

Association is espousing the cause of the retired teachers of the Garo Hills District of Meghalaya, particularly for matters pertaining to pension and gratuity, which the petitioner and his Association claim is their right and entitlement which follows their employment as teachers of Deficit Schools in the State of Meghalaya.

3. Mr. K. Paul, learned Sr. counsel for the Association has, at the outset, submitted that this petition was filed in a representative capacity with the petitioner herein being empowered to approach this Court on the strength of the resolution dated 16.09.2013 passed by the Executive Members of the said Association. Copy of the said resolution is annexed as Annexure-I to this petition.

4. Before launching into the hearing of this matter, the learned Sr. counsel has submitted that it is to be brought on record that the Association has filed a similar and identical petition before this Court registered as WP(C) No. (SH) 263 of 2012 and that this Court had disposed of the same vide order dated 15.02.2013; the operative part of the order being that the State respondent is directed to dispose of the representations dated 18.03.2011 and of 22.08.2011 filed by the petitioner and his Association before the concerned Department.

5. The State respondent on receipt of the said order dated 15.02.2013, has accordingly disposed of the same and has passed order dated 15.05.2013, to the effect that: -

“...after carefully examining the Rules and regulations governing pensionery benefits and also the terms and conditions under which the employees of the Deficit Schools teachers are regulated, the Petitions of the Greater Phulbari Area Deficit School, Retired Employees

Association is hereby disposed of by directing the petitioners to approach their respective School Management Committees for examination and final disposal.”

6. The learned Sr. counsel has submitted that this is nothing but a shifting of responsibility by the State respondent. The earlier writ petition having been disposed of in the manner it has, therefore, the Association has now approached this Court for consideration of the issue of entitlement of pensionary benefits of the members of the Association.

7. In course of these proceedings, the report of the Fifth Meghalaya Pay Commission was published on 31.07.2017 and some of the recommendations made therein being applicable to the case of the Association, therefore, an amended writ petition was allowed to be filed by this Court to bring the said relevant contents to the notice of this Court.

8. The learned Sr. counsel has, particularly at para 20 of the amended petition, extracted and reproduced some of the relevant recommendations made by the Fifth Meghalaya Pay Commission found at para 11.18.1, 11.18.2 and 11.18.3. The same is reproduced herein below:

“11.18.1 The Commission has received Memoranda and representations from various Associations of Aided educational institutions, i.e., Higher Secondary Schools, Secondary Schools, Upper Primary Schools and Lower Primary Schools including the Meghalaya College Teachers’ Association that there is no Government Scheme on social security other than the Contributory Provident Fund at 8 percent of basic pay and Death-cum-Retirement Gratuity, subject to the maximum of 7.00 lakh.

11.18.2 During hearings of the aforesaid Aided Schools and College Employees' Associations, submissions have been made that they are left with little or no means for minimum livelihood after retirement from their services and are reduced to dire pecuniary conditions. The Commission underscores the fact that in the States visited by the Commission, the benefits of pension including family pension were fully extended by the State Governments to the teachers/staff of all the Deficit/Aided Schools and Colleges. This Commission is of the firm view that it is incumbent upon the State Government to appreciate the invaluable social contribution and educational services rendered by Deficit/Aided Educational Institutions.

Analysis, consideration and recommendation:

(1) The Commission, therefore, recommends that the scheme of Pension and other retirement benefits in line with serving Government employees be considered and allowed as per the terms and conditions which may be specified for the purpose to all pre – 01.04.2010 teachers/employees of Deficit/Aided Educational Institutions and the benefits under the New Defined Contribution Pension Scheme (NPS) for post – 01.04.2010 teachers/employees of Deficit/Aided Education Institutions.

(2) The teachers and non-teaching staff under the Deficit/Aided Schools and Colleges be brought under the fold of New Defined Contribution Pension Scheme (NPS) from such date as may be decided by the Government.

(3) The pre-01-01-2016 retired teachers and the non-teaching

employees of Deficit/Aided Schools and Colleges be considered for the grant of a fixed ad hoc as Superannuation Relief at the rates as below: -

<i>(a) Retired Teachers of Deficit/Aided Colleges.</i>	<i>₹ 10,000/- p.m.</i>
<i>(b) Retired Teachers and non-teaching staff of Deficit/Aided Schools and Non-Teaching Staff of Deficit/Aided Colleges</i>	<i>₹ 5000/- p.m.</i>

11.18.3 The grant of the Superannuation Relief shall be subject to the following:

(i) That each case shall be subject to audit certification/authentication by the Director of Local Fund Audit, Government of Meghalaya who shall examine and check the basic service records (Service Books) and other relevant records and documents including the order of retirement issued by the Competent Authority.

