
(2020) 05 MP CK 0157

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 2111, 1026, 2010, 2021, 2027, 2110, 2112, 2114, 2123, 2128, 2151 Of 2019

Shri Gujarati Samaj

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 29-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 39(e), 41

Citation : (2020) 05 MP CK 0157

Hon'ble Judges : S.C. Sharma, J;Shailendra Shukla, J

Bench : Division Bench

Advocate : Vivek Dalal, Vinay Gandhi, Prateek Patwardhan, Prasanna R. Bhatnagar, Sumeet Samvatsar

Final Decision : Dismissed

Judgement

1. Regard being had to the similitude in the controversy involved in the present cases, the writ appeals were analogously heard and by a common order, they are being disposed of by this Court. Facts of the Writ Appeal No.2111/2019 are narrated hereunder.

2. The petitioner before this Court, Shri Gujrati Samaj, a society registered under the Societies Registration Act, is running a school, has filed a writ petition before this Court being aggrieved by the order passed by the controlling authority dated 15.03.2016 under the Payment of Gratuity Act, 1972 holding that the appellant / petitioner is liable to pay gratuity to its employees. It has also been held that the State Government is not liable to pay gratuity.

3. The order dated 15.03.2016 was affirmed in appeal by the appellate authority vide order dated 21.10.2016 and both the orders dated 15.03.2016 and 21.10.2016 were under challenge before the learned Single Judge and the learned Single Judge has dismissed the writ petition keeping in view judgment delivered in the case of Suresh Kumar Dwivedi and others Vs. State of Madhya

Pradesh and others, reported in 1993 MPLJ 663.

4. The learned Single Judge has dismissed the writ petition i.e. W.P. No.23223/2018 (Anudan Prapt Vidyalayeen Shikshak Kamchhari Sangh and another Vs. State of M.P. and others). Paragraph No.2 to 7 of the judgment reads as under:-

"2/ Learned counsel appearing for the petitioner submits that the State Government is liable to pay the gratuity amount and in this regard he has placed reliance upon the Single Bench judgment in the matter of Ramjilal Kushwah and others Vs. State of M.P. and others reported in 2018 (1) MPLJ 49.

3/ As against this, learned counsel for the respondents submits that the State Government is not the employer and that the State Government is not liable to pay the gratuity amount and in this regard he has placed reliance upon the Single Bench as well as Division Bench judgment of this Court. 4/ Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the issue involved in the present case has been concluded by the Division Bench in the matter of Suresh Kumar Dwivedi and others Vs. State of M.P. and others reported in 1993 MPLJ 663, wherein considering the issue of liability of the State Government to pay pension, gratuity etc. to the teachers of the aided institutions, it has been held that such direction cannot be issued since it involves policy matter having financial burden. In the matter of Suresh Kumar Dwivedi (supra) the Division Bench has held as under:-

"16. Coming to the claim of pension, gratuity, medical allowance and C.C.A., learned counsel for the petitioners, placing reliance on a decision of the Supreme Court in AIR 1983 SC 130, D. S. Nakara v. Union of India , contended that with the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low, are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, therefore, in view of Articles 39(e) and 41, and as the basic framework of Socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave, the State Government is bound to make provisions for the teachers of the aided institutions for payment of benefits of the medical allowance, C.C.A., pension and gratuity at the time of retirement. To support, learned counsel also placed reliance on two cases of teachers of Government aided institutions of Haryana State, Haryana State Adhyapak Sangh v. State of Haryana, 1990 (Supp) SCC 306, and Haryana State Adhyapak Sangh v. State of Haryana, AIR 1988 SC 1663.

17. In our opinion, no direction can be issued to the State Government in respect of the aforesaid claims, as it cannot be disputed that implementation of the aforesaid claims is a policy matter involving heavy financial burden. The teachers of the aided institutions are not appointed under the State Government. There is no relationship of master and servant between the State Government and the

teachers. There is no provision in the Act or the rules applicable to such teachers or employees for payment of the aforesaid benefits. It is not clear how the State Government is accountable for extending such benefits and facilities. Since it is a policy matter involving financial burden, it is not the function of this Court to compel the Government to accord sanction, as the Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. See *Union of India v. Tejram Parashramji Bombhate*, (1991) 3 SCC 11. The Haryana Teachers' cases relied by petitioners are of no help, as they relate to parity in pay scales only, which was recommended by the expert body, like Kothari Commission, and the Haryana Government after the report of the Pay Commission, expressed its readiness and willingness to implement the same at par so far as the salaries and additional dearness allowance, etc. were concerned. There too, the benefits of C.C.A., medical allowance, pension and gratuity were not extended."

5/ Subsequently the Single Bench of this Court in the matter of *K.V. Patel Gujarat Kanya Uchchar Madhyamik Vidyalaya, Indore Vs. Prahlad* and another reported in 2013 (5) MPHT 73 has also held that the State Government is not the employer, therefore, the State is not liable to pay the gratuity amount and it is the aided school which is liable to pay the gratuity to the teachers. Having regard to the aforesaid Division Bench as well as the Single Bench judgment, the petitioners are not entitled to the benefit of the subsequent Single Bench judgment in the case of *Ramjilal Kushwah* (supra), wherein the earlier judgments have not been taken note of.

6/ The view which has been taken by the controlling authority under the Payment of Gratuity Act in the impugned order, is in consonance with the view of the Division Bench of this Court in the matter of *Suresh Kumar Dwivedi* (supra) and subsequent Single Bench judgment in the case of *K.V. Patel Gujarat Kanya Uchchar Madhyamik Vidyalaya* (supra). Hence, I do not find any error in the impugned order and no case for interference is made out.

7/ The writ petitions are accordingly dismissed."

