
(2013) 10 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 322 of 2013

Rita Mukherjee and Others	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 4 CALLT 560 : (2014) LabIC 911

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Prमित Kumar Ray, Mr. Shaunak Ghosh, Mr. Rajib Mullick, for the Appellant; Sadananda Ganguli, Sr. Govt. Advocate and Ms. Tapati Samanta, for the State, Mr. L.K. Gupta, Mr. Jayanta Das Gupta and Mr. Balaram Patra for the Respondent Nos. 5 to 9, for the Respondent

Final Decision : Disposed Off

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioners praying for issuing a writ in the nature of mandamus commanding the respondent No. 9 to implement the salary structure as prescribed in the Revision of pay and Allowance Rules, 2009 in respect of the petitioners in connection with their services as assistant teachers of Holy Child Institute Girls' Higher Secondary School, District Kolkata, with effect from April 1, 2009. The facts of this case in a nutshell are as follows:

2. The petitioners are approved assistant teachers of Holy Child Institute Girls' Higher Secondary School, District Kolkata (hereinafter referred to as the said School) which is a Dearness Allowance (D.A.) getting minority school.

3. By an order passed under Memo No. 641-SE(Law)/5S-577/2001 dated May 29, 2002, the Government of West Bengal, School Education Department, Law Branch, decided that the authorities of all D.A. getting schools recognized by West Bengal Board of Secondary Education in the State, which received D.A. component for the approved teaching and non-teaching staff of their schools

from the Government of West Bengal, would have to pay salary in the appropriate scale of pay from their own resources to the approved teaching and non-teaching employees prescribed by the State Government for teachers and non-teaching employees of the Government aided schools with immediate effect. It was also decided that the approved teaching and non-teaching employees of those D.A. getting schools would get D.A. from the Government (on percentage basis) at the rate as it was admissible to other employees of State Government aided Educational Institutions as was announced from time to time by the State, in supersession of all the previous orders issued from the Government to that effect, provided that those posts were duly sanctioned by the Government and appointment of teaching and non-teaching staff to those posts had been approved by the Government. For ascertaining the full and complete text of the above order, the same is quoted below:

GOVERNMENT OF WEST BENGAL

School Education Department, Law Branch

No. : 641-SE(LAW)/5S-577/2001

Dated: Kolkata, 29.05.2002.

To : The Director of School Education, West Bengal

Sub. : W.P. No. 707 of 2000

Staff Council, Gyan Bharati Vidyapith & Anr. Vs. State of West Bengal & Others.

The undersigned is directed to say that pursuant to the order of the Hon''ble High Court dated October 8, 2001 in W.P. No. 707 of 2002 in the case of Staff Council Gyan Bharati Vidyapith and Anr. Vs. State of West Bengal & Ors., the matter regarding payment of salaries to the approved teaching and non-teaching employees of D.A. getting schools recognised by the West Bengal Board of Secondary Education at the rate of at least not less than what the teaching and non-teaching employees of the recognised Govt. aided Schools are being paid. Keeping in view the direction issued to the Anglo-Indian schools has been taken up for consideration.

After due consideration of the matter, it is decided that the authorities of all D.A. getting schools recognized by the West Bengal Board of Secondary Education in the state which receive D.A. component for the approved teaching and non-teaching staff of their schools from the Govt. of West Bengal will have to pay salary in the appropriate scale of pay from their own resources to the approved teaching and non-teaching employees at the rate prescribed by the State Govt. for teachers and non-teaching employees of the Govt. Aided Schools with immediate effect.

It is also decided that the approved teaching and non-teaching employees of those D.A. getting schools will get D.A. from the Govt. (on percentage basis) at the rate as is admissible to other employees of State Govt. aided Educational

Institutions as is announced from time to time by the state, in supersession of all the previous orders issued from the Govt. to this effect, provided that these posts were duly sanctioned by the Govt. and appointment of teaching and non-teaching staff to these posts were approved by the Govt. and appointment of teaching and non-teaching staff to these posts were approved by the Govt. It is reiterated in this connexion that no school will claim D.A. for the staff who is/are not approved and is/are not within the sanctioned strength.

