

CONSTITUTIONAL WRIT

Present: The Hon'ble Justice Dipankar Datta

W.P.No.5167 (W) of 2006

Judgment on: April 1, 2010

Smt. Mala Bhattacharjee (since deceased)

represented by LRs & anr.

Vs.

State of West Bengal & ors.

with

W.P. No.5168 (W) of 2

Smt. Usha Roy & anr.

Vs.

State of West Bengal & ors.

POINTS:

PAYMENT OF SALARY-Original Petitioners, approved teachers of Tuliya Sitala Balika Vidyapith-No evidence, to prove that the school was under the Salary Deficit Scheme-The petitioners not given increased DA in terms of ROPA 1981 and ROPA 1990-Whether, payment of full salary to the petitioners under the Salary Deficit Scheme to be preceded by an amalgamation of the school with the Boys' school-Constitution of India Art 226

FACTS:

The original first petitioner and the second petitioner were approved teachers of Tuliya Sitala Balika Vidyapith. The first petitioner was the Headmistress of the school while the second petitioner was a clerk thereof. The original first petitioner in the former petition having died on 23.9.2006, an application for substitution was filed which, on being allowed, her legal heirs were brought on record as substituted petitioners by an order dated 28.4.2009. The petitioners have prayed for payment of salary and other benefits in

THE COURT:

1) Since common questions of fact of law are involved, these two petitions have been heard together and shall stand disposed of by this common judgment.

2) The original first petitioner and the second petitioner in W.P. No. 5167(W) of 2006 were approved teachers of Tuliya Sitala Balika Vidyapith (hereafter the school). The first petitioner in W.P. No. 5168 (W) of 2006 was the Headmistress of the school while the second petitioner was a clerk thereof. The original first petitioner in the former petition having died on 23.9.2006, an application for substitution was filed which, on being allowed, her legal heirs have been brought on record as substituted petitioners by an order dated 28.4.2009. While the Headmistress retired from service w.e.f. 1.8.2004, the clerk retired from service w.e.f. 1.8.2000.

3) The petitioners have prayed for payment of salary and other benefits in terms of ROPA 1981 and ROPA 1990. They have also prayed for payment of arrears upon fixation of pay in the appropriate scale of pay in terms of ROPA 1981 and ROPA 1990.

4) For the purpose of giving a decision on the entitlements of the petitioners, certain antecedent facts require notice.

5) The school was recognized as a IV class Junior High School in the early seventies of the last century for two years. Recognition was extended by an order of the Board dated 28.4.1976 until further orders. All the petitioners having been appointed, their appointments were approved by the District Inspector of Schools (S.E), Midnapore (hereafter the DIoS). The petitioners had the occasion to approach this Court earlier in its writ jurisdiction voicing a grievance that they have not been given salary and other benefits in terms of ROPA 1981 and ROPA 1990. The Court had passed an order on 27.8.1992 calling upon the DIoS to submit a report. The report dated 12.11.1992 revealed depletion of the roll strength of the students. It was suggested to merge the school with

Tuliya Sitala Model (Boys) School and the teaching and non-teaching staff may be paid full salary under Salary Deficit Scheme. However, in such case necessary permission from the competent authority as well as consent for such amalgamation would be required from the Managing Committee of the Boys School.

6) Upon consideration of the report, a learned Judge of this Court by order dated 25.2.1997 disposed of the writ petition with the following directions :

“Dist. Inspector of Schools (SE) Tamluk is also directed to pass necessary order for amalgamation of the school by allowing the Boys’ School to held co-education class from Class-V to Class X.

The Director of School Education, West Bengal shall take necessary steps and complete the transfer of the school and all teaching and non-teaching staff shall be paid their salary according to ROPA 198 and ROPA 1990, within 30th April, 1997. All teaching and non-teaching staff are directed to extend their co-operation to the Dist. Inspector of Schools (SE) Tamluk, for completing the examination of the school and closing the entire exercise for amalgamation of the school with the other school.

The writ petition is thus, disposed of.”

7) A writ appeal was preferred against the order dated 25.2.1997. The appeal was allowed. Operative portion of the appellate order dated 17.5.1999 reads as follows :

“Keeping in view of the aforementioned dicta, we have no other option but to set aside that part of the judgment under appeal as quoted hereinbefore. However, there cannot be any doubt whatsoever that the appropriate authority, namely Executive Committee, may exercise its power conferred upon it under Section 19A(3)(d) of the Act upon consideration of the entire materials on records and upon asking the appropriate authority including the District Inspector of Schools (SE) Tamluk to submit such materials

before it so as to enable it to arrive at a conclusion as to whether the order of amalgamation should be passed or not. The said committee may thereafter pass an appropriate order strictly in accordance with law.

However, keeping in view the fact that no appeal had been preferred against the other part of the judgment in terms whereof teachers had been directed to be paid their salaries in terms of recommendation of Third Pay Revision Committee and Fourth Pay Revision Committee as also in the light of the observations made by this Court in its order dated 5.1.98, we hope and trust that all arrears of payment should be made as expeditiously as possible.

For the reasons aforementioned, this appeal is allowed to the extent mentioned hereinbefore without any order as to costs.”

8) As a consequence of the order of the Appeal Court, the amalgamation did not take effect as directed by the learned single judge. The petitioners were also not paid salary and other benefits in terms of ROPA 1981 and ROPA 1990.

9) An application for contempt was filed by the petitioners before the Hon'ble Division Bench. By order dated 4.2.2000, the contempt petition was dismissed holding, inter alia, as follows :

“Having heard the learned Counsel, we are of the opinion as no positive direction has been issued as regards payments of salary and merely a pious wish was expressed, it is not a fit case in which proceedings under the Contempt of Courts Act should be initiated for violation of this court's order dated 17.5.1999.

It will, however, be open to the petitioners to take recourse to such remedy which is available to them in law.

This application is dismissed accordingly.”

10) After dismissal of the contempt petition by the Hon'ble Division Bench, a contempt petition was filed before the learned single judge whereupon WPCRC No.3202 (W) of 2001 was issued.

11) The operative portion of the order dated 30.11.2005 passed by a learned Judge of this Court while discharging the contempt rule reads as follows :

“I also find substantial force in the submission of counsel for the alleged contemnors that in view of order of their Lordships of the division bench dated May 17, 1999 setting aside the part of the judgment under appeal that was quoted in their Lordships' order, it can reasonably be said that order made by the single judge directing payment according to ROPA rules also stood set aside. True it is that their Lordships at the latter part of the order also expressed their Lordships' hope regarding steps to be taken by the authorities for paying arrears to the petitioners. But in the order dated February 04, 2000 made in the contempt application the division bench unambiguously said that the observations made expressing hope were nothing but pious wish, and hence they could not be made basis for initiating contempt proceedings. On such facts, it is not reasonably possible to say that the alleged contemnors wilfully or deliberately disobeyed or violated any direction given by the order of the single judge dated February 25, 1997. Hence I am unable to hold that the allegations made by the petitioners are sufficient to hold the alleged contemnors guilty of contempt of this court.

Counsel for the petitioners says that his clients may not be made remediless. In my view, there is no reason to express such anxiety. As is known, for dismissal of contempt proceedings, one entitled to get benefits in terms of the order violation whereof is alleged does not become remediless.

For these reasons I hold that the present contempt rule should be discharged and the contempt application should be dismissed; and I order accordingly. The contempt rule shall stand discharged and the proceedings shall be deemed to be closed.

There shall be no order for costs in the proceedings.”

12) The present petitions were filed after the rule was discharged as referred to above.

13) Mr. Dutta, learned Advocate representing the petitioners invited the attention of the Court to Memo dated 20.3.1997 issued by the DIoS wherein it was recorded that “*all teaching and non-teaching staff of her school shall be paid their salary according to the ROPA 1981 and ROPA 1990 within 304.1997*” and the Headmistress of the school was requested to submit arrear claim in the prescribed proforma in triplicate along with relevant documents within 7 days for onward transmission thereof to the office of the Director of School Education, West Bengal for placement of sufficient fund in this regard.

14) According to him, the DIoS having accepted the position that the petitioners are entitled to payment of salary and other benefits according to ROPA 1981 and ROPA 1990, the respondents have acted arbitrarily in denying the petitioners their due benefits.

15) He next referred to the affidavit-in-opposition of the DIoS to the supplementary affidavit wherein the defence of the State respondents is that the school not being under the Salary Deficit Scheme, the petitioners are not entitled to benefits of ROPA 1981 and ROPA 1990. He contended that documents annexed to the supplementary affidavit of the petitioners in W.P. No.5167 (W) of 2006 are sufficient to disprove the contention of the State respondents that the school was under the Salary Deficit Scheme.

16) He also referred to the report filed by the DIoS before the learned single judge, referred to above, and as urged on the basis thereof that the petitioners were held entitled to “*full salary under Salary Deficit Scheme*”. He, accordingly, prayed for relief as claimed by the petitioners.

