

(1999) 11 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1022 of 1998

Ravi Madanlal Paliwal

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 2 MPJR 222 : (2000) 2 MPLJ 116

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Rajendra Menon, for the Appellant; A.S. Raizada, Dy. Government Advocate for respondents Nos. 1 and 2, Arpan Pawar for respondent No. 3 and Rajendra Tiwari with Dilip Pandey, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

By this writ petition, filed under Articles 226 and 227 of the Constitution of India, petitioner prays for issuance of a writ in the nature of Mandamus or for any other appropriate writ, order or direction, commanding the respondents to grant him the U.G.C. scale as accepted by the State Government from the date of his joining with all consequential benefits.

Shorn of unnecessary details, facts giving rise to the present writ petition are that when teaching in Science upto graduate level was introduced by Sri Guru Tegh Bahadur Khalsa College, Jabalpur, hereinafter referred to as the "College", from the academic session 1987-1988, petitioner was appointed as Assistant Professor on ad-hoc basis in the department of Physics. In pursuance of his appointment, petitioner joined the service in September, 1987. It is relevant here to state that College is admitted to the privileges of the Rani Durgawati University, Jabalpur. Thereafter, the College issued advertisement in the daily newspaper "Nav-Bharat" dated 25-6-1989 inviting applications from candidates

for filling-up various posts; including the post of Assistant Professor in the department of Physics. As regards the qualification and the salary, the advertisement indicated that - "qualification and salary as per U.G.C. College Code." In pursuance of the advertisement made by the College, petitioner applied for his appointment. After the interview, petitioner was offered appointment by letter dated 10-10-1990 in which the petitioner was informed that he has been selected for appointment as Lecturer in Physics in the grade prescribed by the U.G.C. Petitioner accepted the offer of appointment and continued working as Assistant Professor.

It appears that during the inspection by the representatives of the University of the College it was found that the teachers of college, even after being selected by the duly constituted Selection Committee are paid salary ranging from Rs. 700/- to Rs. 1,175/- , the representatives made such report to the Vice Chancellor by communication dated 18-10-1989 (AnnEx. P/11). Thereafter, the College was inspected by the Committee on 18-4-1991 and their inspection note show - "that the College does not pay regular U.G.C. scale to their teachers. There is lot of difference in the pay structure of each teacher. This is surprising." Again the Committee visited the College on 11th November, 1994 and their inspection note show that the teachers of the College were not paid salary in the regular U.G.C. scale.

Statute No. 28 (College Code) deals with the College admitted to the privileges of the University Paragraph 20(3)(i)(ii) of Part VI of Statute 28 inter alia provides for appointment of the teachers on a written contract in the form prescribed in the Appendix. Form contains columns in which the post, the initial salary in the scale of pay and other conditions of service are required to be mentioned. According to the aforesaid paragraph, a copy of the contract is required to be given to the teachers and a copy of the same was required to be lodged with the University. It seems that no such contract was entered into by the petitioner and the College and when it came to the notice of the respondent University; by communication dated 14th February, 1994 (AnnEx. P/4), it requested the President of the Governing Body of the College to send the form of agreement duly filled within a week. While making the aforesaid communication, the attention of the College was also drawn to paragraph 22(1) of Statute No. 28, which inter alia provides that the scale of pay for different categories of teachers in the College be such as are prescribed from time to time by the State Government for similar categories in Government Colleges. Respondent University went on to say that all the Assistant Professors working in the other Colleges are being given the U.G.C. scale of pay of Rs. 2200-4000/- from 1-1-1986 and accordingly the respondent College was asked to ensure payment of salary to the Assistant Professors in the aforesaid scale of pay.

It is only after the aforesaid communication of the respondent University that an agreement was entered into between the petitioner and the College which was signed on 17-5-1994. According to the terms of agreement, the same was to

begin from 6th January, 1990 and the scale of pay provided in the agreement was Rs. 700 to 1600/- .

It is relevant here to state that at the time when the petitioner was appointed the U.G.C. scale for Assistant Professor was Rs. 700 to 1600/- and the same was being paid to the Assistant Professors of Government Colleges. However, later on the scale of pay suggested by the University Grants Commission for Assistant Professors was accepted by the State Government w.e.f. 1-11-1986 and the scale of pay of the Assistant Professors from 1-1-1986 was revised to Rs. 2200-4000/- . It is the grievance of the petitioner that notwithstanding the revision of scale of pay w.e.f. 1-1-1986 and the same being paid to the Assistant Professors working in Government colleges, petitioner is denied the said benefit.

Return has been filed on behalf of respondents No. 4 and 5 in which they have stated that the College is an institution run by the minority society i.e. the Sikhs and the same is not admitted by the State Government under its grant-in-aid scheme. Answering respondents have not denied that the State Government has on the recommendation of the U.G.C. provided for grant of salary of Assistant Professors in the scale of Rs. 2200 to 4000/- with 1-1-1986 but its stand is that the petitioner being not governed by the said decision of the State Government, he is not entitled to the revised scale of pay. Further plea of the answering respondents is that their financial position do not permit them to give to the Assistant Professors salary in the scale of Rs. 2200 to 4000/- .

Mr. Rajendra Menon, appearing on behalf of the petitioner contends that in view of paragraph 10(1) of Statute No. 27 and paragraphs 20 and 22(1) of Statute No. 28, College cannot deny the petitioner salary similar to that which is prescribed by the State Government for similar categories of teachers in Government Colleges. He submits that although the plea of financial constrain projected by the College is erroneous, still the College cannot refuse to carry out its obligations provided under the Statute on such a specious plea. Mr. Menon points out that the College is not keen to be admitted to the privilege of grants-in-aid by the State Government as the same would curtail its power in many fields and in order not to subject it for curtailment of such powers, the College has not chosen to get grants-in-aid. He submits that notwithstanding that the College is a minority institution still it is required to carry out its statutory obligation.

