
(2001) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 6559, 6560, 6561, 6562, 6563 and 6564 of 1997

Yashpal Sharma and Others

APPELLANT

Vs

The Rajasthan Non-Government Educational Institutions
Tribunal and Others

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (2003) 1 WLN 689

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—In all the above-said writ petitions common point of law and the facts are involved with the identical relief.

2. The petitioners were employed on various dates as mentioned in the respective writ petitions by respondent No. 2 Hahalva Keshtriya Shiksha Samiti an educational institution, run by it. The only point involved in the writ petitions is whether the petitioners are entitled to some pay scale as that being paid in the educational institutions of State of Rajasthan to the employees employed in the same category, therefore, there is hardly any necessity to narrate any other fact.

3. Respondent No. 2 (herein-in-after called the institution) is said to be un-aided institution but is recognised institution. It is running the educational institution but not paying the emoluments to its teachers and employees equal to the similarly situated employees in the Government educational institutions or aided institutions.

4. For the reason that the petitioners are not being paid the salary equal to Government servants as many as 8 employees namely: Yashpal Sharma, Mohan Singh Naruka. Rajkumar Gupta, Suresh Chandra Saini, Ram Prakash Tiwari,

Akhilendra Singh, Randhir Singh Yadav and Dharmendra Kumar, approached the Non-Government Educational Institutions Tribunal with one of the relief aforesaid in different applications filed before the Tribunal. All the applications were consolidated and decided together vide impugned order dated 16.8.1997 dismissing the appeals. Being aggrieved, the present six writ petitioners have filed the writ petitions with the prayer to set aside the order of the Tribunal and to grant relief to the petitioners as per law.

5. It was the case of the petitioners before the Tribunal that even though the State employees in the educational institutions were getting much more amount but the petitioners who are highly qualified i.e. B.Com., B.Ed. and even certain higher qualifications and are doing the work of teaching the students in the institution, but were being only paid Rs. 900/- p.m. in toto, which salary was even much less than the Class IV employees. It was further submitted that because of un-employment conditions faced by the petitioners and like persons, these private institutions are exploiting the helplessness of the educated teachers even going to the extent that not only the salary was being paid much less but at the time of entering the service, the resignation in advance was also obtained as a hanging sword on the employees and in case any voice was raised, the result was obvious.

6. It was admitted by the respondents that the salary to the teachers including B.A., M.A., B.Ed., etc. was being paid at Rs. 900/- p.m. for the reason that the institution was not aided institution and was not getting any help from the State and also for the reason that the fee is being charged from the students i.e. ranging from Rs. 35/- to Rs. 60/- (as stated in the reply before the Tribunal) it was not possible to pay scale as demanded. It was denied that any resignation was being obtained in advance at the time of entering into service.

7. In the rejoinder before the Tribunal as mentioned in Annexure-3 attached with the writ petition, it was stated by the petitioner that the minimum fee structure was from Rs. 45/- to Rs. 100/- p.m. per student and the number of students were in thousands.

8. The institution is a recognised institution under the Rajasthan Non-Government Educational Institutions Act, 1989. Every institution seeking recognition is to apply as per the rules by fulfilling certain conditions. Section 4 of the Act provides as under:

4. Kinds of Recognition--Recognition may be of two kinds--

(i) Temporary recognition.

(ii) Permanent recognition.

(i) Temporary Recognition--Any educational institution submitting an application for recognition of a school/ college/library/research institution or training school supported by an affidavit verifying the correctness of the facts mentioned therein may be given temporary recognition.

(ii) Permanent recognition--A Non-Government Education Institution shall be eligible for permanent recognition, if it complies with the following conditions.

(a) After having been granted temporary recognition, the institution seeking permanent recognition must have worked satisfactorily fulfilling the terms and conditions, as specified in Appendix-II, for atleast three years from the date of such temporary recognition.

(b) The management has promptly complied with the provisions of these rules and orders/directions or instructions issued by the Director of Education/State Government and in submitting all necessary information asked from it from time to time.

(c) The students have shown satisfactory examination results.

(d) The institution complies with the minimum physical/ financial norms and other conditions laid down in Appendix-II.

9. The conditions which are required to be complied with by the institution are mentioned in Appendix-II which shall be discussed here-in-after.

10. Section 5 provides for the procedure for recognition in regard to school, educational status of institution, prescribed norms and conditions as mentioned in Appendix-II and only when such report is received the recognition is granted.

11. Appendix-II as mentioned in Sections 4 and 5 relates to non-government educational institutions which prescribes of a building to be constructed and maintained, size of the building relating to office and also the classes etc., library, sports, NCC and many other matters which go to the root for maintaining the educational institution including the educational qualifications about the teachers and other employees and salary to be paid as per the salary fixed by the Board and also the syllabus and work load to be done by the teacher. As a matter of fact Appendix-II is a complete code in itself which requires to be fulfilled at the time of getting the recognition. In Clause (14) it is specifically mentioned that the employees of such institution shall be paid the salary, D.A. and provident fund etc. as per the Government rules. The clause in regard to salary etc. is reproduced as under:

osru HkRrs izkFkfed@mPp izkFkfed laLFkk es dk;Zjr deZpkjh;ks dks ljdkj ek;/fed@lhuh;j mPp ds fu;eks ds vuqlkj osru] egxkbZ HkRrk ek;/fed fo|ky; ,oa Hkfo"; fuf/k lqfo/kk,W miyC/k djkh tk,W A

Counsel for the respondents states that the aforesaid Act is not applicable to the respondent institution for the reason that it is a un-aided institution and relies on a judgment in the case of M.G.D. Girls School and Anr. v. Educational Tribunal and others 1995 (1) WLC 99.

12. In the case of K. Krishnamacharvulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr. AIR 1998 SC 295, it was held by the Supreme Court that it was obligatory on the part of the State to provide facilities and

opportunities to people to avail right of education. The private institutes cater to need of educational opportunities which has element of public interest. Teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. It was held by the Hon'ble Supreme Court that to enforce such law by the teachers of the un-aided private institutions for entitlement to get equal pay at par with the Government employees as enshrined under Article 39(d) of the Constitution of India. It was observed as under:

In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizens. the teachers who teach the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence. are they also not entitled to the parity of the pay scales as per the executive instructions of the Government?

Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view 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.

So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.

13. Present is the case where an un-aided private institution has sought statutory recognition from the State of Rajasthan for running the school and while applying for such recognition had undertaken to abide by the rules of recognition which included Appendix-II. Appendix-II did provide that the salary to be paid to the teachers and other staff would be as fixed by the Board. The similar teachers employed in the aided institutions even though doing the same work of teaching are being paid the Government scales, there is no reason as to why despite the undertaking given at the time of recognition, a private un-aided institution can be made an exception to pay at its own whims and that too an meagre amount of Rs. 900/- p.m. to the post-graduates having professional degree of B.Ed. or even higher. It does amount to violation of human rights and the teachers employed in private institutions have right to give with some honour. The petitioners are entitled to protection under Article 39(d) of the Constitution of India which is equally applicable to such employees. The fact that if a teacher is not paid even the bare minimum for his living or surviving, it can

effect the standard of education to be imparted to the students and, therefore, it is all the more good reason to supervise by the State which gives the recognition to the institutions whether the teachers of un-aided and other staff are being paid in accordance with the norms fixed by the Government or not and to evolve a machinery in this regard so as to end the grievances of teaching staff of un-aided private institutions once for all. Even though the grievance has also been raised in regard to exploitation being done by the private institutions in offering only three months employment at a time and other alike actions by the management of teaching institutions but in the present writ petition there is hardly any necessity to go in any other aspect except as discussed above.

14. For the above-said discussion and reasons, the order of the Tribunal dated 16.8.1997 is set aside with the direction to the respondents to pay to the petitioners the salary as per the norms fixed by the Government in the institutions run by the Government or aided private institutions. It is high time that the State of Rajasthan through Education Department issues instructions in this regard and also evolves a machinery to end such type of grievance being made by the teachers in the private institutions of the State of Rajasthan.

15. With the above-said discussion and reasons, the writ petitions are allowed. No order as to costs.