17) Mr. Chakraborty, learned Advocate representing the State respondents, opposed the petition by submitting that the school was never under the Salary Deficit Scheme; on the

contrary it was a Dearness Allowance (hereafter DA) getting school meaning thereby that teaching and non-teaching staff of the school were entitled to only DA paid by the Government. He referred to the documents annexed to the affidavit-in-opposition to show that all along the petitioners had been receiving the DA component from the Government and not their entire salary. He further urged that there is no averment in the petition that the school was under the Salary Deficit Scheme.

18) Referring to the report of the DIOs filed before the learned single judge while the earlier writ petition filed by the petitioners was being considered, he pointed out that part of the report wherein it was recorded as follows :

“now with the full co-operation with the local people, if a separate school building is erected of its own, required school furniture and teaching aids are provided and if the academic atmosphere of the school is improved with incrisement (sic-increase) of roll strength, only then the approved staff of the school may be paid, full salary under Salary Deficit Scheme.”

19) Relying thereon, he contended that had the school been in receipt of grant under the Salary Deficit Scheme, the aforesaid observation would not have been made in the report.

20) Referring to the order of the Hon'ble Division Bench dated 17.5.1999 he contended that the petitioners do not have any valid claim in respect of payment of salary in the light of the observations made by the Court earlier. Amalgamation of the school with the Boys' School was the pre-condition for the Salary Deficit Scheme to be made applicable and the school having not merged with the Boys' School, the amalgamation did not take place and, therefore, the Salary Deficit Scheme is not applicable. He invited the attention of the Court to that part of the order dated 30.11.1995 passed by the learned single judge while discharging the rule wherein His Lordship recorded that the direction made regarding payment according to ROPA Rules also stood set aside, as extracted (supra). According to him, no legal right of the petitioners have been infringed and, therefore, they are not entitled to any relief.

21) He, however, very fairly submitted that the petitioners would be entitled to increased DA in terms of ROPA 1981 and ROPA 1990 if the same had not yet been released in their favour.

22) I have heard learned Advocates for the parties and considered the materials on record.

23) No evidence, of clinching nature, has been placed to prove that the school was under the Salary Deficit Scheme. Mr. Chakraborty is right in his contention that on perusal of the report of the DIoS dated 12.11.1992, it is clear that the school was not under the Salary Deficit Scheme and that payment of full salary to the petitioners under the Salary Deficit Scheme indeed had to be preceded by an amalgamation of the school with the Boys' school. He is also correct in his contention that the learned single judge while discharging the rule for contempt having held that directions regarding payment according to ROPA Rules stood set aside, the petitioners have no right in law to say that the State Government not having preferred any appeal against that part of the order dated 25.2.1997, it is bound to pay the petitioners' salary and benefits in terms of ROPA 1981 and ROPA 1990.

24) Significantly, the order dated 30.11.2005 of the learned single judge does not record that the observations made therein would not in any way influence subsequent proceedings that the petitioners may wish to initiate for obtaining relief. The finding as arrived at in the order dated 30.11.2005 is thus binding on me.

25) That apart, documents annexed to the affidavit-in-opposition of the DIoS do seem to suggest that the petitioners were only receiving the DA component and not full salary under the Salary Deficit Scheme. In terms of the Salary Deficit Scheme introduced vide Memo No.343 dated 3.3.1973, a formal order is required to be passed bringing the school under the Salary Deficit Scheme. The school having obtained recognition initially in 1970 for two years i.e. before the Salary Deficit Scheme was introduced, it stands to reason that at the inception it was not under the Salary Deficit Scheme. Some of the

petitioners herein started rendering service in the school prior to introduction of the Salary Deficit Scheme. One of the petitioners appears to be the Headmistress of the school. It was, therefore, obligatory for the petitioners to adduce some evidence based whereon it could be recorded that the school was brought under the Salary Deficit Scheme at same point of time.

26) I am, therefore, unable to hold that the petitioners have been successful in proving that the school was under the Salary Deficit Scheme. The letter of the DIoS dated 20.3.1997 must be held to have been issued by mistake and, therefore, not binding on the State Government.

27) The writ petitions stand dismissed.

28) However, it is observed that in the event the petitioners have not been given increased DA in terms of ROPA 1981 and ROPA 1990, the same shall be released in their favour by the competent authority upon due approach being made by the petitioners in this behalf as early as possible but not later than eight weeks from date of such approach.

29) Photocopy of this order shall be retained with the records of W.P. No.5168 (W) of 2006, duly countersigned by the Assistant Registrar (Court).

30) Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.

(DIPANKAR DATTA, J.)