
(1993) 03 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 1456 of 1991

Suresh Kumar Dwivedi and Others	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 22-03-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226, 23, 39
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 3, 5
Madhya Pradesh Ashashkiya Shikshan Sanstha (Institutional Fund) Rules, 1983 — Rule
5(3), 9

Citation : (1994) J LJ 73 : (1993) MPLJ 663

Hon'ble Judges : S.K. Dubey, J; S.K. Chawla, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; R.A. Roman, Government Advocate
for respondent Nos. 1 to 5, for the Respondent

Judgement

S.K. Dubey, J.

The three petitioners, who are recognised teachers, working as Lecturers in three Government aided institutions (for short, the "aided institutions"), D.A.V. Higher Secondary School, Naya Bazar, Lashkar, Gwalior; Maharudra Mandal Higher Secondary School, Lala Ka Bazar, Lashkar and Laxmibai Smarak Higher Secondary School, Nayi Sarak, Lashkar, Gwalior, to which the State Government pays cent per cent grants-in-aid, have preferred this petition under Article 226 of the Constitution of India, in a representative capacity, for seeking redress of the grievance of the teachers, alike petitioners, by a writ of mandamus or certiorari or any other suitable writ, order or direction in the matter of payment of their salary and allowances, and for providing the same benefits and facilities to petitioners and other alike teachers which are being given to the teachers serving in Government institutions.

Brief facts leading to this petition are thus : The petitioners and other teachers, like the petitioners, serving in the aided institutions, governed by M. P.

ASHASHKIYA SHIKASHAN SANSTHA (ADHYAPAKON TATHA ANYA KARMACHARIYON KE VETANO KA SANDAY) ADHINIYAM. 1978 (Act No. 20 of 1978), for short, the "Act", have raised a grievance that payment of monthly salary after expiry of the month is not made by 20th of the month next following the month as mandated in Section 3 of the Act, and, is disbursed after expiry of six months or so. It is complained that house rent allowance is not paid with the monthly salary, but is paid yearly. It is also complained that fixation of scales of pay and allowances of the recognised teachers or other employees is not sanctioned at par with that of corresponding categories of teachers or other employees in the Government educational institutions. The teachers are discharging the same duties as are being discharged by their counterparts in the Government educational institutions, but they are not treated alike. By circular (Annexure P/I) dated 3-9-1990 the Government of Madhya Pradesh have revised the pay scales, bringing them at par with Central pay scales and allowances, of the teachers of aided institutions with effect from 1-7-1990, while the pay scales of the teachers of the Government educational institutions have been revised with effect from 1-8-1989 and the notional fixation of pay has been made under the same pay scales with effect from 1-1-1986. Besides, the disparity in the fixation of revised pay scales, there is a disparity in payment of dearness allowance (D.A.). At the time of the filing of the petition, the Government teachers were getting D.A. at the rate of 58% while D.A. to petitioners was fixed at the rate of 38%. That rate of D.A. has further been increased to Government teachers at the rate of 71%, but the teachers and other employees of the aided institutions are being paid D.A. at the rate of 38%. The petitioners claim that like the teachers of the Government institutions, the petitioners are entitled to the benefit of medical reimbursement, C.C.A., pension and gratuity. The petitioners also claim that time-bound advancement in the pay scales and promotion has been extended to teachers of the Government institutions vide the State Government Notifications dated 14th February/3rd March, 1986 and 11th June/8th April, 1987 (Annexures P/7 and P/8), but the same has not been given to the teachers or employees of the aided institutions. Disparity in pay and allowances and other benefits to the teachers who are discharging same duties and functions alike the Government teachers, is in disregard to the principle of "equal pay for equal work", and is violative of Articles 14, 16(1), 39(d), 41 and 43 of the Constitution.

The three aided institutions in which the three petitioners are working, have made a lukewarm denial, while, in reality, supporting the claim of petitioners.

The State of Madhya Pradesh in their return have contended that the terms and conditions of the recognised teachers or employees of the aided institutions, are regulated by the provisions of the Act which do not provide for the benefits and facilities as claimed. The conditions of service of the teachers and employees employed in the Government educational institutions are entirely different and are governed by Fundamental Rules, and various service rules, framed under Article 309 of the Constitution. Though the petitioners are discharging the same