The Director of School Education, West Bengal is requested to inform the authorities of all D.A. getting schools to follow the order so that the approved teaching and non-teaching employees of these D.A. getting schools are paid their salaries by them, as per decision. D.A. component will only be released by the D.I. on verification of monthly acquaintance rolls of the approved staff.

This order will take immediate effect.

Sd/- D. Basu Spl. Secretary to the Govt. of West Bengal.

No. : 1419(6)-G.A.

Kolkata, the 5th June, 2002.

Copy forwarded to:

The Dist. Inspector of Schools, with the request to inform the authorities of all recognized D.A. getting schools to pay salary in the appropriate scale of pay from their own resources to the approved teaching and non-teaching staff at the rate prescribed by the State Govt. for teaching and non-teaching staff of the recognized Govt. aided schools with immediate effect. D.A. component (on percentage basis) will only be released by the D.I. of Schools (SE), on verification of monthly acquaintance rolls of the approved staff.

Sd/- For Director of School Education, West Bengal.

4. In compliance of the above order, the respondent No. 9 introduced pay structure for its approved teaching and non-teaching staff at the rate prescribed by the State Government for teachers and non-teaching employees of the Government aided schools under the Revision of Pay and Allowance, 1996 (hereinafter referred to as ROPA, 1996).

5. By a memorandum No. 46-SE(B)/5B-1/2009 dated February 27, 2009 issued by the Government of West Bengal, School Education Department, Budget Branch, implemented Revision of Pay and Allowance, 2009 (hereinafter referred to as ROPA, 2009) in respect of the Government sponsored, aided schools up to class-XII standard, amongst others, for actual payment with effect from April 1, 2008 with its notional effect from January 1, 2006.

6. From the records of the respondent No. 9 produced before this Court, it is revealed that the gross amount of monthly remuneration of the petitioners for the aforesaid months were as follows:-

7. In the months of April, 2009 and May, 2009, the respondent No. 9 received Rs. 1,85,519/- in each month from the State Government towards dearness allowance of the teaching staff of Holy Child Institute Girls' Higher Secondary School, District Kolkata (hereinafter referred to as the said school) at the rate of 91% and 97% respectively of their basic pay fixed on the basis of ROPA, 1996. Similarly, in the month of June, 2009, the respondent No. 9 received a sum of Rs. 1,85,762/- towards the dearness allowance of the teaching staff of the said school at the rate of 97% on basic pay calculated on the basis of ROPA, 1996. The dearness allowance received from the State Government for payment to the petitioners in the aforesaid months were as follows:-

8. From the materials-on-record, it is also revealed that the basic pay of the petitioners as disclosed before the State Government for realization of their dearness allowances for the aforesaid months were as follows:-

9. By a communication issued under Memo No. 85-SE(B)/5B-30/2007 dated May 21, 2009 issued by the O.S.D. & Ex-Officio Joint Secretary to the Government of West Bengal, School Education Department, Budget Branch, informed the Commissioner of School Education & Ex-Officio Director of School Education, West Bengal that the State Government declared that all whole-time approved teaching and non-teaching employees of D.A. Getting Schools/Anglo Indian Schools (Primary and Secondary) who were drawing pay-scales as per ROPA, 1996 would get dearness allowance at the rate of 104% of basic pay with effect from 1st April, 2009 and those D.A. Getting Schools/Anglo Indian Schools (Primary and Secondary) who would implement the ROPA, 2009 would get D.A. at per revised rate as already published in the Departmental Memo No. 46-SE(B) dated February 27, 2009. For ascertaining the full and complete text of the above order, the same is quoted below:-

Government of West Bengal School Education Department, Budget Branch
Bikash Bhavan, Salt Lake, Kolkata-700 091.

