

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 309 of 2018

1. State Of Chhattisgarh Through The Secretary Department Of Panchayat And Rural Development, Mantralaya, P.S. Rakhi, Tehsil Aarang, Naya Raipur District Raipur Chhattisgarh
2. The Commissioner-Cum-Director, Directorate Of Panchayat, Naya Raipur, District Raipur Chhattisgarh.
3. The Chief Executive Officer, Zila Panchayat, Kabirdham, District Kabirdham Chhattisgarh.
4. The Block Education Officer, Bodla, District Kabirdham (Chhattisgarh)

---- Appellants

Versus

- Jayant Kumar Patle S/o T.L. Patle, Aged About 37 Years Lecturer Panchayat, Govt. Higher Secondary School, Sarangpurkala, Block Bodla, District Kabirdham (Chhattisgarh)

---- Respondent

For Appellants/ State : Shri PN Bharat, Additional Advocate
Genral

For Respondents : Shri CJK Rao, Shri Ajay Shrivastava
and Shri Parag Kotecha, Advocates

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

27.08.2018

1. Bunch of writ applications came to be clubbed together and heard together since common questions of law arose for consideration.

2. The issue raised before the learned Single Judge was the petitioners who are private respondents here, and were working as Assistant Teacher (Panchayat) or Teacher (Panchayat) or Lecturer (Panchayat), all belonging to the cadre of Teacher (Panchayat), working under the department of Panchayat and Rural Development, Government of Chhattisgarh.

3. Appointments were made in different batches on different posts, but in the same cadre from time to time. They were allowed benefit of revised pay and annual increments, after due orders were issued for them. But suddenly, the State Government decided to withdraw the benefit of pay scale including annual increment on the basis of so called clause which was incorporated in the appointment letters. The issue, therefore, which arose for consideration before the learned Single Judge was whether the benefit so given was within the framework of the law and rules or whether on the basis of the provision incorporated in the appointment letter after many many years the benefit of revised pay scale or increment so granted should be taken away.

4. Learned Single Judge has taken the implication of the Rules including the subsequent executive decision taken by the State Government at the level of the Cabinet. It seems that whatever be the provision, specially Rule 8 provided for in Chhattisgarh Panchayat Shiksha Karmi (Bharti Tatha Seva Ke Sarten) Niyam, 2007 (for short, 'Niyam 2007') or as amended from time to time, the last of them being the 2012 Rule specially Rule 8 which talks in terms of probation stood diluted by the conduct or decisions of the state themselves..

5. While dealing with the submission and argument, the learned Single Judge observed as under in paragraphs 20 to 24 :

"20. Having heard learned counsel appearing for the parties at length and having given anxious consideration to the issues brought before this Court, it follows that the 2007 Niyam allowed relaxation concerning acquisition of B.Ed/D.Ed qualification in note 2 of Schedule II, however, proviso to Rule

8 provides that if any Shiksha Karmi fails to obtain the prescribed educational qualification after five years of joining, he shall not be entitled for increment till he obtains the required qualification. The main part of Rule 8 about the probation speaks of termination of service if service of Shiksha Karmi during the period of probation is not satisfactory. Thus, neither in the proviso nor in note 2 it is mandated that for not obtaining the required qualification the Shiksha Karmi can be terminated or would not be entitled for regularization. It is probably for this effect of the Rules, all the petitioners were confirmed or regularized at the end of their satisfactory completion of probation period even though they had not acquired the B.Ed/D.Ed qualification by that time.

21. All such Shiksha Karmis who were already confirmed or regularised and were coming within the zone of consideration for availing the benefit of increment and time scale pay/revised pay scale in terms of the circular dated 17-05-2013 were allowed the benefit and were getting advantage of the same for the last about three years.

22. Even under the 2012 Niyam relaxation for acquiring the qualification was incorporated by notification dated 19-11-2012 with condition that such candidates are required to attain the qualification within three years, however, the Rule does not provide for the consequences, if such appointee fails to attain the qualification. Even under the proviso to Rule 8 of the 2012 Niyam a candidate is entitled for increment only after completion of the probation period, which has not been interlinked with the issue of acquisition of qualification.