(ii) The extension of benefits under the Social Security Scheme as above to the retired Teachers/Non-Teaching Staff of Deficit/Aided Schools and Colleges shall be subject to the condition that whatever amount of deposits on account of Management's contribution to the Contributory Provident Fund Account and the interest thereon of the concerned Teachers/Staff should accrue/be refunded to the State Government exchequer.

(iii) The Social Security Scheme, as above, is personal to the retired employee and shall not be admissible to their family/next of kin once the beneficiary expires."

9. The learned Sr. counsel has also submitted that in response to the averments made in the amended writ petition, the State respondent has filed its affidavit-in-opposition and at para 19 of the same, a distinction has been sought to be made between the service conditions of the 'Deficit School Teachers' and 'Government School Teachers'.

10. It is also submitted that since the deficit schools such as the one where the petitioner and the other members of the petitioners' Association are teachers are aided/funded by the State Government, the same cannot be termed as private schools for the very reason that the Government exercises pervasive control over the fund/grants extended.

11. In this respect, the learned Sr. counsel has led this Court to the various provisions of the Meghalaya School Education Act, 1981, particularly section 3 (ii) which defines an 'Aided School' as a recognized private school which received aid in the form of maintenance and/or development grant from the State Government. Special emphasis was also made to section 3(vii) which defines 'Employees' to mean a teacher and every employee working in a recognized school. Also sections 4, 5(i), 6, 7(6), 8(1) (2), 9(1) (2) (4), 10, 11, 20, 24, 31(xiv) and 33 are referred to, to show that the State Government is involved in many aspects of the management and control of the school in the areas of requirement of approval from the Government for appointment of a teacher in such schools, making of rules to prescribe the minimum and required qualifications for appointment of teachers as well as control over disciplinary proceedings including suspension etc., involving teachers of such schools.

12. Next, the learned Sr. counsel has referred to the relevant rules, that is, the Amended Assam Aided High and Higher Secondary School Employees

Rules 1965, which are also applicable to the State of Meghalaya. Rule 4(1) of the same, provided for a method of recruitment of Headmasters/Headmistresses. Sub-rule (3) has laid down the qualifications required for selection as Assistant Teachers, which selection, on completion of the process would require the prior approval of the Inspector of Schools concerned before the Managing Committee can make such appointment. Rule 17 in which is laid down the procedure for taking disciplinary action against an employee by the Managing Committee, however, the same to be done so only on the direction of the Director of Public Instruction or the Inspector of Schools.

13. While referring to the many provisions of the Meghalaya School Education Act, 1981 and the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965, the learned Sr. counsel has submitted that the Government has a deep and pervasive control over the management and affairs of the aided schools has been adequately demonstrated.

14. The learned Sr. counsel has then led this Court to the affidavit-in-opposition dated 08.03.2021 filed by the State respondent in reply to the amended writ petition herein to point out contradictions therein as far as the provision of the said School Education Act and the Rules of 1965 are concerned.

15. At para 7 of the said affidavit-in-opposition, the State respondent has averred that the grant or non-grant of pension to the teachers in the Deficit Schools is purely a policy matter of the Government.

16. In the said affidavit, the State respondent has also stated that Deficit

Grant-in-aid Schools and Adhoc Grant-in-aid schools are run by private management and the Government has simply given the grant in aid to such schools, but this does not and would not automatically confer equal status to teachers of such school vis-à-vis the teachers of Government Schools as the teachers of the Deficit Schools are not Government employees.

17. Relevant rules under the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965 would show that there is a distinction between the status of a Teacher in a Deficit School and of that in a Government School as far as service conditions are concerned, that is, a Teacher in a Deficit School is governed by the provision of the said Education Act as well as the School Employees Rules, 1965, while those teachers who are Government Teachers are guided by the Meghalaya Fundamental Rules and Subsidiary Rules. Hence, the deficit school teachers cannot be equated with government school teachers, the learned Sr. counsel has submitted that there is no quarrel with this proposition, however, what is required to be looked into here is with regard to the kind of work done, the foundation of their employment, who is their principal employer and who has pervasive control over their service.

18. The learned Sr. counsel has further submitted that the nature of work, functions and duties of teachers who are teaching in a Government Aided School and those teaching in a full-fledged Government School are similar since they practically follow the same syllabus and curriculum and are also affiliated to a common Board of School Education. Therefore, the principle of equal pay for equal work as enshrined in the Constitution of India under Article 39 will be applicable. In this regard, the report of the Education Commission, 1964-66 which is otherwise known as the 'Kothari Commission

Report’ which was an extensive exercise carried out to develop a National Education Policy has, inter alia, comprehensively analyzed and recommended retirement benefits for deficit school teachers based on the principles of uniformity and parity. In conformity with these recommendations, coupled with the fact that the principle of equality before law would squarely apply to the cause of the Association, the prayer of the members of the Association cannot be without any basis.

19. In support of this contention, the following case laws were cited:

- i. ***State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees & Ors.***: (1995) 4 SCC 507, para 8, 9, 10 and 18;
- ii. ***Haryana State Adhyapak Sangh & Ors. v. State of Haryana & Ors.***: (1988) 4 SCC 571, para 2, 3, 4 and 5;
- iii. ***Haryana State Adhyapak Sangh & Ors. v. State of Haryana***: 1990 (Supp) SCC 306, para 2, 3(a), 6, 7(e), 9, 10, 11 and 12;
- iv. ***Union of India v. Dineshan K.K.***: (2008) 1 SCC 586, para 12;
- v. ***State of Punjab & Ors. v. Jagjit Singh & Ors.***: (2017) 1 SCC 148, para 42.14, 44.2, 58 and 60;
- vi. ***D.S. Nakara & Ors. v. Union of India***: (1983) 1 SCC 305, para 32 and 60;
- vii. ***Surinder Singh & Anr. v. Engineer-in-Chief C.P.W.D. & Ors.***: (1986) 1 SCC 639, page 642;
- viii. ***Randhir Singh v. Union of India & Ors.***: (1982) 1 SCC 618, para 1 and 8.

20. The learned Sr. counsel has also submitted that the Government and its departments are expected to honour their statement of policy and intention to treat its citizens fairly with no tint of unfairness, arbitrariness or unreasonableness. In the matter relating to the case of the petitioner and his association, the Government in the guise of '*policy matter*' has unjustly and arbitrarily denied the rightful service benefits to the deficit school teachers which benefits includes retirement or pensionary benefits since till date no relevant rules have been framed in this regard. Therefore, on considering this aspect of the matter, the doctrine of proportionality can be applied to the fact situation herein. The case of ***Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.***: (2007) 4 SCC 669, para 17 to 21. The case of ***Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh***: (1991) 1 SCC 212, para 29, 30, 31 and the case of ***Dwarkanath Marfatia & Sons v. Board of Trustees of the Port of Bombay***: (1989) 3 SCC 293, para 22 has been referred to by the learned Sr. counsel in this regard.

21. On the assertion of the State respondent that this petition is hit by the principle of res judicata and estoppel, the learned Sr. counsel has submitted that with reference to the judgment and order dated 15.02.2013 in WP(C) No. (SH) 263 of 2012, the effective order of this Court is for the concerned authority to look into the representation filed by the Association, albeit on the same subject matter, the merits of the case has not been dealt with by the High Court and as such, the doctrine of res judicata will not be applicable in this case.

22. Per contra, Mr. K.P. Bhattacharjee, arguing on behalf of the State respondent has, at the outset raised the issue of maintainability of this instant

petition on the ground that the same is barred by the principle of ‘*res judicata*’ and ‘*estoppel*’. Elaborating on this, the learned GA has submitted that the petitioners herein on the same subject matter and cause of action had approached this Court (Shillong Bench under the then Guahati High Court) in WP(C) No. (SH) 263 of 2012 and this Court, vide judgment and order dated 15.02.2013 had disposed of the same by directing the State respondent No. 1 to dispose of the representations dated 18.03.2011 and 22.08.2011 on the same issue preferred by the Association. The Government on consideration of the said representation after giving due consideration to the relevant laws and rules in force, had disposed of the representation vide order dated 15.05.2013 finding that the members of the Association are not entitled to pension as prayed for. Therefore, nothing remains for the petitioners to re-agitate the matter before this Court. In fact, vide the relevant order of this Court dated 15.02.2013, no liberty was granted to the petitioners to re-approach this Court on the same issue.