No. 85-SE(B)/5B-30/2007,

the 21st May, 2009.

From: Shri S. Mahapatra,

O.S.D. & Ex-Officio Joint Secretary

to the Govt. of West Bengal.

To: The Commissioner of School Education & Ex-officio Director of School Education, West Bengal,

Sub: Grant of Dearness Allowance to the teaching and non-teaching staff of Anglo-Indian Schools/D.A. Getting Schools (Primary & Secondary) in West Bengal with effect from 1st April, 2009.

In continuation of this Department Memo No. 52-SE(B)/5B-30/2007 dated

24.03.2009 the undersigned is directed by order of the Governor to say that the Governor has been pleased to declare that all whole-time approved teaching and non-teaching employees of D.A. Getting Schools/Anglo Indian Schools (Primary & Secondary) who are drawing pay scales as per ROPA 1996 will get Dearness Allowance @ 104% of basic pay (Pay Range upto Rs. 25,400/- per month) with effect from 1st April, 2009 and those D.A. Getting Schools/Anglo-Indian Schools (Primary & Secondary) who will implement the ROPA 2009 will get Dearness Allowance at per revised rate as already published vide this Department Memo No. 46-SE(B) dated 27.02.2009 as per para 14.

2. The terms "Pay" for the purpose of calculation of D.A. shall mean the basic pay drawn in the appropriate scale of pay as prescribed for comparable post in Government aided schools under Memo No. 25-SE(B) dated 12.02.1999 in case of who are drawing pay scales as per ROPA 1996 and under Memo No. 46-SE(B) dated 27.02.2009 in case of who are drawing pay scales as per ROPA 2009.

3. The Governor is further pleased to direct that the Dearness Allowance sanctioned herein shall be drawn subject to the following conditions:-

(i) Additional Dearness Allowance sanctioned above should be rounded off to the nearest rupees, in each case.

(ii) The Governor has further been pleased to direct that the additional installment of Dearness Allowance payable in terms of this order should be paid in cash to all teaching and non-teaching staff of Anglo Indian Schools/D.A. Getting schools (Primary & Secondary) irrespective of their pay.

(iii) The charge involved will be debited to the respective appropriate heads in the current years Plan/Non Plan budget under-

2202-General Education-01-Elementary Education-102-Assistance to Non-Govt. Primary Education-Non-Plan-002-Schools for Boys & Girls (Anglo Indian) (ES)-31-Grants in Aid-01-Salary Grants

And

2202-General Education-02-Secondary Education-110-Assistance to Non-Govt. Secondary Schools-Non-Plan-002-School for Boys & Girls (Anglo Indian)) (ES)-31-Grants in Aid-01-Salary Grants

This order issues in terms of Finance Department vide their Group-P (Service), U.O. No. 1341 dated 07.05.2009.

All concerned are being informed.

O.S.D. & Ex-Officio Joint Secretary.

10. According to the petitioners, though ROPA, 2009 was implemented by the respondent No. 9 in fixing their scale of pay from the month of April, 2009, it was reduced/refixed on the basis of ROPA, 1996 from the month of July, 2009.

11. The teaching and non-teaching staff of another D.A. getting school, which was not a minority institution, namely, Shree Maheshwari Vidyalaya filed an application under Article 226 of the Constitution of India in the matter of Shree Sushil Kumar Pandey and Ors. vs. State of West Bengal & Ors. (In re: W.P. 14982 (W) of 2009) claiming their salary and allowances under ROPA, 2009.

12. By a judgment delivered on April 13, 2010, the above writ application was disposed of with the direction upon the above school to implement ROPA, 2009 for fixing the salary and allowances of teaching and non-teaching staff of the above school with effect from the date it was implemented by the recognized non-government aided educational institutions.

