

(2009) 06 KAR CK 0105
In the Karnataka High Court
Case No : Writ Petition No. 13715 of 2006

Sumithra P. and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Karnataka Civil Services (Service and Kannada Language Examination) Rules, 1974 —
Rule 3, 3 (1), 6

Citation : (2009) ILR (Kar) 2752 : (2009) 4 KCCR 3017

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : O. Shivarama Bhat, Prasanna Deshpande and Nagarj Hegde, for the Appellant; T.P. Srinivasa, AGA, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—Since common questions of law and fact are involved in all these writ petitions, they are clubbed together, heard and disposed of by this common order.

2. The petitioners are the teaching and non-teaching staff of private aided educational institutions in the State of Karnataka. Some of them are in service and some of them are retired. All of them had joined the service before 2.9.1987. All of them have passed either Kannada Language Examination as provided in Rule 3 of the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974 (for short "Rules") or the SSLC examination as provided under Rule 5 within the prescribed period. Therefore, they are claiming an additional increment as per Rule 6 on par with the teaching and non-teaching staff of the Government schools in the State of Karnataka. Some of the teaching and non-teaching staff of aided private schools filed writ petitions before this Court claiming the said benefit in W.P. Nos. 25248 to 25302/2004 Lokanatha Kote B. and Ors. v. State of Karnataka and Ors. This Court after considering the rival contentions of the parties, observed as under:

An additional increment is given to the Government servant for having passed the Kannada language examination. On the same analogy, there is no reason why the said benefit should not be extended to the same class of teachers who have been passed the SSLC with Kannada language. Therefore, I am of the view that the Government was under an obligation to consider the request of the petitioners in the light of the aforesaid judgment of this Court in the case of V.P Babar and Ors. v. State of Karnataka and Ors. in W.P. NOS. 3216332208/1998 disposed of on 27.11.1998.

2. Several other writ petitions have been filed by the teaching and non-teaching staff of private aided institutions seeking similar reliefs. This Court has disposed of the said writ petitions in terms of B. Lokanatha Kote's case (supra). In the light of the directions of this Court in the aforesaid writ petitions, the first respondent has considered the claim of the petitioners and has passed orders rejecting the same. The petitioners have questioned the validity of the said orders in these writ petitions.

3. The respondents have filed their statement of objections contending that the Rules are applicable only to Government Servants. The said Rules are not extended to the teaching and non-teaching staff of private aided educational institutions. Therefore, they are not entitled for grant of additional increments as provided under the Rules.

4. Learned Counsel appearing for the petitioners would contend that having regard to proviso to Section 87 of the Karnataka Education Act, 1983, the teaching and non-teaching staff of the Government schools should be treated on par with the teaching and non-teaching staff of the private aided educational institutions. It is further contended that this Court while considering the similar case of grant of DCRG in V.P. Babar and Ors. v. State of Karnataka and Ors. in W.P. Nos. 32163-3220/1998 disposed of on 27.11.1998, has held that the benefits granted to the teaching and non-teaching staff of the Government schools should also be made available to the teaching and non-teaching staff of private aided educational institutions. Following the said decision, this Court in B. Lokanatha Kote's case (supra) has held that the State Government was under an obligation to consider the request of the petitioners for grant of an additional increment in accordance with Rule 3(1) of the Rules. Therefore, the State Government ought to have extended the said benefits to the petitioners and other similarly situated persons. It is farther argued that V.P. BABAR's case (supra) has been confirmed by a Division Bench of this Court in W.A. Nos. 1250-1294/1999 on 10.9.1999 and that SLP filed challenging the said decision in SLP Nos.3032 to 3037/2000 has been rejected by the Apex Court on 7.3.2000.

6. On the other hand, learned HCGP appearing for the respondents has sought to justify the impugned orders. It is argued that since Rule 6 has been omitted vide notification dated 27.7.1987, the petitioners are not entitled for the said benefit.

7.1 have carefully considered the arguments of the learned Counsel made at the

Bar and perused the materials placed on record.

