

(2016) 11 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition Nos. 54161-54162 of 2016 (S-RES)

Vidyavardhaka Sangha (R)

APPELLANT

Vs

Smt. K. Meera Bai

RESPONDENT

Date of Decision : 14-11-2016

Acts Referred:

Karnataka Private Educational Institutions (Discipline And Control) Rules, 1978 — Rule 5

Citation : (2017) 1 KantLJ 442

Hon'ble Judges : Raghvendra S. Chauhan, J.

Bench : Single Bench

Advocate : Sri. Somashekhar, Advocate, for the Petitioner; Sri. E.S. Indires, AGA, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Raghvendra S. Chauhan, J.—The petitioners-Vidya Vardhaka Sangha (Regd.) and the Vidya Vardhaka Law College, have challenged the legality of the order dated 28-4-2016, passed by the Principal Secretary to the Government, Law Department, whereby the Principal Secretary has allowed the revision petition filed by the respondent no. 1-Smt. Meera Bai, under Section 131 of the Karnataka Education Act, 1983.

2. Briefly the facts of the case are that Vidya Vardhaka Sangha ("the Society", for short) was established in the year 1949, for imparting education for those who could not afford to have education, at minimum cost, and especially to the members of downtrodden and lower middle class. The Vidya Vardhaka Law College was established in the year 1974-75, and a five years course was further introduced in the academic year 1984-85, with an intake of eighty students. The Law College was not granted any Grant-in-Aid till 25-8-2015. The College has come under the Grant-in-Aid from 25-8-2015. The petitioners had requested the Government to include the first respondent-Smt. K. Meera Bai in the Grant-in-Aid post. However, the Government has rejected the said proposal.

3. The Law College is not financially self-sufficient, and depends on finances which are drawn by the Society from its other educational institutions, or the donations made by the law students.

4. On 10-7-1993, Smt. Meera Bai, was appointed as a part-time Lecturer in Kannada on a consolidated salary. The said appointment was purely contractual. However, ever since the Law College has been granted the benefit of Grant-in-Aid, the College has been requesting the Government to give the benefit of Grant-in-Aid to Smt. Meera Bai as well.

5. A few of the employees of the Law College had filed a petition before the Principal Secretary, the respondent no. 2, for being granted the same pay scales as the amounts were being granted in the Government Educational Institutions. By order dated 8-11-2005, the Principal Secretary had allowed those petitions. Since the Society was aggrieved by the said order, it had filed a writ petition before this Court, namely W.P. No. 6025 of 2006. Although this Court had granted interim stay in favour of the Society, but subsequently, the said stay was vacated by this Court. Therefore, the petitioners filed a writ appeal, namely W.A. No. 1647 of 2006 before this Court. During the pendency of the writ appeal, the appellants, therein, and the Management agreed that the appellants would be paid the pay scale notionally from 1992 and would be paid their regular salary on par with the Government Educational Institutions only from 1-6-2007. It was also agreed that for the intervening period, from 13-6-1992 to 30-5-2007, only 50% of the notionally fixed salaries would be paid to them and that, too, in two instalments. Upon such an understanding reached between the parties, the writ appeal was finally disposed off on 17-9-2007.

6. Taking advantage of the understanding which was reached between the Management and the appellants, therein, in the aforementioned appeal, Smt. Meera Bai filed a revision petition before the Principal Secretary. In her revision petition, she prayed that she should also be paid the same salary as her counterparts are being paid in the Government Educational Institutions. The Society filed their objections. But, by the impugned order dated 28-4-2016, the revision petition has been allowed on the aforementioned terms. Hence, this petition before this Court.

7. Mr. Somashekar, the learned Counsel for petitioners has raised the following contentions before this Court:

Firstly, that the respondent no. 1 being a part-time employee, is not entitled to the same pay scale as is being paid to her counterparts in the Government Educational Institutions.

Secondly, relying on the cases of Sushmita Basu and Others v. Ballygunge Siksha Samity and Others, (2006) 7 SCC 680 and Satimbla Sharma and Others v. St. Paul's Senior Secondary School and Others, (2011) 13 SCC 760 the learned Counsel has contended that the employees of a Private Unaided School cannot be kept on par with the employees of the Aided School. The Karnataka Private

Educational Institutions (Discipline and Control) Rules, 1978 ("the Rules of 1978" for short), applies only to the Aided School. Therefore, the benefit of Rule 5 of the Rules of 1978, cannot be extended to the respondent no.1.

Thirdly, in case the Society is directed to pay the same pay scale as is being paid to the teachers in the Government Educational Institutions, a financial burden would be placed on the Society, which may not be able to bear. Hence, the very existence of the Society and especially of the College may be in danger.

Fourthly, when the respondent no.1 is not even qualified, as according to the Rules, she is supposed to have 55% in M.A. Degree, whereas, the respondent no.1 has secured merely 52%, she is not entitled to the same pay scale as that of the Government teachers in the Government Educational Institutions.

Lastly, relying on the case of *Union of India and Others v. Tarsem Singh*, (2008) 8 SCC 648 the learned Counsel has pleaded that, in case the arrears has to be paid to the respondent no.1, the same cannot be paid for more than three years from the date of filing of the petition. Therefore, the impugned order deserves to be set aside by this Court.

8. On the other hand, the learned Counsel for respondents has raised the following contentions:

Firstly, the Rules of 1978 cover the Aided Schools. Since the petitioner no.2-the Law College, is being aided by the Government, the Rules are applicable to the Law College.

Secondly, that Rule 5 of the Rules of 1978 does not make a distinction between the part-time and full-time employees. It merely prohibits the Management from paying a scale of lower than the one applicable to the employees of Government Educational Institutions. Hence, it is immaterial if the respondent no.1 happens to be a part-time employee or not.

Thirdly, even if she were unqualified, the Rules of 1978 are still applicable to the respondent no.1 as the Rules are silent on the point of qualification. Thus, the learned Counsel for petitioner is unjustified in claiming that merely because she is unqualified for the post, she is equally not entitled to the pay scale applicable to the Government teachers in the Government Schools.

Fourthly, that the cases of *Sushmita Basu and Others* (supra) and *Satimbla Sharma and Others* (supra) are distinguishable on factual matrix. Therefore, neither of these cases support the case of the petitioners.

Lastly, that even the case of *Tarsem Singh* (supra) is inapplicable to the present case as the issue with regard to the payment of arrears has neither been raised by the respondent no.1, nor decided by the respondent no.2, in the impugned order.

9. According to the learned Counsel, the respondent no.1 has already filed a separate writ petition before this Court with regard to the payment of arrears of

her salary. The said writ petition is presently pending before this Court. Hence, the reliance placed by the learned Counsel for petitioner on the case of Tarsem Singh (supra) is highly misplaced.

10. Heard the learned Counsel for parties and perused the impugned order.

11. The Rules of 1978 apply to the Private Educational Institutions functioning in the State of Karnataka.

12. Rule 5 of the Rules of 1978, deals with the scale of pay. Rule 5 is as under:

"5. Scale of Pay. - The scale of pay of an employee of an institution shall not be lower than the scale of pay of an employee of a corresponding post in the Government Educational Institutions."

Rule 5 of the Rules of 1978 really prohibits a Private Educational Institution from paying a scale of pay lower than the scale of pay paid to an employee of corresponding post in the Government Educational Institutions. Thus, the said Rule is applicable to the Private Education Institutions. The said Rule does not create any exception, and is absolute in its term. Since the said Rule is essentially a benevolent piece of legislation, as it tries to get rid of the mischief of exploitation of the employees by the management, it has to be applied as liberally as possible. Since the said Rule does not make any exception, the said provision is applicable to both the part-time and full time employees of the Private Education Institutions. Therefore, the learned Counsel for petitioners is unjustified in claiming that the Rules of 1978, in general, and Rule 5 of the Rules of 1978, in particular, are inapplicable to respondent no. 1.

13. Even if the respondent no. 1 may be unqualified to hold the post, as long as the respondent no.1 is working for the petitioners, under Rule 5 of the Rules of 1978, she would be entitled to receive the same pay scale, as is being received by her counterparts in Government Educational Institutions.

14. Although the learned Counsel for petitioner has claimed that the society would be financially burdened, but even the said argument is unacceptable. For, Rule 5 of the Rules of 1978 does not make any exception with regard to the financial viability of the Management. Once the Law requires that the Management has to pay the same scale as that of the Government Educational Institutions, the Management cannot plead its inability to adhere to the law.

15. The learned Counsel for respondents is justified in claiming that the issue of payment of arrears of salary is not even involved in the present petition. For, according to the impugned order, the petitioner-Society has been directed merely to pay the same salary to the respondent no.1, as per Rule 5 of the Rules of 1978. The impugned order does not direct the Society to pay the arrears of salary to the respondent no.1. Moreover, the issue, whether the respondent no.1 is entitled to the payment of arrears of salary is still alive, and is still pending before this Court, as the respondent no.1 had already filed a writ petition with regard to the said cause of action. Therefore, the reliance placed by the learned

Counsel for the petitioner on the case of Tarsem Singh (supra), is highly misplaced. Since the issue is still pending, it is not for this Court to express any opinion with regard to the said issue.

16. The learned Counsel for petitioners has relied on the case of Sushmita Basu and Others (supra) and Satimbla Sharma and Others (supra). However, both these cases are distinguishable on their factual matrix. In the case of Sushmita Basu and Others (supra), the Hon"ble Supreme Court has opined that, in the absence of any statutory provisions directing the Private Unaided Educational Institutions to implement the recommendation of the Third Pay Commission retrospectively, the High Court was not justified in granting the arrears of salary to the Teachers in its writ jurisdiction. The Apex Court has clearly observed that "the appellant teachers admitted that there was no statutory provision or even Government order directing Private Unaided Educational Institutions to implement the recommendations of the Third Pay Commission". Similarly, in the case of Satimbla Sharma and Others (supra), the Hon"ble Supreme Court has opined that, "no relief can be given in the absence of statutory provision in favour of the Teachers in Unaided Private Educational Institutions". However, in the present case, Rule 5 of the Rules of 1978 are in favour of the employees, including the Teachers of Private Educational Institutions. Therefore, the ratio of the cases of Sushmita Basu and Others (supra) and Satimbla Sharma and Others (supra) are inapplicable to the present case.

17. For the reasons stated above, this Court does not find any merit in the present writ petitions. The petitions are hereby dismissed.