13. An appeal was preferred against the aforesaid judgment in the matter of Secretary, Shree Maheshwari Vidyalaya & Ors. vs. Sree Sushil Kumar Pandey & Ors. (In re: M.A.T. No. 1320 of 2010) and the same was dismissed by a Division Bench of this Court on March 8, 2011. A SLP was filed before the Hon'ble Supreme Court in the matter of Secretary, Shri Maheshwari Vidyalaya & Ors. vs. Sushil Kumar Pandey & Ors. (In Re: CC 7278/2012) and the same was dismissed in limine on January 2, 2013.

14. Thereafter, the petitioners sent "Demand Justice Notice" dated February 14, 2013 (at pages 292 to 295 of this writ application) through their learned Advocate, to the respondent Nos. 6 & 7, amongst others, for extension of the benefit of pay structure under ROPA 2009 in their favour. It was followed by a further Notice dated March 1, 2013. In the body of the above notice dated March 1, 2013, a letter dated April, 2009 of the respondent No. 6 was quoted as follows (at pages 308 to 309 of this writ application):

Dear Parents/Guardians,

As you may be aware the State Government has accepted the recommendation of the Fifth Pay Commission with regard to salary payable to the staff of, among other categories those of the Educational Institutions are also included.

With the implementation of this recommendation, there is a very high increase in payments of salaries to the staff of this School. For example in the place of Basic Salary Rs. 12000/-, the revised Basic Salary is Rs. 27120/-. This increase has thrust an enhanced additional financial burden on the school, which can be met only by increase in quantum of Tuition Fees. As Holy Child Institute is an only D.A. getting School, we are fully dependent on the tuition fees of our students to meet the entire salary of our staff.

As we are committed to continue to give quality education to our children, taking all aspects into considerations, in order to meet this enhanced additional liability, we have perforce to increase the quantum of Tuition Fees. We have tried to keep the quantum of increase to the minimum possible.

We would therefore like to inform you that the rate of monthly fee from May, 2009 will be as follows:-

We sincerely hope and request that you will understand the situation and extend your fullest co-operation as you have always giving.

Thankfully Yours,

Secretary

15. In the above notice a letter dated April 4, 2009 of the respondent No. 6 was also quoted as follows (at pages 309 to 310 of this writ application):

Dear Teacher,

Holy Child Institute, though Private in nature is making on all out effort to revise your pay based on 5th Pay Commission by means of hike in students' Tuition Fee. You, in your turn should pledge your dedicated service to them. The following reminders come by way to enhancing the quality of our service to the student community. Kindly sign this up as an annexure to the Service Rules served to you at the time of your appointment in this Institution.

1. You are expected to maintain the quality of your teaching so as ensure that students do not need private coaching in your subject.
2. You are to identify academically weak students and give remedial classes outside school hours.
3. You are not to engage in Private tuition for any of our students inside or outside the school.
4. You are expected to set an example in taste, simplicity in dress and hair style.
5. Morning assembly is part of our School's sacred tradition. You should participate in it along with students.

Let me wish you the best all my dear colleagues. I am sure all of you will keep H.C.I. flag flying high always.

Thanking you,

Secretary

16. In reply, the respondent No. 6 admitted the fact of making an appeal to the parents/guardians for rendering their co-operation to the school under reference in the matter of increasing the quantum of tuition fees of the students in order to cope with the additional financial burden for implementation of the pay structure under ROPA, 2009 for the teachers with explanation regarding the obligation for such implementation. The relevant portion of the above communication is quoted below (at pages 318 to 319 of this writ application):

From your Annexure "D" it is evident that had the School implemented the 5th pay commission the increase in the school portion of the monthly salary per employee would have been around Rs. 13000 on an average calculation. Over and above 3% increase in the Basic Salary was to be foreseen for the

subsequent years. This when applied for all 38 employees (Teaching & non-teaching), the management will have to procure another 5 lakhs per month to pay the whole staff. To meet this extra expense the increase in the Tuition fee of the 950 paying students should have been at least by Rs. 600 whereas the increase was only by Rs. 300. This compromise was necessitated in order not to constrain the parents to withdraw their wards from the institution and at the same time the interest of the employees is taken care to a great extent.

