

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3198 of 2014

1. Dr. K.M. Sharma S/o Shri Vihsnu Prasad Sharma Aged About 46 Years R/o Rajapara, Ward P.S. Kanker Tahsil & Distt. Kanker C.G.
2. Ku. Namita Jain D/o Shri B.R. Jain Aged About 39 Years R/o Rajapara, Ward P.S. Kanker Tahsil & Distt. Kanker C.G.
3. Smt. Nilmani Dixit W/o Shri Mahesh Dixit Aged About 39 Years R/o Rajapara, Ward P.S. Kanker Tahsil & Distt. Kanker C.G.
4. Abdul Vajid S/o Shri Abdul Hamid Aged About 42 Years R/o Rajapara, Ward P.S. Kanker Tahsil & Distt. Kanker C.G.
5. Smt. Pushpa W/o Shri Mahendra Kumar Aged About 46 Years R/o Rajapara, Ward P.S. Kanker Tahsil & Distt. Kanker C.G.
6. Tufail Ahmad Razvi S/o Ramjan Ahmad Aged About 40 Years R/o Behind Maszid, P.S. Kanker Tahsil & Distt. Kanker C.G.
7. Seema Nag W/o Satyendra Nag Aged About 36 Years R/o Near Doodhnadi Colony P.S. Kanker, Tahsil & Distt. Kanker C.G.
8. Smt. Meena Netam W/o Sujit Singh Netam Aged About 38 Years R/o Near Doodhnadi Colony P.S. Kanker, Tahsil & Distt. Kanker C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Of State Urban Administration & Development, Mahanadi Bhawan, New Mantralaya, District Raipur C.G.
2. State Of Chhattisgarh Through Commissioner, Scheduled Tribe Scheduled Caste And OBC Development Department Mahanadi Bhawan New Mantralaya Distt. Raipur C.G.
3. Joint Director Regional Office Urban Administration & Development, Subhash Stadium, Raipur C.G.
4. Chief Municipal Officer, Municipality Kanker, Distt. North Bastar Kanker C.G.

---- Respondent

For Petitioners : Shri Arvind Sinha, Advocate on behalf of Shri Prakash
Tiwari, Advocate.
For Respondent/State : Shri PK Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on : 6/10/2015

1. The petitioners are working as Shiksha Karmi Grade-II/PTI in the Municipality. They have preferred this writ petition challenging the order dated 27.12.2013 whereby the State Government has rejected their representation for grant of equal pay scale as admissible to the teachers appointed in the Municipal Services under the Municipal Employees (Recruitment and Conditions of Service) Rules, 1968.
2. Facts of the case, briefly stated, are that the petitioners were appointed as Shiksha Karmi Grade-II/PTI in the respondent No.4 Municipality. At the time of their appointment they were governed under the Chhattisgarh Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998 (henceforth 'the Rules, 1998'). On completion of period of probation, they have been regularized in service. Claiming similar relief, they had earlier preferred WPS No.6670/2007 wherein the petitioners had raised a ground that the Rules, 1998 prescribes that general conditions of service other than prescribed in the said rules shall be the same as applicable to other employees of the Municipality,

therefore, they are entitled to same pay scale as applicable to other employees as also pay scale determined by the State Government by order dated 24.6.2007. In the said matter, after quoting Rule 11 of the Rules, 1998, this Court held in paragraphs 6 & 7 thus:-

“6. Rule 11 of the Rules, 1998 reads as under:

“11. **General Conditions of Service.**- Conditions of service other than mentioned above, shall be the same as applicable to other employees of the Municipality.”

7. On bare perusal of the Rule 11, it is crystal clear that general conditions of service other than mentioned above, shall be the same as applicable to other employees of the Municipality. **In the case on hand, since the method of selection, recruitment, pay scale have been provided in the Rules, 1998, the petitioners cannot claim the salary as applicable to other employees of the Municipality, as there is a clear prescription in the Rules, 1998.** However, the State Government without modification in the Rules, 1998 has prescribed the amended pay scale for Shiksha Karmis working in the Urban local authorities by order dated 24-6-2007.”