8. It is not in dispute that the petitioners are teaching and non-teaching staff of various private aided educational institutions in the State of Karnataka. All of them have joined the service before 2.9.1987. It is not in dispute that the Karnataka Civil Services (Service and Kannada Language Examinations) Rules, 1974, has come into force with effect from 10.1.1974. Rule 3 provides for the obligation of the Government servant to pass Kannada Language Examinations. It is as under:

3. Obligation of Government Servants to pass certain examinations:

(1) Save as otherwise provided in these Rules, every Government Servant shall within the period prescribed in Sub-rule (2) pass,-

(i) the Kannada Language Examination, and (ii) the prescribed examinations, if any, in respect of the post held by him.

Rule 5 states that a Government servant who has passed the Secondary School Leaving Certificate Examination or any examination declared as equivalent thereto by the State Government or any examination higher than the Secondary School Leaving Certificate Examination, in which the question papers on different subjects are answered in Kannada Language; or in which Kannada is the main language, Second Language or an optional subject, or any examination specified in Schedule III as equivalent to the Kannada language examination shall on obtaining a certificate of exemption under Sub-rule (5) be deemed to have passed the Kannada language examination.

Rule 6 provides for grant of one additional increment if they pass Kannada language examination and the prescribed examinations, if any. The said Rules is as under:

6. Grant of additional increments - Every Government servant who has passed, who passes or who is deemed to have passed the Kannada language examination and the prescribed examinations, if any, shall, notwithstanding anything contained in the Karnataka Civil Services Rules or in Rule 10 of the Karnataka Government Servants (Probation) Rules, 1957 and without prejudice to his right to get the normal increments be entitled to one additional increment at the rate corresponding to his position in the time scale-

(a) in the case of a Government servant who has passed or is deemed to have passed the Kannada Language examination and the prescribed examinations, if any, before the date of commencement of these Rules, from the date of commencement of these Rules;

(b) in the case of any other Government servant who passes or is deemed to have passed the Kannada language examination and the prescribed examinations, if any, from the date of passing the last of such examinations:

Provided that no Government servant shall be allowed more than one increment

under this Rule during his entire service under the Government

Rule 6 has been amended from time to time. By a notification No. DPAR. 36. SSR. 86 dated 27.7.1987, Rule 6 has been omitted with effect from 3.9.1987. It is not in dispute that the benefit of the said Rule is available to teaching and non-teaching staff of the Government school, who have joined the service before 2.9.1987. In the circular dated 3.11.2000 Annexure "T" in W.P. No. 13715/2006), the position has been clarified by the State Government as under:

9. Therefore, question for consideration is whether the said benefit is available to the teaching and non-teaching staff of private aided educational institutions, who had joined service before 2.9.1987?

10. The Apex Court in State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, , has held that though "equal pay for equal work" is not a fundamental right under the Indian Constitution, it is a constitutional goal which must colour the interpretation of Articles 14 and 16, so as to be elevated to the rank of a fundamental right, the denial of which will result in an irrational classification.

11. In Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, , the Apex Court has held that teachers of recognized aided private schools are entitled to parity in pay with teachers of Government schools.

12. The Apex Court in Haryana State Adhyapak Sangh and Ors. v. State Of Haryana and Ors. AIR 1990 SC 968, while following the aforesaid judgment has given direction to the State of Haryana as under:

(i) The pay scales of the teachers of Government aided schools shall be revised so as to bring them at par with the pay scales of teachers of Government schools with effect from April 1, 1979 and the differential amount as a result of such revision in pay scales shall be paid in four/six monthly installments, the first installment being payable by June, 30,1990.

(ii) The teachers of the Government aided schools shall be paid additional clearness allowance on the basis of the revised pay scales with effect from April, 1,1979 to December 31. 1985 and the arrears of such additional clearness allowance found payable as a result of such revision shall be paid along with the last part of the five installments of additional deafness allowance which is to be paid in September, 1990.

(iii) The parity in the pay scales and Dearness allowance of teachers employed in aided schools and those employed in Government schools shall be maintained and with that end in view the pay scales of teachers employed in Government aided schools shall be revised and brought at par with the pay scales and dearness allowance payable to the teachers employed in Government schools with effect from January 1, 1986.