23. If the provisions contained in the 2007 Niyam and the 2012 Niyam are placed in juxtaposition, it is manifest that the 2012 Niyam makes a more beneficial provision for the Shiksha Karmis than the 2007 Niyam because under the 2007 Niyam the Shiksha Karmi will not be entitled for increment if he fails to acquire the qualification, but under the 2012 Niyam a Shiksha

Karmi who is appointed even without the subject qualification by way of relaxation as per the notification amending the rules dated 19-11-2012, he will not lose the increment, which is admissible to him after satisfactory completion of probation period.

24. It is important to notice that under both the Rules relaxation is provided, however, under the 2012 Niyam consequence of non obtaining of the qualification within 3 years is not provided. On the other hand, under the 2007 Niyam a person who is not qualified is yet entitled to be confirmed / regularized but he will not get annual increment."

6. The learned Single Judge thereafter, relied on various decisions of the Hon'ble Apex Court as to the ratio in relation to such inter play of the Rules and the notifications and concluded the dispute with following directions :

" In the result, all the writ petitions are disposed of in the following terms:

1) Such Teachers (Panchayat) cadre who were already granted the benefit of time scale pay / revised pay scale and annual increment in terms of the circular dated 17.05.2013 are held entitled to the pay scale/revised pay scale. Accordingly, the action of bringing them lower in the pay scale is quashed.

2) The issue about the petitioners' entitlement to get increment shall be considered afresh by the State Government within a period of 3 months from today. Before taking decision in the matter, the State Government shall hear the petitioners or some of them in the representative capacity. It is made clear that till the issue concerning entitlement of increment is decided, such petitioners who were already enjoying the benefit of increment, shall continue to get the

same, which shall remain subject to the decision taken by the State Government in this regard.

3) Such petitioners who have completed 8 years of service and have already been confirmed / regularized are held entitled to time pay scale/ revised pay scale, however, their entitlement to get increment shall automatically be considered when the State Government takes a decision in respect of such candidates who were already granted the benefit of increment. In the event the State Government decides to grant increment to the candidates, who were already paid the increment, this batch of petitioners will also be entitled for increment without requiring them to move afresh before this Court.

4) Such petitioners who were appointed under the 1997 Niyam when there was no condition of having B.Ed/ D.Ed qualification are held entitled to the revised pay scale/ time pay scale as well as increment and the impugned action withdrawing the said benefits from such petitioners is quashed. They shall continue to get all the benefits, which they were enjoying just before issuance of the impugned communications."

7. The stand which was taken by the State before the learned Single Judge that the Rules have to be strictly read and interpreted and that since there was an embargo created in Rule 8 with regard to non-grant of increment, is also the argument being made even before the appeal court.

8. This argument has already been well answered by the learned Single Judge. Not only this, this Court finds it strange that the State should be in appeal against the order of learned Single Judge, for more than one reason. They themselves have taken a decision at the level of the Cabinet and duly notified by the State on 17.05.2013 to extend the

kind of pay scale and benefits to the different category of Panchayat Teachers. The notification was part of the writ application as Annexure P/6. If despite the so called riggers of Rule 8 of Niyam, 2007, the State went ahead and confirmed the services of such teachers even if they had not acquired B Ed degree during a specified time and also decided to revise the pay scale as also give benefit of increment on the length of service as would be evident from reading of Annexure P/6, then in our opinion, the best view which was possible has been reached by the learned Single Judge specially, in para- 46 of the impugned order.

9. We fail to understand as to how the State can take a plea that its own decision and notification which was as a fall out of a Cabinet decision can be said to be not binding on the State and whether the State can turn around and question its own decisions including that of the Cabinet.

10. In totality, we do not find any infirmity with the decision of the learned Single Judge nor do we appreciate the reasons why the State should have come in appeal in the present case against the decision, since the learned Single Judge seems to have harmonised, the Rule and the decision taken by the State Cabinet in extending the benefit to the cadre of Teachers of Panchayat to the advantage of the State administration.

11. Appeal has no merit. It is hereby dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge