

(2012) 09 DEL CK 0112

In the Delhi High Court

Case No : LPA No. 28 of 2012 and CM No. 770 of 2012

Union of India and Another

APPELLANT

Vs

Shanti Yadav and Others

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 41, 47

Citation : (2012) 09 DEL CK 0112

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rajiv Mehra, with Mr. Ruchir Mishra, Mr. Mukesh Kr. Tiwari and Mr. Sanjeev Kumar Saxena, for the Appellant; R. Subramaniam with Mr. Santosh Kumar, Advocates for R-1 to 3. Mr. S.K. Puri with Mr. Praveen Kumar, Advocate for R-4 to 28, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri(Acting Chief Justice)

1. Army Wives Welfare Association ("AWWF" for brevity) is a voluntary and Non-Government Organization (NGO) established with an intention to carry out charity. It started a school for handicapped children of Army Personnel known as "Asha school". Some funding is provided to this school by the Ministry of Social Justice and Empowerment, Government of India (appellant herein). In this behalf, the appellants have issued guidelines in the year, 1999 which stated that DD Division of the Ministry has been administering four NGO Schemes, viz., "Scheme to Promote Voluntary Action Persons with Disabilities" ("scheme" in short) since 1992-93 and in order to broaden the objective of the Scheme and to make it in consonance with the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 [hereinafter referred to as "Disabilities Act"], all these Schemes have been merged into one umbrella scheme with effect from 20.1.1999. Some of the salient features of the Scheme are as under:

Introduction

1.0 The enactment of the people with Disabilities, Equal Opportunities and protection of Rights Act of 1995 is a landmark legislation and an expression of India's commitment to social justice.

The Scheme of the Ministry of Social Justice & Empowerment, Government of India, simplifies and facilitates procedure for easy access to Government support for NGOs with the aim to widen the scope and range of programmes. It will address the unmet needs of the over 95% Indian citizens with disabilities who have not had access to services so far.

2.0 The objectives of the Scheme:

- ? To ensure effective implementation of the Act.
- ? To encourage voluntary action.
- ? To create enabling environment.
- ? To ensure equal opportunities, equity and social justice to persons with disabilities.
- ? To empower persons with disabilities.
- ? To implement outreach and comprehensive Community Based Rehabilitation programmes in urban and rural environments.
- ? To enhance education opportunities at all level and in all forms.
- ? To enlarge the scope of vocational and professional opportunities, income generation and gainful occupations.
- ? To support all such measures as may be necessary for promoting formal as well as non-formal employment and placement opportunities.
- ? To support people with disabilities in projects which are environment friendly and Eco promotive.
- ? To support effort to ensure protection of human, civil and consumer rights to persons with disabilities.
- ? To support legal literacy, including legal counseling, legal aid and analysis and evaluation of existing laws.
- ? To support the development publication and dissemination of information documentation and training materials.
- ? To support the conduct of surveys and other forms of epidemiological studies.
- ? To support (a) construction and maintenance of buildings, (b) furniture and fixtures, and (c) installation and maintenance of machinery and equipment.
- ? To support and facilitate the availability of appropriate housing, homes and

hostel facilities.

? To establish and support facilities for sport, recreation, leisure-time activities, excursions, creative and performing arts, cultural and socially inclusive activities.

? To promote research in various development areas, innovative strategies, assistive devices and enabling technologies and support production of such devices ensuring quality control.

? To support manpower development activities to train required personnel at different levels for all programmes/projects/activities for persons with disabilities.

? To set up well equipped resource centres at different levels.

? To promote and support the development of self-help groups, parent organizations and independent living.

? To encourage coordination, cooperation and networking and multi-sectoral linkages.

? To support such other measures, which may meet the needs of the persons with disability and fulfil the obligations as prescribed in the Disability Act of 1995.

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3.2 Extent of Support:

I. The quantum of support shall be determined on the scope and merits of the project proposal, which could be upto 90%.

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IV. The NGO will submit their application after calculating the amount required to be released under grant-in-aid in a standardized calculation sheet as per the norms prescribed.