Mr. Rajendra Tiwari, appearing on behalf of respondents No. 4 and 5 however submits that the State Government has accepted the scale of pay suggested by the U.G.C. to its teachers who are governed by the provisions of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978, and included in the grants-in-aid scheme and therefore petitioner is not entitled to pay scale of Rs. 2000 to 4000/- . He points out that the financial health of the College does not permit it to pay to the teachers the salary in the scale of pay suggested by the U.G.C. and accepted by the State Government. He submits that in case the College failed to pay the

salary in the required pay scale to the teachers, nothing prevented the University to withdraw the privilege which has been conferred on the College by its admission to the privileges of the University.

Paragraph 10(1) of Statute No. 27 and paragraph 20(3)(i)(ii) and para 22(1) of Statute No. 28 which are relevant for the purpose, read as follows:--

"Statute No. 27 para 10(1) - The Principal and the teachers in a college admitted to the privileges of the University shall not be appointed on scales of pay lower than those sanctioned by the State Government for the Principals and teachers of corresponding Status in Government colleges.

10(2) xx xx xx

Statute No. 28 para 20(3)(i)(ii)--

20(1)(i) xx xx xx

(ii) xx xx xx

(2) xx xx xx

(3)(i) Every teacher other than one appointed on part-time or temporary basis, shall be appointed on written contract in the form prescribed in the Appendix stating therein the post to which he is appointed the initial salary and the scale of pay and other conditions of service. A copy of the contract shall be given to the teacher and a copy shall be lodged with the University;

(ii) It shall be the duty of Governing Body to get such contract executed within a period of one month from the date on which the appointee joins the post; provided that Governing Body shall get the contract executed:--

(a) Within a period of one month from the date on which the Governing Body starts functioning in case of appointments made by the Foundation Society;

(b) Within a period of two months from the date on which this Statute comes into force in the case of all appointments made prior to such date."

"22(1) The scale of pay for different categories of teachers in the college including the Principal shall be such as are prescribed from time to time by the State Government for similar categories in Government Colleges."

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

It is not in controversy that the scale of pay sanctioned by the State Government for Assistant Professors in Government Colleges is Rs. 2200 to 4000/- . Paragraph 10(1) of Statute No. 27 in imperative terms has provided that the

teachers in a College admitted to the privileges of the University shall not be appointed on scales of pay lower than those sanctioned by the State Government for the teachers of the corresponding status in Government Colleges. Further paragraph 22(1) of Statute No. 28 in no uncertain terms provides that the scales of pay for different categories of teachers in the College shall be such as are prescribed from time to time by the State Government for similar categories in Government Colleges. Paragraph 10(1) of Statute No. 27 has used negative words by saying that the teachers shall not be appointed on scales of pay lower than those sanctioned by the State Government. In view of the imperative nature of the Statute, there is no escape from the conclusion that a College which continues to enjoy the privileges of its admission to the University shall have no option than to fulfil the requirements of the Statute. The requirement of the Statute in clear terms is that the College is required to pay salary to the teachers not less than what has been sanctioned by the State Government for the teachers of corresponding status in the Government College. In my opinion, the College cannot refuse to carry out its obligation so long it continues to enjoy the privileges of admission to the University on the ground of its financial constraints or for that matter, the State Government, not paying the grants-in-aid to the College. Argument of Shri Tiwari that in case of the failure of the College to comply with the statutory provision, University ought to have withdrawn the privileges granted to the College, to say the least is the argument of desperation. It does not lie in the mouth of a college which has admitted large number of students, to contend for withdrawal of the privilege so as to throw the students in academic lurch. The status of the college i.e. its minority character also does not absolve it from making the payment in the scale of pay as provided under the Statute. In this regard, I cannot do better than to quote what has been said by the Supreme Court in the case of *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, , wherein it has been held as follows:--

"17. We, therefore, hold that section 10 of the Delhi Education Act which requires that 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 and which further prescribes the procedure for enforcement of the requirement is a permissible Regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible Regulation which in no way detracts from the fundamental right guaranteed by Article 30(1), to the minority institutions to administer their educational institutions. Therefore, to the extent that section 12 makes section 10 inapplicable to unaided minority institutions, it is clearly discriminatory."

As a last straw, in order to defeat the writ petition, Mr. Tiwari prays for its dismissal on the ground that founder society of the College has not been impleaded as party. It is relevant here to state that the petitioner has impleaded

the Chairman as also the Secretary of the Governing Body of the College as respondents. In the return filed by respondents No. 4 and 5 no such plea was raised. In view of the fact that the Chairman as also the Secretary of the Governing Body of the College have been impleaded as party and further no such plea having been taken by the answering respondents in the return, I am not inclined to reject the writ petition on this ground.

It is worth mentioning here that the Assistant Professors of Government Colleges are being given the scale of pay of Rs. 2200/- to 4000/- from 1-1-1986 and the prayer of the petitioner is to grant the said scale from the said date. This petition has been filed on 2-3-1998. Any direction to the respondents to give the petitioner the scale of pay from 1-1-1986 and the arrears from the said date may cripple the College financially. Taking into consideration the entire facts and circumstances of the case, I am of the opinion that the petitioner be brought in the scale of pay of Rs. 2200 to 4000/- from 1-1-1986 and all consequential benefits flowing from that be reckoned in his favour from that date but he be paid arrears of salary only for a period three years prior to the date of institution of the writ petition.

In the result, writ petition is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to cost.