duties as are being discharged by the teachers of the Government educational institutions, they are not entitled to claim the same benefits, allowances or facilities as are being provided, being governed by the Act. Besides, the services of the employees and teachers serving in aided institutions are not transferable, as they work only in their own institutions, and the seniority cadrewise is counted in their own institutions, while the seniority of the teachers and employees of the Government educational institutions is counted at district as well as divisional level, and in case of Gazetted cadre, at the State level. The teachers and employees of the aided institutions get the benefit of contributory provident fund while the teachers and employees of the Government educational institutions do not. The employees of the Government educational institutions retire at the age of superannuation, while in the aided institutions, it is up to the institution to retire a teacher or an employee at a particular age or not. Therefore, the teachers and staff serving in the aided institutions stand in a class apart from the teachers and employees serving in the Government educational institutions; hence, they are not entitled to claim any parity in respect of scales of pay, allowances and other benefits and facilities being provided to the teachers and employees serving in the Government educational institutions. As regards delayed payment of monthly salary, it was stated that the aided institutions get grants-in-aid on yearly basis in accordance with the Grants-in-Aid Rules, and the education officers are required to scrutinise and to complete formalities including the preparation of salary bills, etc., to ensure that the salary is duly credited in the personal deposit (P.D.) account of the teachers and staff members.

Shri Arun Mishra and Shri N. K. Jain, counsel for the petitioners; Shri R. A. Roman, Government Advocate for respondents Nos. 1 to 3, and Shri J. P. Sharma and Shri S. S. Bansal, counsel for respondents Nos. 4 and 5, were heard.

"Education" in its proper perspective stands on a higher pedestal than any other necessity of life. Education is necessary for the people of the nation, which must be free and fair as far as practicable. To educate people, the Government policy is that the State shall within the limits of its economic capacity, make effective provisions for securing the right to education under Article 41 of the Constitution of India. Article 45 provides that, within a period of ten years, the State shall endeavour free and compulsory education for all children until they complete the age of fourteen years. The right to education may not be in the shape of a fundamental right under Part III of the Constitution, but, reading Articles 41 and 45, it is clear, the framers of the Constitution made it obligatory for the State to provide education for its citizens. It is only education which equips a citizen to participate in achieving the objectives enshrined in the Preamble of the Constitution which assures the dignity of the individual. The dignity of a man is inviolable, as enshrined in Article 21, which cannot be assured unless his personality is developed, and the only way to do that is to educate him. Thus, the Directive Principles which are fundamental in the governance of the country, cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution. These principles have to be read into the fundamental rights. Both

are supplementary to each other. As the "right to education" is concomitant to the fundamental rights enshrined under Part III of the Constitution, the State is under an obligation to establish educational institutions to enable its citizens to enjoy the said right. For that, the State may discharge its obligation through its own or State recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfil its obligation under the Constitution.

Article 51A of the Constitution envisages some of the basic duties which the budding students need to be inculcated and imbibed. They should be sowed in the receptive minds in their formative periods so that they take deep roots at maturity to make them good citizens of our country. A teacher plays a pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. The teacher is adorned as "Gurudevobhava," next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. See *State of Maharashtra v. Vikas Sahebrao* AIR 1992 SCW 2182.

The excellence of the instructions 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. Therefore, it is necessary that the teaching staff should be well equipped. Conditions of service pertaining to minimum qualification of teachers, their salaries, allowance 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, should be made. Oppression or exploitation of the teaching staff or treating them as ordinary labourers has to be eradicated. See *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*,

It is a known fact that in non-Government aided educational institutions, the teachers are exploited, oppressed, and are not paid their full salary in time; their tenure of service is not secure. Therefore, the State of Madhya Pradesh to eradicate the rampant evil from non-Government educational institutions receiving grants-in-aid, to ensure payment of full salary to teachers of such educational institutions in time and to provide them security to tenure of service, enacted the Act.

A Division Bench of this Court in case of *Siddhi Bala Base Library Association v. State of M. P.* 1979 MPLJ 379, while considering the validity of Section 5 of the Act, after referring to various provisions of the Act in some detail, in paragraph 4 has observed that the provisions of the Act mainly provide for a machinery to ensure payment of full salary in time without any unlawful deduction to recognised teachers and other employees every month through the treasury, availability of enough funds for this purpose and utilization of the amount of grant and most of the fees received from the students to make this payment. The Act has also made provisions to secure the tenure of service of teachers, etc.

and provide for recruitment of suitable staff. Suitable provision has also been made to ensure compliance of the provisions by the management of the private educational institutions.

To secure payment of salary within time before the expiry of 20th of each month without any unauthorised deduction, as required by Section 3, Section 5 provides for constitution of "Institutional Fund." Various sub-clauses of this section show that the Institutional Fund is constituted mainly for the purpose of disbursement of salary of teachers and employees of that institution in the manner specified in Section 5 itself. The Education Officer or his nominee under Sub-section (7) is not empowered to act otherwise, his function is only to ensure that the money available in the Institutional Fund is utilised for the purposes specified and that it is done efficiently. See *Siddhi Bala Bose's case* (supra).