23. Again, the learned GA has submitted that the members of the Association having admitted that their services are governed by the provisions of the Meghalaya Education Act, 1981 and are also guided by the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965 would note that Rule 11 of the said 1965 Rules mentions about superannuation and Rule 14 mentions about Contributory Provident Fund. Nothing is stated in the Act or the Rules about any provision as regard pension.

24. That the teachers of the deficit schools are to be treated at par with the teachers in Government schools is also challenged by the learned GA who has submitted that there is a vast difference as far as the status of the teachers of

the deficit grant-in-aid schools which are run by private management and those who are teaching in Government schools.

25. In this respect, the learned GA has relied upon the averments made in the affidavit-in-opposition filed by the State respondent on 08.03.2021, more particularly at para 19 of the same, contents of which is being reproduced herein below: -

*“19. That in response to the averments made in **para 6** of the writ petition, the deponent respectfully submits that the Deficit School Teachers are not at par with the Govt. School Teachers as their service conditions are different from that of a Govt. School Teacher. The Deficit School Teachers are not Govt. employees and the basic difference between a Deficit School Teacher and a Govt. School Teachers may be **enumerated below** –*

***a. A Deficit School** is established, owned and run by a **private body** and the School affairs are looked after by the **Managing Committee** of the said school who are elected from time to time. In other words, the Deficit School is a **Non-Govt. School**. In a Deficit School, the movable and the immovable **property and assets of the school belong to a Private body**.*

*Whereas, a **Govt.** is established, owned, run and controlled by the **Govt.** and the movable and immovable **property and assets of the school belong to the Govt.***

***b. A Deficit School** only receive **financial assistance/grant-in-aid from the State Govt.** as a matter of **policy decision of the Govt.** for paying the **Salary of the Teachers** and the other school staffs as may be*

admissible from time to time. The other expenses and affairs of a Deficit School are managed by the school on its own.

*Whereas, a **Govt. School** receives salary as well as all other expenses from the Govt. which may be incurred by the school from time to time.*

*c. The **appointment of a Teacher in Deficit School** is undertaken by the **Managing Committee** of the School and thereafter is sent to the Govt. for approval. The Govt. after examining the genuineness of the selection process, qualification, age, etc, and on being satisfied, accordingly accords approval for appointment.*

*Whereas, the **appointment of a Teacher in a Govt. School** is undertaken by the Govt through a proper process of selection, which is either the **District Selection Committee** or the **MPSC**.*

*d. The service of the employees of a **Deficit School** is regulated by the “**The Amended Assam Aided High and Higher Secondary School Employees Rules 1965**” and “**The Meghalaya School Education Act 1981**”.*

*Whereas, the service of the employees of a **Govt. School** is regulated by the **Govt. Rules and Regulations** including **The Meghalaya School Education Service Rules 2012**, Fundamental and Subsidiary Rules, etc, of the Govt of Meghalaya.*

e. A Deficit School teacher is not liable for transfer as the job is non-transferable.

Whereas, a Govt. School Teacher’s job is a transferable job. However, the salary of both the Govt. School teacher and the Deficit School Teacher is as per the approved scale of pay of the Govt. as admissible

from time to time and the same does not necessarily imply that a Deficit School Teacher and a Government School Teacher is one and the same.

*f. There is **no pension scheme for Deficit School or Non-Government School employees** or the service condition of a deficit school teacher does not have any provision for pension. However, the Deficit School Teachers are entitled to **Contributory Provident Fund (CPF) Scheme i.e. @ 8% of basic pay** which is contributed by the Govt. as well as **Death cum Retirement Gratuity** which the employees are entitled to at the time of retirement.*

*Whereas, in case of the **Govt. School Teachers** the **Defined pension scheme** has been **abolished w.e.f. 1.4.2010** and thereafter the **Govt. School Teachers** are under the **New Pension Scheme (NPS)**. In the New Pension Scheme the employer i.e. the **Govt. contributes 10% of the basic pay.***

