IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.43 of 2016
In
Civil Writ Jurisdiction Case No.2663 of 2015

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Baidyanath Jha, Son of Late Nirash Jha, resident of village Baurha, P.O. + P.S. Laukaha, District- Madhubani, Secretary of Non-Government Recognized and Aided Sanskrit Primary, Middle and High School Teachers' Association of the District of Madhubani

...Petitioner ... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Patna.
2. Secretary, Department of Human Resources, Government of Bihar, Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. Department of Finance, Government of Bihar through its Principal Secretary, Patna.
5. The Special Director, Secondary Education (In-charge Sanskrit), Education Department, Government of Bihar, New Secretariat, Patna.
6. Bihar Sanskrit Shiksha Board through its Secretary, Near Chitkohara Bridge, Patna off Harding Road, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 65 of 2016
In
Civil Writ Jurisdiction Case No.2464 of 2015

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1. Indu Kant Mishra, Son of late Umakant Mishra, resident of Village + P.O- Ramai, P.S- Farbishganj, District- Araria, presently working as Headmaster of Ambika Sanskrit Prathmik-Sah- Madhya Vidyalaya, Ramai, Chairman of Araria District Sanskrit School Teachers' Association.
2. Prakash Nath Jha, Son of Mahendra Nath Jha, resident of Village- Baradbatta, P.O- Urlaha, P.S- Palasi, District- Araria, presently working as Headmaster of Bhawani Sanskrit Prathmik-Sah- Madhya Vidyalaya, Baradbatta, District - Araria, Secretary of Araria District Sanskrit School Teachers' Association.

... ... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Patna.
2. Secretary, Department of Human Resources, Government of Bihar, Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. Department of Finance, Government of Bihar through its Principal

Secretary, Patna.

5. The Special Director, Secondary Education (In-charge -Sanskrit), Education Department, Government of Bihar, New Secretariat, Patna.
6. Bihar Sanskrit Shiksha Board through its Secretary, Near Chitkohara Bridge, Patna.

... Respondents ... Respondent/s

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with

Letters Patent Appeal No. 2268 of 2015
In
Civil Writ Jurisdiction Case No.3022 of 2015

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1. Shailendra Prasad Sinha, S/o late Ram Sundar Prasad Sinha, R/o Village/ Mohalla Shamshuddinpur, P.O. + P.S. Revilganj, District Saran.
2. Sanjeev Kumar Singh, S/o Sh. Krishna Kumar Singh, R/o Village/Mohalla Nayaka Lohar Tola, P.O. + P.S. Revilganj, District Saran.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Government of Bihar, Patna.
2. The Special Director, Secondary Education Sanskrit, Govt. of Bihar, Patna.
3. The Joint Secretary, Secondary Education, Govt. of Bihar, Patna.
4. The Bihar Sanskrit Siksha Board through its Secretary, having its office at Boring Canal Road, East Patna.
5. The Chairman, Bihar Sanskrit Siksha Board, Boring Canal Road, East, Patna.
6. The Secretary, Bihar Sanskrit Siksha Board, Boring Canal Road, East, Patna.

... Respondents... Respondent/s

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with

Letters Patent Appeal No. 1851 of 2015
In
Civil Writ Jurisdiction Case No.3444 of 2014

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1. Ashok Kumar Singh, Son of late Shiv Nandan Prasad Singh, Resident of Village Vishnupur, P.O. Pakaria, P.S. Shambhuganj, District Banka.
2. Shiv Kumar Singh, son of late Shreenath Singh, Resident of Village Sukhpura, P.O. Miranpur, P.S. Nonhara, District Ghzazipur (Uttar Pradesh).
3. Kailash Chandra Jha, Son of Sri Deep Narayan Jha, Resident of Village Mahmatpur, P.O. + P.S. Amarpur, District Banka.
4. Dighambar Kumar Singh, son of late Basuki Prasad Singh, Resident of Village and P.O. Pakaria, P.S. Shambhuganj, District Banka.
5. Naresh Kumar Singh, son of Sri Ramji Prasad Panjiyara, Resident of Village

Galampur, PO- Baidachak P.S Amarpur, District Banka.