Since a serious grievance has been raised relating to delay in payment of monthly salary, it would be proper to refer to the rules framed by the State Government in exercise of its powers conferred by Clause (a) of Sub-section (2) of Section 10 read with Sub-sections (1) and (7) of Section 5 of the Act, which is called the "M. P. ASHASKIYA SHIKSHAN SANSTHA (INSTITUTIONAL FUND) RULES, 1983 (for short, the "Institutional Fund Rules"). Rule 2(e) defines "salary month" as the month for which or for any part whereof the salary is earned. "Salary payment month" as defined in Rule 2(f) means the month immediately following the month in which the salary of the salary month is paid. Rule 3 relates to constitution of the Institutional Fund, and Rule 5 to its operation. Sub-rule (3) of Rule 5 deals with the situation where difficulty arises in operation of the fund. It contemplates that in case of any difficulty arises in regard to the operation of the Institutional Fund, which is normally operated as per Sub-rule (1) jointly by the representative of the institution, nominated by the management and the Education Officer or his nominee, arrangement for payment of salary to the staff can be made by the head of department, defined under Clause (c) of Rule 2, viz., the Director of Public Instructions, in case of private schools. As contemplated in Sub-rule (3) the State Government may on a reference made by the head of the Department, issue an order to the Education Officer to operate the account singly as may be specified in the order. Rule 6 relates to payment of grant by the State Government Ayog. Rule 7 relates to Pass Book of the account of every institution. Rule 8 speaks of opening of two accounts, each by the teachers and other employees of the institution in any Bank or Post Office convenient to them specified by the Education Officer for payment of salary. Rule 9(1) lays down that the Principal/Headmaster concerned shall prepare the pay bills of the teachers and other employees of the institution in Form I before the 20th of the salary month, wherein the amount of salary payable to every employee and deductions to be made there from shall be shown. Sub-rule (2) of Rule 9 relates to signing of the bills and cheques by the representative nominated by the management and the Education Officer concerned. Under Sub-rule (3) of Rule 9, the Education Officer has to examine the pay bills and cheques submitted by 20th of the salary month for verifying

and ensuring the requirements enumerated in Sub-clauses (a) to (d). Under Sub-rule (4) of Rule 9 if any mistake is found by the Education Officer on examination of the pay bills and cheques, he has to return the same to the Principal/Headmaster for correction, but not more than once. Sub-rule (5) of Rule 9 lays down that if there is any dispute in regard to the payment of salary to any teacher/employee, the salary of such teacher/employee shall be disbursed by preparing a separate pay bill after obtaining due orders of the Grants Sanctioning Officer, but for that salary of other teachers/employees shall not be withheld. Sub-rule (6) of Rule 9 casts a duty on the Principal/Headmaster, after completing action under Sub-rule (3), to send the cheque drawn on the personal deposit account not later than 27th of the salary month along with a sheet indicated in Form II. Sub-rule (7) speaks of the encashment of the cheque so sent by 5th of the salary payment month from the treasury/sub-treasury and deposit of the net amount payable to every employee in the account of the employee concerned every month. Sub-rule (8) speaks of issuance of pay slip in Form III by 15th of the salary month by the Principal/Headmaster. Rule 10 relates to deductions. There are other rules also, which are not relevant for the purposes of this petition.

From the aforesaid provisions of the Rules, it is abundantly clear that ordinarily a teacher cannot be denied payment of his salary on the appointed date of the salary payment month. Every institution and Education Officer has to obey the positive mandate of Rule 9 and prepare pay bills of recognised teachers. If there is any default on the part of the Principal/Headmaster, it is open to the Management to take appropriate action against him, but the Management's default cannot stall disbursement of salary to teachers, as it results in extraction of forced labour which is prohibited by Article 23 of the Constitution. Therefore, the stand of the State that, because of the lapses on the part of the institution, Principal/Headmaster, the delay is caused, is not correct, as, to meet such a situation, the Education Officer or his nominee can operate the account singly as may be specified in the order, as is evident from Sub-rule (3) of Rule 5. Hence, the payment of monthly salary to the teachers after the lapse of six, seven or eight months or so on the pretext of completing the formalities and scrutinising the pay bills, etc., is not only illegal but shows lack of performance of statutory duty imposed under the Act and the Rules. A teacher must get his salary of the salary month on the next following month on the appointed date, and for that even if the State Government has to deploly more staff, they may do so, as is the view recently taken by a Division Bench of this Court in an unreported decision in M. P. No. 325 of 1991, Smt. Suman Shinde v. State of M. P. and Ors., decided on 14-11-1992.