*g. The age of retirement of service of a **Deficit School Teacher** is **60 years** with a provision for extension of service up to **63 years.***

*Whereas the age of retirement of a **Govt. School Teacher** is **58 years.***

*Therefore a **Deficit School Teacher** enjoys service life of **additional 2 (two) years** which could also be extended by another **3 (three) years** and thus get extra benefit of **5 (five) years in total** as compared to a Govt. School Teacher. Hence, a Deficit School teacher is in much advantageous position when it comes to length of service.*

*h. That as on today a **Deficit School Teacher** is entitled to **Contributory Provident Fund and Death cum Retirement Gratuity.***

*Whereas, a **Govt. School Teacher** is entitled to **New Pension Scheme and Gratuity** and there is no monthly pension scheme as the same has been abolished since 1.4.2010.*

Hence, the contention of the petitioners that they are at par with any of the Government Teachers is highly incorrect and cannot be accepted by the answering deponent.”

26. In support of his contention, the learned GA has relied on the following decisions:

A. On grounds of maintainability/res judicata:

- i. Shri. Heron Roy Manar & Ors. v. State of Meghalaya order dated 11.07.2022 in WP(C) No. 203/204/205 of 2015, para 4, 9, 14, 17 and 22.

B. On grounds of policy decision:

- i. M.P. High Court Bar Association v. Union of India & Ors.: (2004) 11 SCC 766, para 73.

C. On grounds of Pay Commission Recommendation:

- i. M.P. Rural Agriculture Extension Officers Association v. State of M.P.: (2004) 4 SCC 646, para 26;
- ii. State of Karnataka v. State of A.P.: (2000) 9 SCC 572, para 160;
- iii. Mani Subrata Jain v. State of Haryana: (1977) 1 SCC 486, para

- iv. Secretary, Mahatma Gandhi Mission & Anr. v. Bharatiya Kamgar Sena & Ors.: (2017) 4 SCC 449, para 60;
- v. Union of India v. Arun Jyoti Kundu & Ors.: (2007) 7 SCC 472, para 16

D. On grounds as to whether the Courts can direct the Govt. to make amendments:

- i. State of Himachal Pradesh & Ors. v. Satpal Saini: (2017) 11 SCC 42, para 4, 5, 6, 7, 8, 9, 10 and 11

27. This Court, after an extensive recording of the submission and contention of the rival parties herein, without repeating the facts of the case as has been stated above, would look into the issues raised herein to determine the case of the parties.

28. There is no quarrel to the fact that the petitioner and the members of his Association are retired teachers of recognized private schools which received grant-in-aid from the Government for the purpose of payment of salary to the teachers and employees of such schools besides usage of such aid for the development of the said schools.

29. The petitioners have also referred to various provisions of the Meghalaya School Education Act, 1981 to contend that the Government has a deep and pervasive control over the affairs of such aided schools, including the working condition of the teachers. Relevant provisions of the amended Assam Aided High and Higher Secondary School Employees Rules, 1965 was also referred to in this regard.

30. A comparison between the duties and functions of a teacher in a

Government Aided School and that of a teacher in a full-fledged Government School has been made to demonstrate the fact that such duties and functions are similar and identical as regard the syllabus and curriculum and their affiliation to a common Board of School Education.

31. The main grievance of the petitioner and members of the Association is that after retirement, the pensionary benefits which was given to the retired teachers of Government Schools have been denied to them, thereby causing a breach of the provision of Article 14 of the Constitution of India which provides that '*equals have to be treated equally*' and that there should be '*equal pay for equal work*'.

32. Reiterating that because of the deep and pervasive control the Government has over these private aided schools who are in receipt of the said grant-in-aid, non-extension of pensionary benefits to retired teachers of Government aided school is discriminatory, arbitrary and a violation of the fundamental rights of the teachers concerned.

33. In the cases cited by the Association, the case of Haryana Adhyapak Sangh reported in (1988) 4 SCC 741, the Hon'ble Supreme Court at para 3 of the same has observed that, "*...there is no reason for discrimination between the teachers employed in aided schools and those employed in government schools as far as the salaries and additional dearness allowance are concerned.*". In the case of Haryana Adhyapak Sangh reported in 1990 (Supp.) SCC 306, similar observation as was made in the previous case(supra) was also made in this case, where the Hon'ble Supreme Court has dwell more on the issue of parity of pay and allowances but has not touched on the issue of pensionary benefits.