Assuming that Govt. circulars and ROPA applies to our school even then as per the Govt. Memo No-85 SE (B)/5B-30/2007 Dated 21st May 2009 Govt. DA receiving institutions have the option to continue to follow the 1996 ROPA for payment of salary to the staff and your clients received 97% of the Basic Salary as Govt. DA which was much higher than the DA admissible under 5th pay Commission scheme and today it is enhanced to 133%.

17. Hence this writ application.

18. It is submitted by Mr. Promit Roy, learned Counsel appearing on behalf of the petitioners that the issue of implementing the pay structure under ROPA, 2009 in respect of the D.A. Getting schools recognized by the West Bengal Board of Secondary Education was decided by the Government of West Bengal under its Memo No. 641-SE(Law)/5S-577/2001 dated May 29, 2002. It is further submitted by him that by a judgment dated April 13, 2010 delivered in the matter of Shree Sushil Kumar Pandey & Ors. vs. State of West Bengal & Ors. (In re: W.P. No. 14982(W) of 2009) it was decided that the D.A. Getting schools are under obligation to introduce the pay structure under ROPA, 2009 in view of the Government's Order dated May 29, 2002 and the Government Order Dated May 21, 2009 did not give any liberty to any recognized D.A. Getting school in the State not to implement the above pay structure. According to Mr. Roy, the above judgment was upheld by a decision of the Division Bench of this Court dated March 8, 2011 in the matter of Secretary, Shree Maheshwari Vidyalaya & Ors. vs. Sree Sushil Kumar Pandey & Ors. (In re: M.A.T. No. 1320 of 2010). It is also submitted by him that a SLP filed against the above judgment of the Division Bench was dismissed by the Hon'ble Supreme Court by an order dated January 2, 2013 in the matter of Shri Maheshwari Vidyalaya & Ors. vs. Sushil Kumar Pandey & Ors. (In re: CC 7278/2012) and as a consequence of which the aforesaid judgment of the Division Bench of this High Court is governing the field. Reliance is placed by Mr. Roy on the decision of Kunhayammed and Others Vs. State of Kerala and Another, The other limb of the submissions of Mr. Roy is this the respondent Nos. 5 to 9 implemented the pay structure under ROPA, 2009 in respect of the petitioners for the months of May and June, 2009 and as a consequence thereof, subsequent withdrawal of that benefit was bad in law. Reliance is placed on the decision of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, .

19. It is submitted by Mr. L.K. Gupta, learned Senior Advocate appearing on behalf of the respondent Nos. 5 to 9, that while dismissing the SLP in the matter

of Secretary, Shree Maheshwari Vidyalaya & Ors. (Supra), the Hon''ble Supreme Court held that the school in question was not established by linguistic minority community. According to Mr. Gupta, the proposition of law settled in the matter by this High Court is not applicable in the instant case in view of the admitted fact that the school under reference, namely, Holy Child Institute Girls'' Higher Secondary School, District Kolkata, in this case is established by a religious minority community of the society of sisters of charity. According to Mr. Gupta, the right to stipulate the salaries and allowances of the petitioners could not be taken away from the management of a minority institution by virtue of a Government Order. The second limb of argument of Mr. Gupta is this, the Government Order dated May 29, 2002 was superseded by the subsequent Government Order dated May 21, 2009 giving an option to the recognized D.A. Getting schools either to continue with the pay structure of ROPA, 1996 with dearness allowance at the rate of 104% of the basic pay at that point of time or to implement the pay structure under ROPA, 2009 as per revised rate with dearness allowance payable by the State Government on it. It is also submitted by Mr. Gupta that the area of investigation of the conduct of the answering respondents was the pay structure followed till April, 2009. Relying upon duly audited registers prepared by the respondent No. 9 for payment of salary and dearness allowance to the petitioners as also the dearness allowances received for the months of April, May and June, 2009, it is submitted by Mr. Gupta that the benefit of pay structure was never extended to the petitioners.