(iv) As from April 1, 1990 the teachers employed in aided schools shall be paid

the same salary and dearness allowance as is paid to teachers employed in Government schools.

(v) The arrears of pay and dearness allowance payable as a result of such revision for the period from January 1, 1986 to March 31, 1990 shall be paid in four/six monthly installments, the first such installment being payable by June 30, 1990.

13. In *State of Haryana and others Vs. Rajpal Sharma and others*, the Hon'ble Supreme Court observed as follows:

The positive direction in *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others*, to the effect that as from 1.4.1990 the teachers employed in aided schools shall be paid the same salary and dearness allowance as is paid to teachers employed in Government schools, leaves no room for doubt about the grant of the said benefit to the respondents herein who are the teachers in privately managed aided schools in Ambala District in the State of Haryana.

14. In *State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others*, the Apex Court has held as under:

10. It is, therefore, late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary, allowances, etc. with their counterparts in the Government schools. The question, for our consideration, however, is whether the State Government or the Management is to meet the consequent expenditure.

15. In *K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College Of Engineering and Anr.* AIR 1998 SC 295, the Apex Court has held that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So they cannot be denied the same benefit which is available to others. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.

16. In *The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others*, the Apex Court has reiterated that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State

Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. Appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution. Therefore, the decision is manifest that there is no justification for denying the claim of the respondents for parity of pay scales. Therefore, the claim of the teachers for salary on par with their counterparts working in privately managed and recognised aided schools cannot be denied.

17. This Court in V.P. BABAR's case (supra) was considering a similar question regarding payment of DCRG amount to the teaching and non-teaching staff of private aided educational institutions. It is held that whatever benefits that are extended or made available to the Government Servants as Retirement Gratuity/ Death Gratuity becomes automatically applicable to the staff of the aided institutions. The said decision has been upheld by the Division Bench of this Court and that SLP tiled against the decision of the Division Bench has been dismissed by the Apex Court. Following the decision in V.P. BABAR's case (supra), this Court in B. Lokanatha Kote's case (supra) has held that additional increment is given to the Government servant for having passed the Kannada examination. There is no reason why the said benefit should not be extended to the same class of teachers who have passed the SSLC with Kannada language. This decision has attained finality.

18. From the discussion made above, it is clear that imparting primary and secondary education to students is the bounden duty of the State Administration. The private institutions cater to the needs of the educational opportunities. Therefore, there is a corresponding responsibility on the State Government to ensure that in aided schools, the teachers and other staff whose appointments have been approved by the State Government are entitled for same emoluments as are provided to their counterparts in the Government schools. The decision of the State Government not to extend the increment in question to the teachers and other # employees of the private aided educational institutions is patently irrational and unjust, particularly, when their counterparts in the Government schools are made available with the said benefit. In the Circular dated 3.11.2000, the State Government has clarified that its employees who have passed the examination in question and who have joined the service before 2.9.1987 are entitled for the aforesaid increment. Similar benefit should also be made available to the teachers and other employees of aided private educational institutions, who have passed the Kannada Language Examination or the SSLC examination as per Rules 3 and 5 respectively within the prescribed period.

19. At this stage, learned Counsel for the petitioners submits that the State Government may be directed to grant the benefits without any further delay. It is settled that even in case where the Court holds that the order passed by the Government is unsustainable, then ordinarily a direction should be given to the State Government or the authorities taking the decision to reconsider the matter

and pass appropriate orders. The Court should avoid giving a declaration granting a particular scale of pay

and compelling the Government to implement the same. {See Haryana Civil Secretariat Personal Staff Association's case (supra)}. Therefore, this Court can only direct the State Government to reconsider the matter in accordance with law and in the light of the observations made in the course of the order.

20. In the result, writ petitions succeed and they are accordingly allowed. The orders impugned herein (Annexure "A" dated 22.10.2005 in W.P. No. 13715/2006 and Annexure "A" dated 10.11.2005 in W.P. Nos. 17236/2008 & 10111 to 10681/2009 respectively) are accordingly quashed. I direct the first respondent to reconsider the matter in accordance with law and in the light of the observations made above. No costs.