34. In the case of H.P. State Recognized & Aided School Managing Committees(supra) on perusal of the relevant paragraphs relied by the petitioner at para 8 and 9 of the same, the Hon'ble Supreme Court has observed as follows:

“8. The aided schools teach the same syllabus and curriculum, prescribe the books and courses as per Government directions and prepare the students for same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the State Government and the appointments are made with the approval of the State Government. The fees levied and concessions allowed are strictly in accordance with the instructions issued by the Education Department of the State Government from time to time. The Managing Committees of aided schools are approved by the State Government and two members of the Committee are appointed by the Education Department. The service conditions of the teachers including disciplinary proceedings and award of punishment etc. are governed by the Rules framed by the State Government.

9. It is, thus, obvious that the State Government has a deep and pervasive control on the aided schools. The Government Schools and the aided school specially after the Kothari Commission Report - have always been treated at par. It has been authoritatively laid down by this Court that the teachers working in the aided schools are entitled to the same salaries and allowances as are being paid to the teachers in the government schools. In Haryana State Adhyapak Sangh v. State of Haryana: [(1988) Supp 1 SCR 682 Pathak, CJ] speaking for this Court held "in our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in the Government

schools for the entire period claimed by the petitioners...". This judgment was subsequently interpreted by this Court in Haryana State Adhyapak Sangh. v. State of Haryana: [AIR (1990) SC 968], where Agrawal, J. speaking for the Court observed as under:

"The judgment of this Court dated 28.07.1988 also accepts the principle of parity in the matter of salaries and dearness allowance of teachers employed in aided schools and those employed in Government schools and there is nothing in the judgment which indicates that the said principle of parity is to be applied upto 31.01.1985 only, and not thereafter. In the circumstances we are of the view that the direction of this Court in the judgment dated 28.07.1988 must be construed to mean that the respondent are required to maintain such parity and to revise, from time to time, the pay scales and dearness allowance of the teachers employed in aided schools as and when the pay scales and dearness allowance of teachers employed in Government schools are revised. It is, therefore, incumbent upon respondent to revise the pay scales of teachers employed in the aided schools so as to bring the same at par with the pay scales of the teachers employed in the government schools with effect from 01.01.1986 and fix the salaries of the teachers employed in aided schools in the revised pay scales with effect from 01.01.1986 and pay the salaries and dearness allowance to these teachers on that basis."

35. All the other cases referred to by the petitioner at para 19 above more or less deals with the principle of 'equal pay for equal work' and elucidation of this principle is seen in the case of Randhir Singh(supra) at para 8, reproduced below as:

“8. It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims “equal pay for equal work for both men and women” as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the take-over of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched. Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to

them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word 'Socialist' must mean something. Even if it does not mean 'to each according to his need', it must at least mean 'equal pay for equal work'. "The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law, e.g, Section 59 of the Hungarian Labour Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western Labour Codes too. Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and Clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance" (vide International Labour Law by Istvan Szaszy, p. 265). The preamble of the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". Construing Articles 14 and 16 in the light of the Preamble and Article 39(d), we are of the view that the principle 'equal pay for equal work' is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification

though those drawing the different scales of pay do identical work under the same employer.”

36. In response to this, the State respondent has pleaded that there is no discrimination as far as pay and allowances to the teachers of Government Aided Schools and those in Government Schools inasmuch as both sets of teachers are getting the revised pay scale as per the recommendation of the Fifth Pay Commission. In fact, the State respondent in its additional affidavit filed before this Court taken note of on 17.09.2018 at para 2 of the same has made the following averment:

“2. That the deponent states that pursuant to the Hon’ble Court’s direction, the Education Department, Government of Meghalaya received intimation from the Government Advocate regarding the Hon’ble Court’s direction as per Order dated 2.8.2018. In this regard the deponent respectfully submits that vide Notification No. EDN.38/2010/195 dated 21.6.2018 (Annexure – 1 of the additional affidavit) issued by the Government of Meghalaya, Education Department –

“The Governor of Meghalaya is pleased to extend the revised scale of pay as per recommendation of the Fifth Meghalaya Pay Commission to all teaching and non teaching staff of Deficit Schools availing State Government’s scale of pay in the State with effect from 01.01.2017. Arrear pay will be paid @ 25% per year. For those, who are to retire within 4 (four) years, steps will be taken by the Government to ensure that arrears be paid in full before retirement.”

