

(2013) 02 AHC CK 0164

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 75714 of 2010

Ranjana Tandon & Ors.

APPELLANT

Vs

Bhel Educational Society & Ors.

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 02 AHC CK 0164

Hon'ble Judges : Amreshwar Pratap Sahi, J

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.

Heard Mr Udayan Nandan, learned counsel for the petitioners, Mr Santosh Kumar, holding brief of Mr K.N. Misra, learned counsel appearing for the Bharat Heavy Electrical Ltd. (in short, BHEL) and Mr H.N. Pandey, learned counsel for the Central Board of Secondary Education (in short, CBSE).

This writ petition has been filed by the teachers of an institution established under a society created by BHEL at Jhansi. They have come up praying for enforcement of their rights to receive the benefits arising out of the Sixth Pay Commission Report (in short, the Pay Commission).

Mr Udayan Nandan submits that since the benefits of the Pay Commission have been extended to the employees and teachers of some institutions that have been established by BHEL; as such, there is no reason to discriminate the petitioners in this matter. He further contends that these benefits are even otherwise admissible as the institution in question is affiliated to the CBSE, where also the terms of affiliation mandate public sector undertakings to extend such benefits.

Mr Udayan Nandan, therefore, contends that if the respondents are bound by the terms and conditions of affiliation by the CBSE, the petitioners, who are employees of the institution, cannot be denied the said benefits. Documents have

been brought on record by the petitioners to substantiate their pleadings.

The respondent BHEL has taken a preliminary objection to the maintainability of the writ petition on the ground that the institution is a privately managed institution and, being affiliated to the CBSE, its employees cannot maintain the writ petition. His submission, therefore, in short, is that the writ petition, being not maintainable under Article 226 of the Constitution, deserves to be dismissed.

In rejoinder Mr Udayan Nandan submits that this issue has also to be viewed from the angle that M/s. BHEL is a Central Government public sector undertaking having its units throughout India where major finances are received from the Central Government. He contends that since the Central Government has a deep and pervasive control over BHEL; therefore, any institution established by it is also of the same category inasmuch as according to clause 12 of the byelaws of the society the funds to the institution are to be made available by the BHEL itself. The submission, therefore, is that not only the administrative control is there with the respondents, but they have also the financial control, the funds wherein are received from the Central Government.

The aforesaid contentions have been disputed by the learned counsel for the respondents. Two counter affidavits explaining the status of the institution have been filed.

Having heard learned counsel for the parties, the preliminary objection in the present matter is to be upheld keeping in view the Full Bench decision of our Court in the case of M.K. Gandhi Vs. Director of Education, reported in 2005 (4) ESC 2265.

The issue of relating to maintainability of such petitions came up for consideration before this Court in the case of Union of India Vs. Dilip Kumar Pandey: Special Appeal No. 1074 of 2010, decided on 12.7.2010, relating to a school established by the Indian Airforce at Bumrauli, Allahabad. This Court held that a writ petition of an employee of such school would not be maintainable.

Apart from this, certain leverage has been provided in the decision of this Court in M.K. Gandhi (supra), but the Apex Court in appeal against this Full Bench judgement has set aside the observations made by the Full Bench; thereby clearly ruling that such a writ petition would not be maintainable. The said view of the Apex Court has been reiterated and followed by a learned single Judge in the case of Smt. Dr. Deepa Agarwal Vs. State of U.P.: CM WP No. 29743 of 2009, decided on 11.6.2009.

In the aforesaid circumstances, the claim of the petitioners cannot be enforced through a writ petition. The petition is therefore consigned to the record with liberty to approach a proper forum in the event they are able to establish that the 6th Pay Commission recommendations are applicable and have been enforced by the BHEL in relation to the employees in similarly situated institutions established by the byelaws.

The writ petition is dismissed with the aforesaid observations.