... ... Appellant/s

Versus

1. The State of Bihar theough its Chief Secretary, Patna.
2. Secretary, Department of Human Resources, Government of Bihar Patna.
3. Principal Secretary, Education Department, Government of Bihar Patna.
4. Department of Finance, Government of Bihar through its Principal Secretary, Patna.
5. Bihar Sanskrit Siksha Board through its Secretary, Near Rajapur Pool, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 1880 of 2015
In
Civil Writ Jurisdiction Case No.5109 of 2015

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1. Narayan Jha, S/o Late Rajeshwar Jha, resident of village Sugauna, P.S. - Rajnagar, District - Madhubani.
2. Jai Chandra Jha, S/o Late Mahanth Jha, resident of Village - Karmauli, P.S. - Khajauli, District - Madhubani.
3. Karpur Thakur, S/o Bilat Thakur, resident of village - Andhra, P.S. - Andhra Tharhi, District - Madhubani.
4. Shobha Kant Chaudhary, S/o Late Kishori Chaudhary, resident of village - Chaura Mahrail, P.S. Jhanjharpur, District - Madhubani.
5. Satya Narayan Chaudhary, S/o Late Jagdhar Chaudhary, resident of Village - Gaur Andhra, P.S. - Rudrapur, Distt. - Madhubani.
6. Ram Chandra Sah, S/o Late Upendra Sah, resident of Village - Singhyan, P.S. - Andhra Thari, Dist - Madhubani.
7. Dev Kumar Singh, S/o Hari Ballabh Singh, resident of Village - Belha, P.S. - Phulparas, District - Madhubani.
8. Harischandra Jha, S/o Bishnu Kant Jha, resident of village - Sijaulia, P.S. - Phulparas, District - Madhubani.
9. Chandeshwar Choubey, S/o Late Hari Narayan Choubey, resident of village Sugauna, P.S. - Rajnagar, District - Madhubani.
10. Satish Chandra Jha, S/o Dayanand Jha, resident of Village - Madhura, P.S. - Lakhnaur, District - Madhubani.
11. Rameshwar Mishra, S/o Badhi Mishra, resident of village - Mansapur, P.S. - Laukhi, District - Madhubani.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.

2. The Principal Secretary, the Department of Education, Government of Bihar, Patna.
3. The Principal Secretary, the Department of Finance, Govt. of Bihar, Patna.
4. The Special Director, Secondary Education (Incharge Sanskrit) Department of Education, Government of Bihar, Patna.
5. The Secretary, Bihar Sanskrit Shiksha Board, Patna.
6. The Chairman, Bihar Sanskrit Siksha Board, Patna.
7. Deo Charan Mishra, S/o Late Suryamani Mishra, resident of Village - Satighara, P.S. - Babubarhi, Dist - Madhubani.
8. Gauri Shankar Jha, S/o Late Ramanand Jha, resident of Village - Satghara, P.S. - Babubarhi, District - Madhubani.

... ... Respondent/s

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Appearance :
(In Letters Patent Appeal No. 43 of 2016)
For the Appellant/s : Mr. P.K. Shahi, Sr. Adv. with
Mr. Purushottam Jha, Adv.
Mr. Vikash Kumar Jha, Adv.
For the Respondent/s : Mr.Ashutosh Ranjan Pandey, AAG-15
Mr. Kumar Manish, SC-5
Mr. Kumar Pankaj, AC to SC-5
(In Letters Patent Appeal No. 65 of 2016)
For the Appellant/s : Mr. P.K. Shahi, Sr. Adv. with
Mr. Purushottam Jha, Adv.
Mr. Vikash Kumar Jha, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-8
(In Letters Patent Appeal No. 2268 of 2015)
For the Appellant/s : Ms. Namrata Mishra, Adv.
Ms. Archana Jha, Adv.
Ms. Anamika Kumari, Adv.
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15
(In Letters Patent Appeal No. 1851 of 2015)
For the Appellant/s : Mr. Devendra Kumar Sinha, Sr. Adv. with
Mr. Alexander Ashok, Adv.
Mr. Abhinay Raj, Adv.
For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15
Mr. Shashi Shekhar Tiwary, AC to AAG-15
(In Letters Patent Appeal No. 1880 of 2015)
For the Appellant/s : Ms. Hemant Kumar Jha, Adv.
For the Respondent/s : Mr. Ajay Bihari Sinha, GA-8
Mr. Suryakant Kumar, AC to GA8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-08-2019

These intra court appeals arise from a common judgment and order passed by a learned Single Judge of this Court on 12.08.2015 in a batch of writ petitions arising from CWJC No.2663 of 2015, CWJC No.2464 of 2015, CWJC No.3022 of 2015, CWJC No.3444 of 2014 and CWJC No.5109 of 2015 whereby the writ petitions have been dismissed.