37. The teachers of aided schools are also beneficiaries of the ‘Contributory

Provident Fund (CPF) Scheme' @ 8% of basic pay and are also getting the 'Death cum Retirement Gratuity' at the end of their service career. Therefore, there is no discrimination or inequality as far as pay and allowances are concerned.

38. It is, however, contended that the service conditions of the teachers of Government Aided Schools and those of full-fledged Government Schools are not the same as has been brought out by the State respondent in its affidavit, particularly at para 19 of the affidavit dated 08.03.2021 reproduced at para 25 hereinabove. Therefore, there is no violation of Article 14 of the Constitution as the principle of equal pay for equal work is not applicable in the case of the Association.

39. This Court on careful analysis of the contention of the learned GA would agree that the manner in which the appointment of the teachers of Government Aided Schools and those of Government Schools are made, are indeed different and emerged from separate sources, though in the area of functions and duties they are similar in nature. However, considering the fact that different rules and statutes govern the said working conditions of these two sets of teachers, it cannot be said that one set of teachers are being favoured over the other or that they are at par. For in the case of teachers of aided schools, the Government does have limited control in some areas though it does not have complete control since the same falls within the domain of the Managing Committee of such schools, while for teachers in Government Schools, there is complete control by the Government in every aspect of their employment.

40. It is also the stand of the State respondent that as far as pensionary benefits are concerned, it is the stated policy of the State that the teachers of

the aided schools are not entitled to the same as there is no pension scheme formulated for them. In fact, it is reiterated that as on date, there is no more monthly pension scheme, the same having been abolished since 01.04.2010 and in its place the 'New Pension Scheme and Gratuity' in which the employer, that is, the Government contributes 10% of the basic pay came into operation. Whereas in the case of Deficit School Teachers as submitted, the Contributory Provident Fund Scheme is available to them. This too, appears to be valid for even if one assumes that the New Pension Scheme can be made applicable to the members of the Association, the issue of equal contribution by employees (teachers) and employer (Government) will figure, which in all probability was not done so in the case of the members of the Association. Even then, if the teachers of aided schools are to be entitled to pension, then the Government has to take over complete control and management of such schools by way of provincializing of the same.

41. There is no doubt that in the Kothari Commission Report it was remarked that although the State Governments have adopted various schemes for retirement benefits, no attempt was made to extend the scheme to teachers in local schools, under local authorities or even private schools. The Commission went on to recommend that the system of retirement benefits to teachers should be based on the principles of uniformity and parity. Coming nearer home, in the State of Meghalaya, the Meghalaya Fifth Pay Commission Report dated 31.07.2017 has, inter alia, recommended social security for both teaching and non-teaching staff of deficit schools within the State of Meghalaya. However, the State respondent has asserted that the Government is not obliged to implement such recommendations or part of such recommendations in view of the stated policy in such regard.

42. The State respondent has cited the case of **Secretary, Mahatma Gandhi Mission & Anr. v. Bhartiya Kamgar Sena & Ors.**; (2017) 4 SCC 449 and also the case of **Union of India v. Arun Jyoti Kundu & Ors.** (2007) 7 SCC 472, para 16 to say that the Hon'ble Supreme Court dealing with the issue of recommendation of the pay commission, it was held that “...*The recommendations of the pay commission are not binding on the Government of India, much less any other body. They are only meant for administrative guidance of the Government of India. The Government of India may accept or reject the recommendations either fully or partly,...*” and also that “...*It is well settled principle of law that recommendations of the pay commission are subject to the acceptance/rejection with modification of the appropriate government.*”. In the context of the case in hand, the submission of the learned GA that the State Government is not obliged to implement all the recommendations of the Fifth Pay Commission, vis-à-vis the payment of pension to teachers of Government Aided Schools is found acceptable to this Court.

43. On the application of the Doctrine of Proportionality to the case of the Association, the learned Sr. counsel for the Association has referred to the case of Coimbatore District Central Cooperative Bank (supra). At para 18 and 21 of the same, it was observed as follows:

“18. “Proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—

the elaboration of a rule of permissible priorities.

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no “pick and choose”, selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a “sledgehammer to crack a nut”. As has been said many a time; “where paring knife suffices, battle axe is precluded”. ”

44. On application of the Doctrine of Proportionality to government policies, the case of Kumari Shrilekha Vidyarthi (supra) at 29 and 30, the Hon’ble Supreme Court has observed as follows:

“29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. (See Ramana Dayaram Shetty v. International Airport Authority of India, [(1979) 3 SCR 1014] and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir [(1980) 3 SCR 1338]. In Col. A.S. Sangwan v. Union of India, [(1980)] Supp SCC 559]:

While the discretion to change the policy in exercise of the executive power, when not tramelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior

criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.

30. In Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay,[1989] 3 SCC 293 the matter was re- examined in relation to an instrumentality of the State for applicability of Article 14 to all its actions. Referring to the earlier decisions of this Court and examining the argument for applicability of Article 14, even in contractual matters, Sabyasachi Mukharji, J. (as the learned Chief Justice then was), speaking for himself and Kania, J., reiterated that: (SCC p. 304, para 22) “every action of the State or an instrumentality of the State, must be informed by reason. actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution.” Ranganathan, J. did not express any opinion on this point but agreed with the conclusion of the other learned Judges on the facts of the case. It is obvious that the conclusion on the facts of the case could not be reached by Ranganathan, J. without examining them and this could be done only on the basis that it was permissible to make the judicial review. Thus, Ranganathan, J. also applied that principle without saying so. In view of the wide ranging and, in essence, all-pervading sphere of State activity in discharge of its welfare functions, the question assumes considerable importance and cannot be shelved. The basic requirement of Article 14 is fairness in action by the State and we find it difficult to accept that the State can be permitted to act

otherwise in any field of its activity, irrespective of the nature of its functions when it has the uppermost duty to be governed by the rule of law. Non- arbitrariness, in substance, is only fair play in action. We have no doubt that this obvious requirement must be satisfied by every action of the State or its instrumentality in order to satisfy the test of validity.

45. On what has been observed above, to put the matter in its proper perspective, what could be ascertained is that the Association has put forth its case to say that its members are entitled to pension after their retirement from service in Government Aided Schools to be at par with their counterparts teaching in full-fledged Government Schools, basically on the premise that there is deep and pervasive control of the Government authorities over the affairs and management of the service of teachers working in aided schools.

46. The other contention is that in spite of recommendations by the Pay Commission or even by the Kothari Commission that such teachers are to be given due pensionary benefits, the Government citing policy decision has refused to extend such benefits, thus, the doctrine of proportionality, under the facts and circumstances of this case can be applied to by this Court to meet the grievances of the members of the Association.

47. Again, as has been pointed out at para 25 hereinabove, there are similarities as well as dissimilarities as regard the mode and manner of recruitment and appointment of these two sets of teachers, more pertinently, nowhere was it ever indicated in the Meghalaya School Education Act, 1981 or the Amended Assam Aided High and Higher Secondary School Employees Rules, 1965 that there is a provision for payment of pension to teachers of Government Aided Deficit Schools.

48. Since the mandate of Article 14 of the Constitution is that '*equals have to be treated equally*', the doctrine of proportionality and principles of parity cannot be applied to the situation in this case. It is also a settled law that the policy decision(s) of the State are not to be interfered with unless they are found to be grossly arbitrary or irrational. The case of **State of Punjab & Ors. v. Ram Lubhaya Bagga & Ors; (1998) 4 SCC 117**, para 25 would be a relevant reference on this point when it was observed that “....*So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.*”

49. As to the stand of the respondent No. 2/Union of India, Mr. R. Debnath, learned CGC, has submitted that in this writ petition there is no relief sought for from the Government of India and as such, the Union would not make any submission as regard the factual matrix of this case.

50. In conclusion, this Court taking everything into consideration would

find that the petitioner and the members of his Association have not been able to make out a case for issuance of any mandamus by this Court to the State Government as regard payment of pension to the said members of the Association.

51. Since a definite conclusion have been arrived at, the issue of res judicata may not be necessary to be discussed herein. Other irrelevant submission or contention and even case laws cited are also not taken note of herein.

52. This petition being devoid of merits is hereby dismissed.

53. Petition disposed of. No costs.



Judge

Meghalaya
04.08.2023
"Tipilynti-PS"