed in accordance with the relevant rules. The disparity in the pay scales, therefore, necessarily is discriminatory because they are discharging the same functions and possessing the same qualifications as their counterparts in the other private aided recognized schools in Chandigarh. The principle of "equal pay for equal work" necessarily has to be attracted and to that effect the petition must succeed.

6. Learned counsel appearing for Union Territory, Chandigarh opposed the second prayer of the petitioners by asserting that the management is not entitled to the grant-in-aid in the ratio of 95% and 5%, firstly because the management has not filed the petition and secondly on the ground that permission had been accorded to the management of Ishwar Singh Dev Samaj Girls Senior Secondary School, Chandigarh to start 11th and 12th Class in Commerce and Humanities group-subject to the condition that no additional staff would be provided. He also emphasized that there are financial constraints in giving grant-in-aid. On the contrary while reverting the said argument, petitioners' learned counsel also emphasized that grant-in-aid had been given in the case of other schools, namely Guru Gobind Singh Senior Secondary School.

7. Answer to all these propositions in fact requires little further discussion because the same is provided by the decision of the Supreme Court in the case of State of Maharashtra Vs. Manubhai Pragaji Vashi and others, . In the cited case there were certain private recognized Law Colleges. The grievance raised was regarding hostile discrimination pertaining to grant-in-aid. The defence offered by the State of Maharashtra was identical. With respect to the plea of paucity of funds, the Supreme Court approved the reasoning of Bombay High Court and held :

"The High Court has further referred to the plea of paucity of funds pleaded by the State and has held that paucity of funds can be no reason for discrimination, placing reliance on the decision of this Court in Municipal Council, Ratlam Vs. Vardichan and Others, . This reasoning of the High Court is also fully justified and no exception can be taken to the said proposition as well. We hold so."

Therefore, unhesitatingly we conclude that paucity of funds in the peculiar facts is no ground. This is for the added reason giving education is one of the State's functions. It does not come to an end if private institutions and teachers are allowed to exist and come into being.

8. As regards other schools to which grant-in-aid was granted, it has been pointed out that other schools were already upto 11th class and with the introduction of 10 + 2 system in the school, the other schools mentioned by the petitioners were permitted to have class 12. The said plea appears to be devoid of any merit. The management of the petitioners with respect to the school too had taken permission to start classes in the institution. Once the permission as such had been granted the State cannot escape its liability because Ishwar Singh Dev Samaj Girls School is an aided school. The function of the State to provide education will not end. Giving benefit of grant-in-aid to one and not to the other certainly would be hostile discrimination. In this regard it requires a mention that with the introduction of 10 + 2 system in the schools certain classes were closed from the colleges. New classes were opened in the schools. Additional staff was required in the schools. The interest of the students could not be ignored. The teachers had to be appointed to give better education and facilities to the students. The aid is provided to meet the material expenses of the school who

cannot ordinarily raise the same except by exorbitant fee. There is huge expenses or costs. The schools cannot be permitted to hike the fee to any extent particularly when they are aided recognized schools. On this count thus, the plea of the respondents must fail. In a similar situation in the case of State of Maharashtra v. Manubhai Pragati Vashi and Ors. (supra) when hostile discrimination was noticed the contention of the State was rejected.

9. While it is true that management of Ishwar Singh Dev Samaj Girls Senior Secondary School is not a petitioner but still the petitioners have a right because it is they who draw their salaries. By refusing the claim for grant-in-aid on a hyper technical view, the rights of the petitioners cannot be defeated. Otherwise they will find difficult to get their salary on the principle of equal pay for equal work. Merely because if the management of the school has not chosen to file a writ petition will imply that the teachers as such must suffer. They are the final beneficiaries. Their rights cannot be ignored. Consequently, the contention so much thought about by the respondents' learned counsel must fall.

10. For these reasons, the petition is allowed. The respondents are directed to pay the same salary to the petitioners as is being paid to their counterparts in the privately managed Government aided schools in Chandigarh and the expenses so incurred are to be apportioned by the Chandigarh Administration and the management in the ratio of 95% and 5% respectively. Parties are left to bear their own costs.