Since each of the writ petitions raised common issues of law while praying for identical reliefs that they were heard together and disposed of by a common judgment which is put to question in this batch of appeals.

For the sake of convenience we are persuaded to refer to the relief prayed by the writ petitioners which fell for consideration before the learned Single Judge.

The writ petitioners in their respective writ petitions in sum and substance, while praying for issuance of a writ in the nature of mandamus to command the respondents to allow the teaching and non-teaching staffs of the Non-government Recognized (Aided) Sanskrit Schools of primary, middle and secondary standard the pay scale as admissible to the teachers and non-teaching staffs of the Government Schools in accordance with the resolution bearing Memo No.237 dated 20.02.1990, have relied upon a judgment reported in **2011(4) PLJR 931 (Bihar Minorities/Aided Primary**

Teachers Association vs. State of Bihar) rendered by a learned Single Judge of this Court.

For the sake of ready reference we are persuaded to reproduce the relief prayed by the writ petitioner in CWJC No.2663 of 2015 which in fact takes into fold the relief prayed by the writ petitioners in other writ petitions which were heard and disposed of analogous and runs under:

(i) For issuance of a writ in the nature of a writ of mandamus directing and commanding the respondents to allow the parity of pay and all other allowances to the teachers and non-teaching staffs of the Non-Government Recognized and Aided Sanskrit Schools of Primary, Middle and Secondary standard in compliance with the resolution of the State Government, Human Resources Development Department, Government of Bihar, Patna issued vide Memo no.2152-1237 dated 20.02.1990 (Annexure 5) from the date these benefits have been made available to the teachers and non-teaching staff of Government schools, without making any discrimination, as held by this Hon'ble Court vide its judgment dated 28.10.2010 passed in CWJC No.1739 of 2004, judgment dated 10.05.2011 passed in CWJC No.2897 of 2005, judgment dated 14.05.2013 passed in CWJC No.8011 of 2012 and judgment dated 30.01.2014 passed in CWJC No.5252 of 2006.

(ii) For grant of selection grade and time bound promotion/ACP from due date as granted to the teachers of Government Schools and Aided Minority School Teachers.

(iii) For payment of teaching allowances, residence allowance, interim reliefs, bonus, uniform allowance, travelling allowance, group insurance, contingence etc.

(iv) For grant of Leave Salary (Encashment) like teachers of Government Schools and Minority Aided Schools.

(v) For grant of 5th Pay Revision with effect from 01.01.1986 and monetary benefits thereof from 01.04.1989 like employees of Government Schools made vide resolution no.6021 dated 18.12.1989 and not w.e.f. 01.04.1993 as has been made vide Government Resolution no.3268 dated 05.11.1993.

(vi) For grant of 6th Pay Revision with effect from 01.01.19996 and monetary benefits thereof from 01.04.1997 like employees of Government Schools made vide Finance Department Resolution No.660 dated 08.02.1999 and not w.e.f. 01.07.2005 as has been made vide Government Resolution no.470 dated 04.03.2006.

(vii) For grant of pension/family pension/gratuity, provident fund etc. as payable to the similarly situated Teachers in Government Schools and Aided Madarsa School.

(viii) For grant of any other such benefits which have been allowed to the Teachers of Government Schools and Aided Minority Schools in compliance with the judgment of this Hon'ble Court in the case of Bihar Minorities/Aided School Teachers Association vs. The State of Bihar and others) as reported in 2011(4) PLJR 931.

(ix) And for any other relief/reliefs for which the petitioner is found to be entitled to under the facts and circumstances of the case.

CWJC No.5109 of 2015 is filed by the retired teachers of Non-Government Recognized Aided Sanskrit Schools who while making prayer for payment of their salary, allowances and other inservice benefits as prayed in other writ petitions, have also sought a direction for payment of pension, family pension, gratuity, provident fund etc. at par with the teachers and non-teaching staffs of the Government Schools.

While CWJC No.2663 of 2015 and CWJC No.2464 of 2015 is filed by the Secretary of the Teachers Association of the respective schools, CWJC No.3022 of 2015 and CWJC No.3444 of 2014, is filed by the teaching staff of such schools, as we have already mentioned CWJC No.5109 of 2015 is filed by the retired teachers of one of such schools.

For the sake of ready reference we would be referring to the pleadings in LPA No.43 of 2016 and from CWJC No.2663 of 2015 and LPA No.1851 of 2015 arising from CWJC No.3444 of 2014 because we find that the affidavits in support of the respective stand of the contesting parties have been filed in these matters.

Some undisputed facts noted in the present case is that the schools in question were set up by the private bodies and the management and functioning of these institutions are in hands of the private managing committee. Even though these institutions have been given recognition by the State Government in its Education Department and are also provided with financial aid but the management of the respective schools continues to be in the hands of the managing committees.

One important facet of the matters is that these privately managed Sanskrit Schools were sought to be taken over by State by promulgation of ordinances under Article 213 of the Constitution of India. It is when some dispute arose regarding payment of salary that writ petitions were filed before this Court and the matter reached the Supreme Court to result in a Constitution Bench judgment reported in **(2017) 3 SCC 1 (Krishna Kumar Singh vs. State of Bihar)**, whereby the ordinances under which the schools were sought to be taken over were held a fraud on constitutional power as they were never laid before the State Legislature. The Constitution Bench, however, while holding as such protected the salary drawn by the teachers at par with the government employees by declaring that no recovery would be made of the salary so paid to the teachers/non-teaching staff. The Supreme Court thus while holding that the ordinances did not create any right or confer status of a government employee on the teaching and non-teaching staff of the Sanskrit Schools, simply protected the salary drawn by them under the ordinance as recovery was restrained.

The present set of writ petitions were filed much before such declaration by the Constitution Bench but then the declaration of the Supreme Court that the ordinances would not confer any right on the teaching and non-teaching staff of the Sanskrit Schools to be treated at par with the government employees would certainly have a bearing in so far as the relief in the present set of cases is concerned.

The pleadings on record do confirm that the appellant-writ petitioners base their relief on a circular bearing Memo No.237 dated 20.02.1990 in so far as it allows the salary and other allowances to the teachers and non-teaching staff of the Non-Government Recognized Minority Primary, Middle and Secondary Schools together with the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas, as admissible to the teachers and non-teaching staff of the government schools. The said resolution of the Human Resources Development Department, Government of Bihar was made effective from 01.01.1990 and is enclosed at Annexure 5 to CWJC No.2663 of 2015.

The pleadings on record of CWJC No.2663 of 2015 also contains a resolution dated 13.04.1983 at Annexure 3 which deals with the pay revision of teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas with effect from 01.04.1981 under the 4th Pay Revision Commission recommendations. A plain reading of the resolution would confirm that the pay revision was granted to the teaching/ non-teaching staff of Non-Government Recognized (Aided) Sanskrit Schools and Madarsas at par with the teaching and non-teaching staff of the Government Schools.

By a subsequent resolution dated 31.03.1984 the State Government resolved to allow the same pay-scale and dearness allowances to the teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas as admissible to the government employees. Such resolution is at Annexure 4 to the said writ petition. These resolutions are followed by the resolution relied upon by the appellant-writ petitioners bearing Memo no.237 dated 20.02.1990 whereby for the 3rd time the State Government in its Human Resources Development Department resolved to provide the same salary and other allowances/benefits to the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas as admissible to the teaching and non-teaching employees of the Government Schools. This resolution is at Annexure 5.

By another resolution bearing Memo No.893 dated 08.11.1990 the State Government in its Human Resources Development Department resolved to grant the same pay-scale and other allowances to the Teaching and Non-teaching staff of the Non-Government Recognized Minorities Schools as admissible to the teaching and non-teaching staff of the Government Schools with effect from 01.01.1986 and the financial benefits with effect from 01.03.1989. The resolution bearing Memo No.237 dated 20.02.1990 was modified to such extent. This was followed by a resolution bearing Memo No.3268 dated 05.11.1993 of the Department of Primary, Secondary and Mass Education whereby the modalities were laid down in regard to implementation of the Central Pay Scales by way of 5th Pay Revision for the Non-Government (Aided) Primary Schools (including Minorities). The said circular after taking note of the earlier resolution bearing Memo No.237 dated 20.02.1990 on which the appellant-writ petitioners rely, allowed benefits of revision of pay scale by way of 5th Pay Revision with effect from 01.01.1986 but the financial benefits was allowed from 01.04.1993 and which led to the writ petition filed by the Bihar Minorities/Aided Primary Teachers' Association arising from CWJC No.7139 of 2004 which was allowed vide judgment reported in **2011(4) PLJR 931**.