Thereafter, revised guidelines 2000 were issued with a view to incorporate certain aspects that the Ministry desired to address while realizing grants assistance to voluntary organization. Some of the salient features of the guidelines spelt out in the said Circular dated 21.6.2000 are as under:

i) To support projects run by good NGOs working in unserved areas, and to widen its intervention with a view to bring about a healthy sectoral growth in areas where little or no attention has been focused so far.

ii) To ensure that the spread of assistance is equitably meted out and keeping in view the scarce resources available, encourage the voluntary organization to mobilize their own financial support systems to sustain their activities, the basic intent being that voluntary organizations should not solely rely on aid from the Government.

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iv) The guidelines make it clear that the funding pattern will be on a reducing basis. VOs that have been assisted in respect of projects for a period in cross of 5 years will be funded on a tapering scale such that over a period of 10 years the grant assistance from the Ministry will stand terminated.

2. Under the aforesaid Scheme, grant in aid to the extent of Rs. 9,71,369/- was provided to the Asha school for the academic year 1999-2000. Asha school employed various teachers to impart education to the disabled persons, and the respondent Nos. 3 to 28 (hereinafter referred to as "teachers") are amongst those people. These teachers filed Writ Petition (C) No. 5364/1999 making a grievance that the salary paid to them was far below the salary paid to their counterparts in Government schools and further that the benefit of pay revision on the recommendation of Fifth Pay Commission was not acceded to them. In this writ petition, appellants were impleaded as the respondent No. 1 & 2 and Adjutant General, Army Welfare Society impleaded as the respondent No. 3, AWWA as the respondent No. 4 and Director Asha AWWA School was impleaded as the respondent No. 5. This writ petition was filed on 02.1.1995 and during the pendency of these writ petition, guidelines dated 21.6.2000, noted above were issued by the appellants. In the meantime, Asha school got grant for the year 2000-01, 2002-03. On 01.4.2003, revised scheme was issued to promote voluntary action for persons with disabilities and in terms thereof grant-in-aid for the Asha school was released for the year 2003-04.

3. The respondent Nos. 1 to 3 herein contested the writ petition by filing their counter affidavit. Thereafter additional counter affidavit was filed by these respondents in November, 2004. This writ petition was ultimately heard and decided vide judgment dated 22.7.2011.

4. The learned Single Judge has allowed the writ petition holding that these teachers are entitled to the same pay scale as enjoyed by their counterparts in other schools run by or under the control of Armed Forces or catering to the needs of Defence Personnel and thus, would also be entitled to the benefit of Pay Commission. A mandamus was issued to the appellants herein to release adequate grant-in-aid to Asha school to meet the requirement to pay the salaries to the teachers and staff. A perusal of the judgment of the learned Single Judge would show that the first question which was discussed was as to whether the school would be amenable to writ jurisdiction under Article 226 of the Constitution and answer to this is given in affirmative relying upon the Constitution Bench judgment of the Supreme Court in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, with an approval in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, .

5. It is not necessary to go into this aspect in detail as the appellants do not question the aforesaid aspect of the judgment of the learned Single Judge in the present appeal touching upon the maintainability of the writ petition under Article 226 of the Constitution.

6. The learned Single Judge thereafter referred to the Schemes formulated by the Ministry which, inter alia, provides for grant-in-aid to the extent of 90% of the total expenses by the Ministry. The learned Single Judge thereafter proceeded to answer the question as to whether the school was justified in denying the teachers and staff the benefit of recommendation of Fifth Pay Commission holding that it was not permissible. The issue is discussed in the following manner:

17. The other question that arises for consideration is whether the Respondents are justified in denying the Petitioners the benefit of the recommendations of the FPC. In a separate compilation, the Petitioners have placed charts and tables comparing the scales of pay offered to the teachers of schools for the disabled either under the Government of National Capital Territory of Delhi ("GNCTD") or of staff of the schools under the armed forces or other special schools. As regards schools for the disabled their primary teachers are paid the scale of Rs. 4500-125-7000/-. Apart from HRA, DA, CCA etc. travel allowance of Rs. 100/- per month is also given both to the Primary as well as Trained Graduate Teachers ("TGTs"). However, in the School in question, the special educators who may be TGTs or PGTs or even primary teachers are given a consolidated pay of Rs. 4200/- with no special educator or medical allowance. An Assistant Teacher is paid a consolidated pay of Rs. 2800/- per month. On the other hand, the scale of pay of Rs. 4500-125-7000 is offered to teachers of the Air Force Golden Jubilee School, Subroto Park; Kulachi Hans Raj Model School, Ashok Vihar Phase- II; Aanchal Special School, Kautilya Marg, NDMC; Balwantray Mehta Vidya Bhawan, Greater Kailash-II; and even the Model School for Mentally Handicapped Children, Kasturba Niketan, Lajpat Nagar-II, Delhi. What is significant is that while in some of these schools a special allowance is given to special educators there is no such allowance to the teachers of the School in question. This also has to be viewed in light of the inability of the State to meet its statutory obligation under the PDA to fulfil the minimum educational needs of disabled children. The need for a School for the special children of the defence personnel is beyond question. The staff of such schools, which include the Petitioners, are in fact discharging what in effect is the statutory obligation of the State under the PDA. The pay and allowances granted to such teachers ought to be on par with teachers in other schools. In fact, those like the Petitioners who are engaged in providing education to the special children ought to be given, in addition to the regular pay scale, special allowances consistent with the delicate and difficult but skilled task being performed by each of them. An educator of a special child has to devote personalised attention to each special child and ensure that the child receives skills and training apposite to the child's abilities and needs and relevant to the child's development as an individual. These skills are gathered by the educator over years of experience and cannot be expected of teachers of children in other schools. There is a need to incentivise and acknowledge the special skills and tasks performed by teachers of special children. Granting them special pay and allowances, in addition to the regular

pay scales, is but one such device.

18. It is disconcerting that the School in question is in fact doing the opposite. It is paying its teachers far less than the normal pay of teachers in other schools whether in the private sector or in the public sector. There can be no justification for this discriminatory practice which clearly contradicts the constitutional guarantee of equality and nondiscrimination under Article 14 of the Constitution. To be fair to Respondent Nos. 3 to 5, Mr. Ankur Chhibber, learned counsel appearing on their behalf stated that if a direction is issued to Respondent Nos. 1 and 2 to release adequate funds to Respondent Nos. 3 to 5, then they would have no objection whatsoever to paying to the Petitioners the revised pay scales not limited to revision of pay consistent with the recommendations of the FPC and consistent with what is being paid to teachers in other schools run by or under the control of the armed forces or catering to the needs of the children of defence personnel. That brings up the issue of financial constraints.

7. The issue of financial constraint is also brushed aside on the ground that lack of financial resources ought not to be permitted to be pleaded when it comes to meeting the constitutional and statutory obligation imposed on the Government of India under the Constitution and the Disability Act respectively. Learned Single Judge observed that as the Ministry is providing grant-in-aid to the school of 90% expenditure incurred but when it is found that the same is not adequate to enable the school to pay its staff and teachers Fifth Pay Commission scales on par with other schools run by or under the control of the Armed Forces or catering to the needs of children of Defence Personnel, a case was made out to issue direction the appellants to release adequate grant-in-aid to meet the said requirements.

8. In this intra-Court appeal preferred by the appellants under Clause 10 of the Letters Patent Appeal, the arguments made by the learned Senior Counsel is that such a mandamus cannot be issued having regard to the nature of Scheme and funding provided therein. It was argued that the basic aim of the Scheme of the Ministry of Social Justice and Empowerment, issued in consonance with the provisions of Disability Act to promote voluntary action for persons with disabilities reads as under:

The basic aim of the scheme is to promote voluntary action. The Human Resource Personnel assisting the nongovernmental organizations are not the employees of Government of India or the Ministry. References in this Annexure to enlisting of the services of Human Resources personnel with prescribed qualifications of RCI should not be construed as giving rise to claims of honorarium at par with personnel of other institution/bodies in the Governmental sector. The position should be made clear to person partaking in the voluntary effort.

9. Mr. Rajiv Mehra, learned Senior Counsel, further submitted that an important aspect of the Scheme contained in the Circular dated 21.6.2000, viz., condition

(iv) was overlooked which provides that the funding pattern will be on a reducing basis. Voluntary organizations that have assisted in respect of projects for a period in excess of five years will be funded on a tapering scale such that over a period of ten years the grant assistance from the Ministry will stand terminated. Therefore, Asha school in no school could claim grant assistance from the appellants beyond ten years.