So far as the petitioners' claim in respect of payment of arrears of salary of notional fixation of pay scale from 1-1-1986 and actual disbursement of the same from 1-8-1989 is concerned, it is not the stand of the respondent/State that the teachers are not doing the same work or work of similar nature or are not discharging similar duties, functions and responsibilities which are being

discharged by teachers of the Government educational institutions. It is also not in dispute that vide Annexure P/1, the Government has directed that the teachers of the institutions which are getting cent per cent maintenance grant shall be entitled to the same pay and allowances which are being paid to Central Government teachers of employees, but this benefit has been extended to the teachers of the aided institutions from 1-7-1990 while the Government teachers have been extended the benefit from 1-8-1989, giving notional fixation from 1-1-1986. As rightly pointed out by petitioners that Rule 33(1) of the Revised Grants-in-Aid Rules for Non-Government Educational Institutions in Madhya Pradesh, annexed as Annexure R/II, lays down that the scales of pay of teachers including the head of the institution and other employees of the educational institution, which is in receipt of Government grant, shall be in accordance with those sanctioned for the corresponding categories of employees in Government educational institutions. Therefore, not to extend this benefit from 1-8-1989 of the notional fixation from 1-1-1986, in our opinion, is violative of Articles 14, 16(1) and 39(d) of the Constitution and the principle of "equal pay for equal work".

The complaint that the petitioners are not being paid the same rate of D.A. for which they are entitled, as is clear from Rule 33(1), in our opinion, has also merit. When the petitioners filed the petition they were being paid D.A. at the rate of 38%, while the Government teachers and employees were paid D.A. at the rate of 58%, which has been further increased to 71%, but the same rate of D.A. is not paid to the teachers and other employees of the aided institutions. It cannot be denied that Pay and allowances include D.A. Therefore, when the recognised teachers or other employees of the aided institutions are entitled to the same pay and allowances which are being paid to those of corresponding categories of the Government employees and teachers, the Government cannot deny payment of D.A. to teachers equal to that of Government teachers, as that is against the principle of "equal pay for equal work", which has the status of fundamental right and, thus, non-payment of D.A. equal to that of Government teachers is violative of Articles 14, 16(1) and 39(d) of the Constitution. See *Grih Kalyan Kendra Workers' Union Vs. Union of India and others*, ; *Randhir Singh Vs. Union of India (UOI) and Others*, and *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*,

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 *D.S. Nakara and Others Vs. Union of India (UOI)*, *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 Adhyapak Sangh and Others Vs. State of Haryana and others, and Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others,

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 *Lieutenant (Mrs.) India Kumari Kartiayoni Vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-I* and others, *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.

The petitioners have claimed time-bound advancement to the recognised teachers or employees in accordance with Annexure P/7, dated 14-2-1986, and Annexure P/8, dated 11-7-1987, which have been made applicable to aided schools, but, so far, benefits of the same have not been given to the aided schools. As it involves financial implication, we are not inclined to make any direction. However, it is expected from the Government to consider the claim of time-bound advancement in the pay scale in the light of Annexures P/7 and P/8 and in view of Annexure P/5, R F- 85 whereby time-bound scheme has been implemented in Sagar Division to aided schools.

Lastly, in relation to mode of payment of house rent allowance, it is not in dispute that the house rent allowance is being paid to the petitioners/teachers, but the payment is yearly and not monthly, like that of teachers and employees of Government schools. As house rent is being paid to teachers on yearly basis as the grant is arranged yearly, but, in spite of the yearly grant, the teachers are paid monthly salary, their pay bills and cheques are prepared monthly, there can be no difficulty in payment of house rent allowance monthly, changing the mode of payment of house rent allowance yearly to monthly.

In the result, a writ of mandamus is issued commanding the State Government and its authorities to disburse the monthly salary of the teachers by 20th of each month regularly next after the salary month. The due salary of previous months not paid so far shall also be disbursed by 20th of the next month. Petitioners shall be paid D.A. equal to that being paid to teachers and employees of the Government institutions from 1-8-1989. Arrears of D.A. shall be paid by 31st of October 1993. The notional fixation of revised pay shall be made from 1-1-1986 by the end of this year. The teachers shall be paid house rent allowance monthly with their salary by 20th of each month, and for that suitable provision shall be made within three months. The claim of the teachers in respect of time-bound advancement in the pay scales shall be considered and a decision shall be taken thereon within six months; if on consideration the claim is not accepted, the petitioners shall be free to take recourse to appropriate proceeding in accordance with law.

As regards other claims, no orders are passed, as they are not in the province of this Court.

In the circumstances of the case, parties to bear their own costs of this petition. The security amount shall be refunded to petitioners.