5. The moot question before this Court is whether the institution receiving grant-in-aid by the State Government is liable to pay the gratuity keeping in view the Payment of Gratuity Act, 1972 or the State Government is liable to pay the gratuity keeping in view the Payment of Gratuity Act, 1972.

6. Shri Vivek Dalal, learned counsel appearing for the appellant has placed reliance upon a judgment delivered in the case of *Suresh Kumar and others Vs. State of Madhya Pradesh and others*, reported in 1993 MPLJ, 663 and his contention is that the learned Single Judge has not taken into account the judgment delivered by the Division Bench.

7. Reliance has also been placed upon another judgment delivered in the case of *Birla Institute of Technology Vs. State of Jharkhand and others*, reported in 2019 (4) SCC, 513. In the aforesaid case, it has been held that the teachers are

entitled for payment of gratuity.

8. Reliance has also been placed upon another judgment delivered in the case of Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and others, reported in 2007 (1) SCC, 268, however, it involves a different issue, it was in respect of applicability of Provident Fund Act, 1952 and the definition of the employee as well as relating to exception in respect of applicability of Employees' Provident Fund Act to the establishment belonging to or being under control of Central or State Government, the aforesaid judgment also does not touch the issue involved in the present case.

9. Reliance has also been placed upon other judgment delivered in the case of Ramjilal Kushwah and others Vs. State of Madhya Pradesh and others, reported in 2018 (1) MPLJ, 49. In the aforesaid case, learned Single Judge has held that teachers are entitled for payment of gratuity and in respect of institution receiving grant-in-aid, the State of Madhya Pradesh has to pay the gratuity, however, the fact remains that the judgment was delivered by the learned Single Judge.

10. Reliance has also been placed upon another judgment delivered in the case of J.C. Mills Education Institution and another Vs. Smt. Ashindra Tiwari and others decided on 30.07.2012 (W.A. No.417/2009) and it has been argued by the learned counsel that in the aforesaid case, it has been held that the State of Madhya Pradesh has to pay the gratuity to the employees working in the institution receiving grant-in-aid.

11. This Court has carefully gone through the judgment delivered in the case of J.C. Mills Education Institution (supra). In the aforesaid case, initially an order was passed by the controlling authority under the Payment of Gratuity Act with a direction that the employee may recover the amount of gratuity from the Deputy Director Education or from the institution.

12. The order was modified by the appellate authority and the appellate authority has directed that the Deputy Director Education (Government) shall provide ediquate grant-in-aid for payment of gratuity. The order was not challenged by the State Government and finally, the writ appeal was allowed with a direction to the Deputy Director to make the payment of gratuity, meaning thereby, the State Government was directed to pay the gratuity. The judgment was delivered on 30.07.2012, however, the judgment delivered prior in time i.e. the judgment delivered in the case of Suresh Kumar Dwivedi and others (supra) has dealt with the issue in respect of the liability of the State Government in depth. Paragraph No.16 to 17 of the aforesaid judgment read as under:-

"16. Coming to the claim of pension, gratuity, medical allowance and C.C.A, Learned counsel for the petitioners, placing reliance on a decision of the Supreme Court in MANU/SC/0237/1982 : AIR 1983 SC 130, D.S. Nakara Vs. Union of India contended that with the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and

the fact that the old men who retired when emoluments were comparatively low, are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, therefore, in view of Articles 39 (e) and 41, and as the basic framework of Socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave, the State Government is bound to make provisions for the teachers of the aided institutions for payment of benefits of the medical allowance, C.C.A., pension and gratuity at the time of retirement. To support, learned counsel also placed reliance on two cases of teachers of Government aided institutions of Haryana State, *Haryana State Adhyapak Sangh Vs. State of Haryana*, MANU/SC/0176/1990 : 1990 (Supp.) SCC 306 and *Haryana State Adhyapak Sangh Vs. State of Haryana*, MANU/SC/0185/1988 : AIR 1988 SC 1663.

17. In our opinion, no direction can be issued to the State Government in respect of the aforesaid claims, as it cannot be disputed that implementation of the aforesaid claims is a policy matter involving heavy financial burden. The teachers of the aided institutions are not appointed under the State Government. There is no relationship of master and servant between the State Government and the teachers. There is no provision in the Act or the rules applicable to such teachers or employees for payment of the aforesaid benefits. It is not clear how the State Government is accountable for extending such benefits and facilities. Since it is a policy matter involving financial burden, it is not the function of this court to compel the Government to accord sanction, as the Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. See *Union of India Vs. Tejram Parashramji Bombhate*. MANU/SC/0104/1991 : (1991) 3 SCC 11. The Haryana Teachers cases relied by petitioners are of no help, as they relate to parity in pay scales only, which was recommended by the expert body, like Kothari Commission, and the Haryana Government after the report of the Pay Commission, expressed its readiness and willingness to implement the same at par so far as the salaries and additional dearness allowance, etc. were concerned. There too, the benefits of C.C.A., medical allowance, pension and gratuity were not extended."

13. In light of the aforesaid judgment of the Division Bench, which is prior in time, this Court is of the considered opinion that the learned Single Judge has rightly dismissed the writ petition.

14. The Full Bench of this Court in the case of *Jabalpur Bus Operator Association Vs. State of Madhya Pradesh* and another, reported in 2003 (1) MPHT, 226 has held that the judgment delivered prior in time prevails over the judgment, which is delivered later in time and therefore, in light of the judgment delivered on 22.03.1993 in the case of *Suresh Kumar Dwivedi (supra)*, which has not been set aside, it is the petitioner-institution, who has to pay the gratuity and not the State of Madhya Pradesh.

15. Resultantly, the present appeal fails and stands dismissed. The appellant institution shall make payment of gratuity along with interest within a period of

60 days from today.

All other connected writ appeals are also, accordingly, dismissed.