10. It was submitted that the learned Single Judge without appreciating the above guidelines dated 21.6.2000 and the Scheme to promote voluntarily action for persons with disabilities has directed appellants to release to the Asha school grant-in-aid commensurate to the requirement of the school to pay its teachers and staff, including the Principal and Vice-Principal, pay scales at par with the scales of pay giving to the staff, teachers and holders of corresponding posts in Government Schools, schools run by or under the control of Armed Forces, is contrary to condition (iv) of Guidelines dated 21.6.2000 of assisting NGO/VOs and the Scheme. The Scheme, inter alia, provides for payment of honorarium to persons called volunteers who offered their services for cause to promote voluntarily actions for persons with disabilities.

11. On this basis, the submission was that these volunteers, i.e., the respondent No. 4 to 28 were only entitled to honorarium and could not claim parity with the teachers of recognized aided schools or the Government run school/Army run school.

12. Mr. S.K. Puri, learned Senior Counsel appearing for the respondent Nos. 4 to 28, per contra, argued that the respondent Nos. 1 to 3 had categorically stated that they have no objection whatsoever to pay the revised scales. He further argued that having regard to the laudable objections of Disability Act when the Government had promulgated this school in question agreeing to finance 90% of the expenditure incurred by schools for disability run by the NGO like AWWA maintaining Asha school, the teachers of this school could not be denied their due remuneration on the principle of "equal pay for equal work" as their duties were comparable with the teachers of other such schools for disabled schools run by the Government or under the control of Armed Forces.

13. We have minutely gone through the impugned judgment of the learned Single Judge and have also given due consideration to the arguments of the learned counsel for both the parties. The private respondents herein belong to teaching and non-teaching staff of Asha School. The children who are studying in this school are abnormal intellectual due to cerebral palsy/or are hearing or speech impaired. Teaching and non-teaching staff have to undertake varied jobs from the cleaning of children to physical training and education with the aim to rehabilitate the children and integrate them in the society. Towards this end, the Asha school offers facilities in education, activities of daily living, physiotherapy, music and dance therapy, social integration, speech therapy, vocational training, yoga and other exercises. The school also organizes various in-service training programmes and training camps for parents. Private respondents claim that the

teachers are well qualified and trained in their fields and are required to remain present to attend to the children through the entire hours of the school. These teachers and other staff are not paid same salaries as are paid to their counterparts in Government schools.

14. Further, as pointed out above, under the scheme formulated by the appellant, it is providing some aid to the Asha school.

15. In this background, two issues arise for consideration in this case. The first would be as to whether teaching and non-teaching staff, i.e., the private respondents are entitled to same salaries as given to the teachers and other staff in the Government schools. If answer to this question is in the affirmative, the second question would be as to whether the appellants can be directed to bear and meet the additional financial burden created thereby.

16. While dealing with the first question, we will have to keep in mind the purpose for which Asha school is established and the manner in which the teaching and non-teaching staff was recruited. As indicated in the beginning AWWA runs Asha School. The governing body of AWWA consists of wives of COAS, VCOAS, AG, ADG C&W and DDG (Cer) at Army Headquarters and for day-to-day affairs, there is a Managing Committee. The President, Vice-President and Co-ordinator of Managing Committee is wife of COAS, wife of VCOAS and wife of AG respectively. As a welfare measure, Asha school was started to impart education to differently abled children. These children are of Army personnel. This school is not recognized school and does not come within the ambit of Delhi School Education Act. Therefore, the provisions of the said Act, including those which pertain to payment of salary, etc. to the teachers of the recognized private school, do not apply to Asha school. It is more in the nature of benevolent activity of AWWA for the welfare of differently abled persons. In that sense, assuming it to be a social responsibility, this school is being run. Therefore, the respondents cannot claim parity of pay scales.

