

Before : S. S. Sodhi, J.

HARBHAJAN SINGH BAINS,—Petitioner.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 2107 of 1978.

December 19, 1985.

Constitution of India 1950—Article 226—Court directing in writ proceedings that pay be fixed in terms of the government order—Another person approaching the department claiming benefit of the aforesaid judgment in order to claim similar relief—Relief denied by the department on the ground that the government orders regarding pay fixation would be made applicable only on court directions—Such order of the department—Whether valid.

Held, that when it had been held by the Court that Government was duty bound to fix the pay of teachers in accordance with the principles laid down in the government order, it was incumbent upon the authorities to fix the pay of such teachers in the same manner. Those who had filed petition under Article 226 of the Constitution of India, 1950, in this behalf do not thereby form or constitute any special category warranting different treatment from those who though being similarly placed had not approached the Court for this purpose.

(Para 7).

Writ petition under Articles 226 and 227 of the Constitution of India praying that the Hon'ble Court may be pleased to issue an appropriate writ, order or direction for directing the respondents to fix the pay of the petitioner in accordance with the memorandum dated 28th August, 1961 and the respondents are not entitled to fix the pay of the petitioner in accordance with the memo, dated 19th March, 1965.

Any other relief which is just and proper in the circumstances of the case be allowed to the petitioner.

The costs of this petition be also awarded.

B. S. Khoji, Advocate, for the Petitioner.

G. S. Grewal, A.G. Punjab, with H. S. Nagra, Advocate, for Respondents Nos. 1 & 2.

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JUDGMENT

S. S. Sodhi, J.

(1) The matter here exemplifies a typically bureaucratic attitude driving the petitioner to knock at the doors of this Court for a relief which could and should have been granted by the authority concerned. It pertains to the fixation of pay of a teacher of a private school, consequent upon it being taken over by the Government.

(2) The petitioner Harbhajan Singh was a teacher in the Khalsa Higher Secondary School, Mahilpur, when it was taken over by the Government in December, 1961. He was thereby taken into Government service as a Drawing teacher. Pay of existing staff including that of the petitioner was required to be fixed in accordance with the Government Memorandum of August 28, 1961 (Annexure P-1) which provided that the staff of this school would be allowed only Government pay scales and pay in the Government Scales would be fixed on the basis of length of service in equivalent, identical and higher time scale. It was on this basis that the pay of the petitioner came to be fixed.

(3) The criteria for fixation of pay of the teachers of private schools taken over by the Government was, however, subsequently changed. The new criteria being as contained in Memorandum No. 1088-Ed.-IV-(36)/75/65/4511, dated March 19, 1965. This being,—

- “(i) A teacher whose pay is less than the minimum of the Government scale would be given the minimum of the Government scale;
- (ii) In other cases where the pay is more than the minimum of the Government scale, he should continue to get higher salary as personal pay and the amount of his personal pay which he may be getting more than the minimum of the Government scale should be adjusted against his future increments;
- (iii) That the previous Government orders regarding fixation of pay of such teacher stand modified to the above extent.”

(4) In so far as the petitioner was concerned, the earlier criteria was more to his advantage.

(5) One Dalip Singh Gill, Deputy Education Officer, Bhatinda who was also adversely affected by this new criteria of March 19, 1965 challenged it in writ proceedings where it was struck down and the appeal filed against it was also dismissed. This being *Director of Public Instructions Vs. Dalip Singh Gill*. (1), it was observed there,—

“We are of the considered opinion that the Government was duty-bound to fix the pay of the respondent in accordance with the principles settled at the time when the private school was taken over in May, 1962.

If after fixing the pay of the respondent in accordance with these principles and after allowing him the usual increments, the Government comes to the conclusion that statutory rules be amended so as to effect the conditions of service of all the employees placed in the same grade, the action taken by the Government would perhaps be supportable on the basis of the principle laid down by their Lordships of the Supreme Court in Roshan Lal Pandori's case (supra). The Government can certainly be not allowed to go back on a solemn promise made at the time when the private institution was taken over under its management.”

In pursuance of this judgment, the Director of Public Instruction (Schools) by his letter of January 18, 1977 (Annexure P-6) directed the District Education Officer, Ferozepur to fix the pay and other conditions of service of said Dalip Singh Gill and three others in accordance with the conditions of service as were laid down at the time of the taking over of the private schools where they were working.

(6) On November 28, 1977, petitioner Harbhajan Singh made a representation to the Director of Public Instruction that his pay too may be fixed in accordance with the rule laid down in *Dalip Singh Gill's* case (supra). In reply he was informed by the District

(1) L.P.A. 200/76 decided on 6th October, 1976.

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Education Officer, Hoshiarpur by this letter of January 2, 1978 (Annexure P-7) that as per orders of the Director of Public Instruction of January 18, 1977, these instructions would be applicable only if a writ petition was filed by the petitioner. It is this communication that compelled the petitioner to file the present writ petition and so unnecessarily too.

(7) When it had been held by the Court that Government was duty bound to fix the pay of teachers of private schools in accordance with principles settled at the time they were taken over, it was incumbent upon the authorities concerned to fix the pay of all such teachers in the same manner. Those who had filed petitions under Article 226 of the Constitution of India in this behalf did not thereby form or constitute any special category warranting different treatment from those who though similarly placed had not approached this Court for this purpose. Compelling the petitioner to resort to legal proceedings in this situation, cannot but invite adverse comment.

(8) The petitioner is accordingly hereby granted the relief claimed, namely, a direction to the respondents to fix his pay in accordance with the memorandum of August 28, 1961. This writ petition is thus accepted with costs, which considering the circumstances here are assessed at Rs. 1,000.

H.S.B.

FULL BENCH

Before: P. C. Jain, C. J., S. S. Kang, and I. S. Tiwana, JJ.

JOGINDER SINGH,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 833 of 1986

July 17, 1986

Haryana Excise and Taxation Inspectorate (State Service Class III) Rules 1969—Appendix 'D'—Recruitment to the posts of taxation inspectors—Rules providing for competitive examination comprising