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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11724/2016

Date of Decision : 9th March, 2017

R.K. DABAS & ORS. ..... Petitioners

Through Mr. Sarvesh Bisaria, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

Through Mr. Akshay Chaudhary, Advocate for Mr. Rahan Duggal, Standing Counsel for GNCTD for R-1 & R-2
Ms. Avnish Ahlawat with Ms. Latika Choudhary and Ms. Palak Rohmetra, Advocates for R-3/SCERT

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioners, four in number, in this writ petition have impugned order dated 16.03.2015 whereby OA No. 4222/2010 has been dismissed by the Principal Bench of the Central Administrative Tribunal (hereinafter Tribunal for short).

2. The petitioners are retired officers of the State Council of Education Research and Training (SCERT).

3. The petitioners had filed the aforesaid OA seeking direction to the SCERT to pay them pension in terms of unamended Rule 67 of Rules and Regulation of SCERT. The contention was that the amendment made on 07.12.1999 was illegal and contrary to law. The pre amended Regulation 67 reads as under:-

"67. Terms and Tenure of service of Academic Staff.

The terms and tenure of service of the academic staff at the Council shall remain the same as available for the academic staff of the National Council of Educational Research and Training."

4. The notification No. F.5(4)/SCERT/ADMN./9337-59 dated 7.12.1999 amending Regulation 67 reads as under:-

> *" Notification*
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> *In exercise of the powers conferred under Regulations 43 to 49 of the Memorandum of Association and Rules and Regulations of SCERT and as per the decision of the Executive Committee of the Council in its meeting held on 1.12.99, the existing provisions under Regulation 67 of the aforesaid Rules and Regulations of the Council are hereby substituted with the following provisions with immediate effect:-*
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> *'The terms and tenure of service of Academic and other staff of the Council should remain the same as available for the Academic and other staff of the Directorate of Education, GNCT of Delhi with such modifications that may be specifically adopted by the Executive Committee from time to time.'*

5. The petitioners herein along with others has earlier filed W.P. (C) No. 3693/1998 praying that gratuity and pension Scheme should be made applicable to the employees in the SCERT. This writ petition was allowed vide judgment dated 18.05.2002 relying upon the resolution dated 04.03.1992 which reads as under:-

> *"The matter regarding introduction of GPF, Gratuity and Pension Scheme in SCERT was placed before the*

Committee with the prior permission of the Chairperson. The Committee resolved that the scheme of GPF, Gratuity and Pension may also be introduced in SCERT and modalities for the same be worked out in consultation with the Finance Department of Delhi Admn."

Reference is also placed to unamended Regulation 67 and the appointment letters. It was alao held that the petitioners were entitled to benefit of the Advance Carrier Promotion Scheme.

6. However, the aforesaid decision was reversed by the Supreme Court in Civil Appeal No. 3272/2003 titled ***Lt. Governor of Delhi & Ors. Vs. V. K. Sodhi & Ors.***, primarily on the ground that SCERT is not "State" under Article 12 of the Constitution of India and therefore, the writ petition itself was not maintainable. The Supreme Court had held:-

15. Once we hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India, we do not find ourselves persuaded to issue any such direction as sought for by the writ petitioners (the respondents herein). In fact, it becomes unnecessary to go into the question of validity of the amendment of Regulation 67, the effect of the uniform non implementation of Regulation 67 as it stood earlier, and the effect of the absence of a challenge in the writ petition to the amendment to the Regulation itself. It is also not necessary to go into the question whether SCERT should seek the permission of the Government for incurring additional expenditure in terms of service benefits to its employees.

16. It appears to us that in the case of bodies like SCERT, the court cannot ignore the financial implications of implementing the directions that it is *called upon to issue. The object of SCERT is laudable and it has to coordinate and promote education in the State. Its resources are limited and the main income is by way of grant from the State Government. When SCERT pleads that it cannot spend the whole of the grant or a major portion of the grant in paying salaries and emoluments to its employees and if it does so, that may tend to frustrate the very object with which the society was formed, it is an argument that has to be considered weighty by a court called upon to exercise jurisdiction under Article 226 of the Constitution of India. A court cannot issue a direction which would tend to frustrate the very object with which a society like SCERT is formed or a body like SCERT is created. After all, there may be a point of time in a welfare State where the right of the employees must be subservient to the right of the society. In the matter of education, surely, the interests of the society at large should prevail and issue of any direction that may endanger such interests must be done with extreme caution and only after careful deliberation.*

17. In our view that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution and normally not amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India, we do not find it necessary to pursue further, these other aspects. Suffice it to say, that the direction issued by the High Court cannot be sustained.