17. No doubt, these teachers, viz., respondents herein are performing the same duties, which are being performed by their counterparts in the recognized or aided schools. It is also correct that the work of such teachers who deal with differently abled children may even more arduous. In this sense, these respondents may have the expectations of getting higher salaries. If it was possible for Asha School to meet this financial burden, that would have been an ideal situation. However, as pointed out above, AWWA has taken up this benevolent and social cause of teaching and training differently abled children of the Army personnel. In that sense, its social act is in the nature of welfare measure providing education to handicapped children, which is a noble task. Not only Asha School is not run on profits, no fee or hardly any fee is charged from the students. But for some grant given by the Union of India, it may not even be possible for AWWA to run this Asha School. All these respondents knew it pretty well before they joined the school as teachers. In that sense, they also joined to serve the social cause more as social workers.

18. This Court would like to put it on record that with a heavy heart, the Court is denying the benefit of higher salaries to the respondents. Had it been possible, this Court would have ensured that these teachers also get the same remuneration, which is being given to the teachers of recognized school discharging same duties. However, having regard to the aforesaid situation in mind, it becomes difficult to give these reliefs. If the AWWA or Asha school may have to bear this financial burden, that would be an impossible task for them and they may be forced to close the school. Such a situation would not only be against the public interest, but even the respondents would not want to be so.

19. Coming to the liability of the UOI, it seems difficult to direct them to bear the financial burden, which may accrue if the salaries of the teachers are enhanced in the manner they are demanding.

20. It is a recognized that without imparting proper education to persons suffering from disabilities, there cannot be any meaningful enforcement of their rights under the Act of the Constitution. Realizing this, the Government has taken certain initiative and adopted certain measures to fulfil its statutory and constitutional obligations. The Disability Act places responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment. There have been and are a number of programmes, schemes and services for disabled people in India but there was no separate law to protect the rights of disabled people. The Act claims to fill that void. It seeks to establish a coherent and comprehensive framework for the promotion of just and fair policies and their effective implementation. It creates formal procedures, which hasten the process of full and total integration of the disabled in the society. It also aims at facilitating efficient enforcement of policies. The Act has specially made education of children with special need a basic focus. The main aim of PWD Act is also to define the responsibilities of the Central and State Governments with regard to the services for disabled persons. The Act aims to ensure full life to a disabled individual so as to enable him to make full contribution in accordance with his disability condition. As per the Act, the Central and State Governments are obliged to ensure that every child who is physically and mentally challenged has access to free and adequate education till the age of 18. The Act indicates that integrated education and special schools are required to be set up to meet the educational needs of children with disabilities. The Act also provides for introduction of non-formal education, provision of aids and appliances and creation of adequate teacher training facilities to prepare teachers for special and integrated schools.

21. In order to fulfil these talks, the Government has framed the Scheme, as extracted above. The Government is providing the financial support under this Scheme. There are so many such institutions, which are catered by the Government under this Scheme. Depending upon its financial capacity, such

social Schemes are formulated by the Government. Mandamus cannot be issued to the Government to provide funds beyond their means. If anything is needed in support of this observation of ours, reference to the Supreme Court judgment in the case of State of Punjab and Others Vs. Ram Lubhaya Bagga Etc. Etc., would suffice, wherein the Court held:

29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.

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32. Any State endeavor for giving best possible health facility has direct correlation with finances. Every State for discharging its obligation to provide some projects to its subject requires finances. Article 41 of the Constitution gives recognition to this aspect.

41: Right to work, to educate and to public assistance in certain cases. - The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age sickness and disablement, and in other cases of undeserved want.

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35. Learned Counsel for the appellant submits that in the Writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said to be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the Constitution is not absolute and it is to be within permissible reasonable restriction. This principle equally applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that government will give due consideration and priority to the health budget in future and render what is best possible.

22. Such a direction if given qua Asha school, many other or similar other

institutions who are getting financial support under the Scheme formulated by the Ministry of Social Justice and Empowerment would come forward and it may become naturally difficult for the Government to meet those demands. Therefore, direction to this effect given by the learned Single Judge to the appellant to release grant-in-aid commensurate to the requirement of Asha School to pay to its teachers and staff, including the Principal and the Vice-Principal, pay scales at par with the scales of pay given to the staff, teachers and holders of corresponding posts in Government schools is not legally permissible and we set aside the same. Appeal is allowed in the aforesaid terms with no orders as to costs.