(Emphasis supplied)

3. In the earlier petition, this Court noted that a notification prescribing the amended pay scale has been issued on 24.6.2007 without amending the the rules and the State Government did not file any specific reply but adopted the reply filed by the Municipality, therefore, the State Government was directed to examine the issue to ensure that the petitioners are paid proper pay scale as prescribed by the State Government under the provisions of the Rules, 1998.

4. The State Government thereafter considered the issue and rejected the claim of the petitioners by passing the impugned order dated 27.12.2013. In the said order, the State Government has taken note of notification dated 29.6.2007 and presently applicable rules i.e. Chhattisgarh Shikshak (Nagriya Nikay) Samvarg (Bharti Tatha Sewa Ki Sharte) Niyam, 2013 (for short 'the Rules, 2013') and came to the conclusion that all Shiksha Karmis working in the Municipality are paid pay scale in accordance with the Rules, therefore, regular teachers who were earlier appointed prior to 1998 in different Municipalities being governed by different statutes, cannot be equated with the petitioners who have been appointed under different statute, therefore, their claim deserves to be rejected.
5. In the matter of **S.C. Chandra and others Vs. State of Jharkhand and others** {(2007) 8 SCC 279}, the Hon'ble Supreme Court held that principle of equal pay for equal work cannot apply merely because the nature of work is same irrespective of qualifications, mode of appointment, experience, etc. It was held that fixation of pay and determination of parity is a complex matter which is for the executive to discharge and grant of pay scale by the Court may result in a cascading effect and reaction which can have adverse consequences.
6. In **Union of India through Secretary, Department of Personnel, Public Grievances and Pensions and another Vs. T.V.L.N. Mallikarjuna Rao** {(2015) 3 SCC 653}, the Hon'ble Supreme Court

has held thus:-

“26. The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service.

27. The Government on consideration of the report submitted by the Committee issued Office Memorandum dated 11-9-1989 prescribing therein different pay scales and different grades of Data Entry Operators besides the mode and manner of recruitment to and qualifications for each entry grade post as well as eligibility and experience for promotional grades. The Court or the Tribunal, in our opinion, would be exceeding its power of judicial review if it sits in appeal over the decision of the executive in the matter of prescribing the pay structure unless it is shown to be in violation of Articles 14 and 16 of the Constitution of India. Difference in pay scales based on educational qualifications, nature of job, responsibility, accountability, qualification, experience and manner of recruitment does not violate Article 14 of the Constitution of India.

7. In the case at hand, the petitioners have been appointed under the Rules, 1998, now substituted by the Rules, 2013 wherein their pay scales have been prescribed, therefore, the petitioners are not entitled for any other pay scale than the one prescribed under the Rules.
8. In WPS No.208/2012 (Rajeev Kumar Jaisawal & Others vs. State of Chhattisgarh & Others) decided on 30th January, 2012, Shiksha Karmis Grade-I, II & III had raised a claim for grant of pay scale equal to the Government teachers. After placing reliance on various judgments of the Supreme Court in this regard, this Court dismissed the said writ petition and held that huge number of Shiksha Karmis, may be more

than one lakh, are working in the State and any decision by the Court to grant benefit of pay scale as admissible to teachers working in the School Education Department would have serious consequences on the State Exchequer and it is precisely for this reason the Hon'ble Supreme Court has repeatedly held that pay fixation and grant of parity is the job of the executive.

9. Even otherwise, in para-7 of the order passed in the petitioners' earlier writ petition, this Court has clearly held that method of selection, recruitment, pay scale having been provided in the Rules, 1998, the petitioners cannot claim salary as applicable to other employees of the Municipality, as there is clear prescription in the Rules, 1998. The said order has attained finality because the petitioners did not prefer any appeal. Thus, the present writ petition is clearly barred under the principle of *res judicata*.

10. For the foregoing, the writ petition being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)