20. Reliance is placed on the decisions of Sushmita Basu and Others Vs. Ballygunge Siksha Samity and Others, Mrs. Satimbla Sharma and Others Vs. St. Paul's Senior Secondary School and Others, , Salesian Province of Kolkata (Northern India), represented by its The Salesian Province of Kolkata (Northern India) Vs. State of West Bengal and Others, in support of his above submissions.

21. It is submitted by Mr. Sadananda Ganguli, learned Senior Government Advocate, High Court, Calcutta that there was no mandate on the recognised D.A. Getting schools in the Government Order dated May 21, 2009 for implementing the pay structure under ROPA, 2009 for its teaching and non-teaching staff. According to him, the respondent Nos. 5 to 9 were at liberty either to continue with the pay structure under ROPA, 1996 or to implement that of under ROPA, 2009 and the quantum of payment of D.A. by the State Government was dependent on such decision.

22. I have heard the learned Counsel appearing for the respective parties at length and I have given my thoughtful consideration to the facts and circumstances of this case, it is not in dispute that the Hon''ble Supreme Court did not interfere with the proposition of law settled by the Division Bench of this High Court in the matter of the fixation of pay structure of the teaching and non-teaching staff of Shree Maheshwari Vidyalaya on the ground that the above school was not established by a linguistic minority community. Though the doctrine of merger had no manner of application on the above decision in view of

the principles of law settled in the matter of Kunhay Ammed & Ors. (Supra), it is not in dispute that the above issue was not decided by this High Court in the decision under reference in respect of a recognized D.A. Getting school established by a minority community under Article 30(1) of the Constitution of India. The above issue is under consideration in the instant case.

23. The right of minorities to establish and administer educational institutions was recognized under Article 30 of the Constitution of India. For proper adjudication of the first issue involved in this writ application, the above provisions are quoted below:

30. Right of minorities to establish and administer educational institutions. ? (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law of the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.]

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

24. By virtue of the provisions of Article 28 of the Constitution of India, the freedom as to attendance at religious instruction or religious worship in certain educational institutions have been protected as follows:

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

25. The scope of protecting the interests of minorities has been introduced by the provisions of Article 29 of the Constitution as follows:

29. Protection of interests of minorities.- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

26. A thumbnail sketch on the above provisions of the Constitution of India brings out the possibility that the educational institutions established or administered by the minorities or to be so established or administered by them in exercise of rights conferred by the above provisions may be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State, (ii) those which want aid, and (iii) those which want only recognition but not aid. Reference may be made to the matter of *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, and the relevant portions of the same are quoted below:

23. The ambit of the rights conferred by Article 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves. The educational institutions established or administered by the minorities or to be so established or administered by them in exercise of the rights conferred by that article may be classified into three categories, namely, (1) those which do not seek either aid or recognition from the State, (2) those which want aid, and (3) those which want only recognition but not aid.

27. Since, the Holy Child Institute Girls' Higher Secondary School, District Kolkata, was recognized by the West Bengal Board of Secondary Education, which was a State within the meaning of Article 12 of the Constitution of India and the aforesaid school was a D.A. Getting school, this discussion will be restricted to the above zone of consideration hereinafter.

