
(2003) 04 P&H CK 0100
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11065 of 2000

Smt. Swaran Bhatia	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 134 PLR 445

Hon'ble Judges : Viney Mittal, J; V.M. Jain, J

Bench : Division Bench

Advocate : S.P. Laler, for the Appellant; Girish Agnihotri, Addl. A.G. for Respondent Nos. 1 to 3, H.S. Kamboj, for K.S. Jetley, for No. 4, for the Respondent

Judgement

Viney Mittal, J.—The petitioner is an ex-Head Mistress in Arya Girls School (now Senior Secondary School) Ambala Cantt. Haryana. She has approached this Court through the present petition under Articles 226/227 of the Constitution of India. The prayer made in the petition is for the issuance of a writ in the nature of mandamus for directing the respondents to grant the benefit of revised pay-scale to the petitioner with effect from January 1, 1996 till the date of her actual retirement i.e. July 31, 1997 and also to grant her revised gratuity on the basis of revised pay-scale with interest.

2. The petitioner had joined her services as Head Mistress in Arya Girls School, BC Bazar, Ambala Cantt. She served till her superannuation on July 31, 1997. On her retirement, her retiral benefits were not released to her. She had approached this Court through CWP No. 4040 of 1999. The aforesaid writ petition filed by the petitioner was disposed of by a Division Bench of this Court vide order dated August 31, 1999. The respondents were directed to make the payment of gratuity to her alongwith interest. Subsequently, with effect from January 1, 1996 the State Government of Haryana revised the pay-scale of the employees vide communication dated December 7, 1998. The State Government also

decided to implement the revision of pay-scale for the employees of Haryana Recognised Privately managed aided schools. A copy of the aforesaid decision of the State Government dated December 7, 1998 has been appended as Annexure P. 2 with the petition.

3. The petitioner claims that on the basis of the aforesaid communication, the petitioner also became entitled to the revised pay-scale and enhanced gratuity on the basis of the revision of the pay-scale with effect from January 1, 1996 till her retirement. The petitioner served a legal notice. In response to the aforesaid legal notice, the Director Secondary Education Officer, Haryana, Chandigarh directed the District Education Officer to send the case of the petitioner to the concerned authorities and process the same to take further action. However, till the date of filing of the petition, nothing happened. Accordingly, the petitioner has approached this Court through the present petition.

4. Upon notice of the present petition, separate written statements have been filed on behalf of the respondents. Respondents No. 1 to 3 have chosen to file an independent written statement and respondent No. 4 has chosen to file a separate written statement.

5. In the written statement filed on behalf of respondents No. 1 to 3, they have stated that the petitioner was an employee of privately managed aided recognised school and there was no master servant relationship between the petitioner and respondents No. 1 and 3, therefore, the claim made by the petitioner against the aforesaid respondents was not maintainable. It was further maintained by the petitioner that the Government is the sanctioning/verifying authority regarding revision of pay-scale and gratuity etc. and without submitting the claim by an employer it is not possible to release the grant-in-aid. The aforesaid respondents have maintained that as and when the claim of the petitioner is submitted by the concerned school, grant-in-aid in this regard would be released.

6. In the written statement filed on behalf of the management respondent No. 4, it has been stated that since this school was an aided school, therefore, it was the duty of the State Government to make the payment of the Staff. The said respondent has further maintained that the petitioner had not made any claim against the answering respondent.

7. Even the aforesaid respondent has conveniently denied its liability to make the payment to the petitioner shifting the same upon the official respondents.

8. We have heard the learned counsel for the parties and with their assistance have also gone through the record of the case.

9. From the perusal of the record, we find that it is very unfortunate that a retired teacher, like the petitioner is being made to shuttle from pillar to post. It is apparent that respondents No. 1 to 3 and respondent No. 4 are adopting stand shifting the liability to make the payment to the petitioner upon each other. From

the stand adopted by the respondents, it is apparent that none of the aforesaid respondents has chosen to deny the claim of the petitioner. It is only the liability to make the payment which is being put upon one another.

10. Maybe that the petitioner was an employee of privately* managed aided recognised school. However, for that reason alone, the official respondents No. 1 to 3 cannot escape their responsibility by merely denying that there was no master servant relationship between the petitioner and respondents No. 1 to 3. The least, which was expected by respondents No. 1 to 3 was a direction from the aforesaid respondents to the school and its management to release the aforesaid payment to the petitioner which is not being disputed by the management. Respondent No. 4 in any case could not have shirked its responsibility by merely saying that since the grant-in-aid was to be released by the education department, therefore, the payment was not to be made by the school. Since the petitioner was primarily an employee of the school respondent No. 4 and, therefore, it was the primary duty of the school management itself to have discharged its liability by making the due payments to the petitioner.

11. Accordingly, we dispose of the present petition with a direction to respondents No. 2 and 3 to issue the necessary directions to the School respondent No. 4 to release necessary payments to the petitioner, as claimed by her in the present writ petition, the aforesaid directions shall be issued by respondents No. 2 and 3 to the institution respondent No. 4 within a period of three weeks from the date a certified copy of this order is received by the aforesaid respondents. On receipt of the aforesaid directions, respondent No. 4 shall make the necessary payments thereafter within a further period of one month. If the necessary payment is not made by respondent No. 4 within the aforesaid period then action under Rule 5-A of the Haryana Aided School (Security of Service). Act, 1971 shall be initiated by respondents No. 1 to 3 against the school respondent No. 4 and the payment shall be made by the aforesaid respondents No. 1 to 3 to the petitioner themselves, within a further period of two months from the date of the passing of the aforesaid orders directing the management of the school to make the payment to the petitioner.

12. A copy of this order be given dasti to the parties on payment of usual charges.