7. After the aforesaid judgment, the petitioners herein commenced the second round of litigation by filing OA No. 4222/2010, primarily praying that they were entitled to pension. The said OA has been dismissed vide the impugned order dated 16.03.2015 holding that the petitioners were entitled to and have been paid the amount contributed to the Provident Fund Scheme. The impugned order specifically refers

to paragraph 16 of **V. K. Sodhi (Supra)** quoted above. Reference has also been made to the decision of the Delhi High Court in Writ Petition (C) No. 3560/2013 titled as ***B. K. Kapoor Vs. Govt. of NCT OF Delhi & Ors.*** in which it has been held as under:-

> *"11. It is settled law that a Juristic Entity, such as a society registered under the Societies Registration Act, breaths and lives in terms of its charter of incorporation i.e. the Memorandum of its incorporation and Rules framed. Thus, notwithstanding the Executive Committee of SCERT being empowered to amend the Rules as per power conferred by Rule 43 it must additionally abide by Rule 64 which requires amendment to the Rules with the previous concurrence of the Government of Delhi; and we do not find any approval accorded by the Government of Delhi to the resolution passed by the Executive Council on October 13, 2008. Further, as observed by the Supreme Court in **V.K.Sodhi's case (supra)** since entire finances of SCERT are met by the Government of NCT Delhi, any resolution passed by the Council having financial impact must be as per the finances made available by the Government of NCT Delhi.*
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> *12. We concur with the view taken by the Tribunal.*
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> *13. The submission advanced that Rule 26 shows complete representation of the Government of NCT Delhi including the Secretary Finance on the Executive Council of SCERT and that since the resolution dated October 13, 2008 was passed when the Secretary Finance was present it has to be treated as a resolution with the approval of the Government of NCT Delhi is noted and rejected for the reason the Secretary Finance has not been shown to us as having any power to act on behalf of the Government of NCT Delhi with reference to the allocation of business rules to conduct the affairs of the Government of NCT Delhi. A person can wear two hats. The Lt. Governor of Delhi exercises the executive powers*

> *on behalf of the Government of NCT Delhi and he alone could have approved the resolution in question.*
> *14. The second argument advanced by relying upon certain observations of the Supreme Court in* ***V.K.Sodhi's*** *case where the Supreme Court held that there is no deep and pervasive control of the State over SCERT and hence SCERT is not a State. It was urged that said observations of the Supreme Court would reveal that the management of the affairs of SCERT is the concern of the Executive Committee alone without any governmental interference.*
> *15. We fail to understand the applicability of the logic of the argument. That the Government does not exercise deep and pervasive control over the affairs of SCERT has nothing to do with Rule 64 of the Memorandum of Association of SCERT which mandates that any amendment to the Rules must be with the previous concurrence of the Government of Delhi."*

In the aforesaid writ petition, the issue raised was whether teachers teaching in SCERT would be entitled to the benefit of enhancement of the age of retirement, as was given to the employees of NCERT. Reliance was placed on unamended Rule 67. This decision rejects this contention and reliance placed on unamended Rule 67.

8. Moreover, the SCERT did not have gratuity and pension Scheme from the beginning. On 04.03.1992 a resolution was passed by the Executive Committee for introduction of gratuity and pension Scheme in the SCERT. However, the said resolution was not accepted by the Government of Delhi, which has to provide the funds to the SCERT. In the absence of the said concurrence, the claim for pension must fail. Pension scheme is no longer applicable even to the Central Government employees with effect from 01.01.2004. The petitioners have been paid the amounts under the

Contributory Provident Fund Scheme.

9. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is accordingly dismissed. There will be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 09, 2017/b