28. It is a settled proposition of law that Article 30(1) of the Constitution of India gives rights to minorities to establish and to administer educational institutions of their choice but right to administer cannot include the right of mal-administer and power of dismissal, removal, reduction in rank or suspension, security to ill paid teachers who are rendering service to the nation and protect the backward classes may be regulated by the State as a condition for granting aid to the educational institution as regulatory measures. Reference may be made to the relevant portions of the above matter of *Kerala Educational Bill, 1957, Re v. (supra)* as follows:

31. Power of dismissal, removal, reduction in rank or suspension is an index of the right of management and that is taken away by clause 12(4). These are, no doubt, serious inroads on the right of administration and appear perilously near violating that right. But considering that those provisions are applicable to all educational institutions and that the impugned parts of clauses 9, 11 and 12 are designed to give protection and security to the ill paid teachers who are engaged in rendering service to the nation and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2)

and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions.

29. In the journey of interpreting the provisions of Articles 28, 29 and 30 of the Constitution of India, the Hon"ble Supreme Court repeated and reiterated the above proposition of law as settled by a nine Judges Bench of the Hon"ble Apex Court in the matter of Kerala Education Bill, 1957, Re v. (supra). The observation of a three Judges Bench of the Hon"ble Supreme Court in the matter of All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, are quoted below:

91. The Constitution does not confer any right on the institution to receive any aid. It however forbids the State in granting aid to educational institutions from discriminating an educational institution on the ground that it is under the management of a minority whether based on religion or language. This would imply that the State has right to grant or not to grant aid. It may be that the State is not in a position to grant aid to educational institutions. In such circumstances nobody can force the State to grant aid. But if the State grants aid to educational institutions there should not be any discrimination. It is open to the State to prescribe relevant conditions and insist on their being fulfilled before any institution becomes entitled to aid.

30. In the decision of Frank Anthony Public School Employees" Association (supra), the Hon"ble Supreme Court held that the management of a minority educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. The relevant portions of the above decision are quoted below:

16. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guide of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of

Article 30(1) which is to make the institution an effective vehicle of education.

31. Ultimately, a Bench of eleven Hon"ble Judges of the Supreme Court decided various issues relating to the provisions of Articles 28, 29 and 30 of the Constitution of India in the matter of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, . Though there was no deliberation in the majority decision on the issue relating to the grounds on which the staff and teacher of a minority institution could challenge the adverse decision of the management, according to the Hon"ble Justice V.N. Khare (concurring with the majority view), it would be appropriate if adverse decisions of the management are tested on grounds of breach of the principles of natural justice and fair play or any regulation made in respect of labour laws. The relevant portions of the above decision are quoted below:-

232. Another question that arises in this connection is as to on what grounds the staff and teachers, if aggrieved, can challenge the arbitrary decisions of the management. One of the learned Senior Counsel suggested that such decisions be tested on the grounds available under the labour laws. However, seeing the nature of the minority institutions the grounds available under labour laws are too wide and it would be appropriate if adverse decisions of the management are tested on grounds of breach of the principles of natural justice and fair play or any regulation made in that respect.

32. The view of the discussions made hereinabove, it is now the settled proposition of law that security to ill paid teacher of a recognized minority educational institution which is receiving financial support from the Government, may be regulated by the State as a condition for granting recognition and/or aid as regulatory measure. Such support may be in the form of "Grants-in-Aid" or "Dearness Allowance" but the consequence of receiving such grant is same. So, the Government Order dated May 29, 2002 as also the Memorandum dated May 21, 2009 are applicable in the instant case in the same manner in which those are applicable in case of non-minority educational institutions.

33. The effect of the Memorandum dated May 21, 2009 on the Government Order dated May 29, 2002, has already been decided in the matter of Shree Sushil Kumar Pandey (in re: W.P. 14982 (W) of 2009) (supra) and the relevant portions of the above decision are quoted below:

I do not find any reason to accept the argument that once the Order dated February 27, 2009 was issued enforcing the Revision of Pay and Allowance Rules, 2009, the Order dated May 29, 2002 directing all recognized D.A. getting institutes in the State to pay their staff at the rate prescribed by the Government for the teaching and non-teaching employees of the Government aided school lost its force. Life of the Order dated May 29, 2002 was not coterminous with the life of the Revision of Pay and Allowance Rules, 1998 during whose term, incidentally, the Order was issued.

