

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 367 of 2016

- Abdul Kadir Qureshi S/o Shri Abdul Jabbar Quereshi, Aged about 66 years, r/o Nehru Nagar, Raipur, (Chhattisgarh)

---- Appellant

Versus

1. Secretary, M.P.State School Education Department Bhopal M.P.
2. Secretary, M.P. State General Administration Department, Bhopal M.P.
3. Secretary, MP State Finance Department, Bhopal, M.P.
4. Commissioner, Directorate Public Education, Gautam Nagar, Chetak Kunj, Bhopal M.P.
5. State Of Chhattisgarh School Education Department, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh

----Respondents

For Appellant	:	Shri Ashish Shrivastava and Shri Amit Verma, Advocates
For Respondents	:	Shri RK Gupta, Deputy Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

28.07.2017

1) This Writ Appeal is by the Writ Petitioner who came to this Court complaining that he has not been given parity in scale of pay following the recommendations of the Fifth Pay Commission. He contended that as Planning Officer of the School Education Department, he is entitled to claim parity with the scale granted to

the Planning Officer in the Department of Planning Development Board (Zila Yojana Vikas Mandal).

2) Heard the learned counsel for the appellant and the learned State Government counsel.

3) The issue as to whether the appellant is entitled to plead that there ought to be parity in pay between the Department of School Education and the Planning Officers of other departments, is one which is not a matter to be decided through judicial intervention as has been rightly noticed by the learned Single Judge. However, adverting to paragraph-8 of the impugned judgment it can be seen that the recommendations made through the communication dated 09.07.2004 have been adverted to by the learned Single Judge to hold that the Planning Officer in the Department of School Education was deliberately left out of parity that was ordered or recommended in favour of the Planning Officers of other departments. We have considered the contents of the communication dated 09.07.2004. We see that there is no specific exclusion of the Planning Officer of the Department of School Education and the recommendation is one confined to those categories for which parity was recommended. That by itself, does not *ipso facto*, mean that pay parity was refused to the Planning Officers of the Department of School Education. We say this because, the availability of a Note at the foot of the communication dated 09.07.2004 cannot be read in isolation and does not contain

the expression of the decision of the Government refusing parity to the Planning Officers in the Department of School Education as claimed by the petitioner.

4) For the aforesaid reasons, while we may be in agreement with the principles of law stated by the learned Single Judge in the impugned judgment regarding the justiciability of pay parity through judicial review jurisdictions, we are of the view that the question whether the petitioner was entitled to claim the benefit of parity as pleaded by him required to be decided by the Government at the appropriate level.

5) In the result, the dismissal of the Writ Petition as per the impugned judgment is set aside and this Writ Appeal and the Writ Petition are ordered directing that the question whether the Planning Officer in the Department of School Education is eligible to be treated at par with the Planning Officers of other departments for the purpose of the pay scale shall be decided by the Government. We direct that it shall be done at the appropriate level in the Government and the decision shall be taken on or before 31.12.2017. The Appellant shall mark his appearance in the Office of the Fifth Respondent- The Secretary, School Education Department, State of Chhattisgarh on 21st August, 2017 at 11 am. If the claim of the Appellant for parity is decided favourably, consequential action shall follow for re-fixation of the retiral benefits by determining the last pay that he would have drawn, had pay

parity been made applicable as sought for by him. Such action shall follow within a further period of two months. It is clarified that all issues are left open.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

padma