It is of no consequence that in the Revision of Pay and Allowance Rules, 2009

nothing was said for the recognized D.A. getting institutions in the State. First, there was no scope for saying anything therein concerning revision of pay of the recognized D.A. getting institutes; and secondly, in view of the existing Order of the Government dated May 29, 2002 it was not necessary. This order created right of the employees of all the recognized D.A. getting institutes in the State (including the petitioners) to claim revision of their pay under all the future Revision of Pay and Allowance Rules issued by the Government.

It is totally wrong to say that by the order dated May 29, 2009 the Government gave an option to the recognized D.A. getting institutes in the State either to pay their employees according to the scales specified in the Revision of Pay and Allowance Rules, 1996, or to implement the Revision of Pay and Allowance Rules, 2009. It is evident from what has been stated in the Order dated May 29, 2009 that it was issued only for notifying the Government's decision how it would pay dearness allowance to the recognized D.A. getting institutes paying their employees according to the provisions of the two rules.

34. The above decision was upheld by a Division Bench of this High Court in the matter of Secretary, Shree Maheswari Vidyalaya (In re: M.A.T. No. 1320 of 2010) (supra) and the relevant portions of the above decision are quoted below:

Government control remains very much and the Circular of May 29th, 2002 (Page 97 of the Paper Book), as rightly held by the learned Single Judge, has its axiomatic application upon the Appellants and they are bound to follow the same.

In view of our aforesaid discussion, we do not feel inclined to refer to Memorandum dated 27/02/2009 on the basis of the Finance Department Resolution. As such, the decision of Ksl and Industries Ltd. vs. Arihant Threads Ltd. (supra) on the question of interpretation of a non obstante clause also does not fall for consideration.

35. I do not find any reason to take a different view from the above. As a result the first issue involved in this matter is decided in favour of the petitioners.

36. With regard to the introduction of the pay structure under ROPA, 2009 in favour of the petitioners, I find that the disclosure of their pay structure to the State Government even for the month of April, 2009 for realization of dearness allowances from the State Government was different from the entries made in the audited salary register of the respondent Nos. 5 to 8. Admittedly, the gross salaries of the petitioners recorded in the above register in the months of May and June, 2009 were more or less equivalent to the amount payable under ROPA, 2009. No answer with regard to such discrimination was available from learned Senior Counsel appearing for the above respondents.

37. That apart, it was not in dispute that the respondent No. 6 issued notice dated April 4, 2009 approaching the parents/guardians of the students of the school under reference to render their co-operation by paying tuition fees at enhanced rate which was a consequence of implementation of pay structure

under ROPA, 2009 for the teaching and non-teaching staff. Therefore, subsequent withdrawal of the above benefit resulted in facing financial constrain by those staff. Such action was violative of rules of principles of natural justice and fair play and cannot be sustained in law.

38. The decision of Sushmita Basu & Ors. (Supra) was delivered in a case of recognized unaided school. In view of the above distinguishable fact, it has no manner of application in this case. For the same reason, the decision of Satimbla Sharma & Ors. (supra) has no manner of application in this case. Admittedly, the above judgment was delivered in respect of one unaided private educational institution. The decision of Father Mananchira Chacko Matthew (supra) was on the issue of applicability of the provisions of the Employees State Insurance Act, 1948 on a minority educational institution. In view of above distinguishable fact, the above decision is not applicable in this case.

39. In view of the discussions and observations made hereinabove, the respondent Nos. 5 to 9 are directed to implement the pay structure prescribed under Revision of Pay and Allowance, 2009 in respect of the petitioners with effect from the date the same was implemented by the State Government. Pay and allowances of the petitioners shall be released in terms of the above direction including arrears within two months from the date of communication of this order.

40. This writ application is thus disposed of.

41. There will be, however, no order as to costs. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.