This judgment has been much relied upon by the writ petitioners to espouse their relief and when this fact was placed before this Court, the State in its Human Resources and Development Department was directed to place on affidavit whether or not the judgment and order of the learned Single Judge in the case of Bihar Minorities/Aided Primary Teachers' Association (supra) has been implemented or has been questioned before a superior forum. It is after several direction and on imposition of costs that ultimately affidavits have been filed in LPA No.43 of 2016 and LPA No.1851 of 2015 by the Principal Secretary admitting to the position that the judgment has been implemented but yet does not come to the aid of the appellant-writ petitioners because it is related to Minorities Schools while the writ petitioners are Non-Government Recognized (Aided) Sanskrit Schools who would not be entitled to the benefits of the said judgment.

The other issue which was canvassed by learned counsel appearing for the State led by Mr. Ashutosh Ranjan Pandey, learned Additional Advocate General No.15 is in reference to Resolution No.970 dated 31.08.2013 to submit that the claim of the writ petitioners were examined and has been resolved by the said resolution in consideration of their prayer for grant of 5th and 6th Pay Revisions from 01.01.1986 and 01.01.1996 respectively but upon consideration of the entire matter as well as the eligibility of the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools who admittedly are run by the private managing committee, the Government has resolved to provide them the benefits in the manner prescribed with effect from 01.04.2013.

In so far as the reliance of resolution bearing Memo no.237 dated 20.02.1990 is concerned, the respondents have made reference to the subsequent resolution dated 08.11.1990 and 31.08.2013 to submit that whatsoever was the decision taken in the earlier resolution dated 20.02.1990 stood amended and modified by the subsequent resolutions.

Ms. Namrata Mishra, learned counsel appearing for the appellant-writ petitioners in one of the appeals contesting the position submits that the very resolution no.970 dated 31.08.2013 has been questioned by the appellant-writ petitioners on its discriminatory nature for even while considering the claim of the teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools on the issue of pay parity and other allowances, the Government while accepting the claim has no reason to fix an arbitrary cut-off date of 01.04.2013 which is not backed by any reason or a possible explanation.

Before us the issue which falls for consideration is, whether in view of the earlier resolutions of the State Government in allowing the pay-scales and allowances as admissible to the teaching and non-teaching employees of the government schools at par to the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas as manifest from the resolution dated 13.04.1983 (Annexure 3), the resolution dated 31.03.1984 (Annexure 4) and the resolution dated 20.02.1990 (Annexure 5) in so far as the benefit of pay revision to the teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas are concerned and which resolution has not been interfered with by any resolution of the State Government in supersession or to wrest away such right and to take away the benefits by virtue of such resolution rather even by the subsequent resolutions dated 05.11.1993 at Annexure 8 and 12.04.1999 at Annexure 10 the position regarding grant of pay-revision and allowances to the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas has been reiterated albeit with separate cut-off date, which situation in fact has continued until the resolution No.970 dated 31.08.2013 which was published in the Bihar Gazette Extraordinary dated 04.09.2013 whereunder the State Government in its Education Department while admitting that the matter as regarding the grant of pay revision to the teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas was under consideration of the State Government and that on consideration of such claim and basing the pay-scale admissible to the government teachers as on 01.01.2006 that the pay-scale and dearness allowance has been determined while taking a decision not to grant any other benefits, the relief towards pay parity can be denied.

In our opinion, the circulars on record confirm that the State Government in its Education Department strictly does not deny the claim advanced by the writ petitioners for pay revision together with the dearness allowances to the teaching and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas at par with the teaching and non-teaching staff of the government school rather the only issue which falls for consideration is the cut-off date from which the same is to be given and whether there is arbitrariness in the action of the State in fixing 01.04.2013 as the date of admissibility.

For the purpose we do not have to look further because this very issue fell for consideration in the case of **Bihar Minorities/Aided Primary Teachers Association** (supra) and the learned Single Judge has allowed the writ petition taking note of an earlier judgment rendered in a case filed by the teachers of aided middle school arising from **CWJC No.5366 of 1996 (Madhav**

Mahaseth vs. State of Bihar) since reported in **1998(1) PLJR 803** whereby the clause present in the resolution dated 05.11.1993 in so far as it allowed monetary benefits of such pay revision to the teachers and non-teaching employees of aided primary/middle schools with effect from 01.04.1993, was struck down with a consequential direction that those teachers and employees of aided primary and middle schools would be entitled to revision of pay scale with effect from 01.01.1986 with the monetary benefits from 01.03.1989, as allowed to the teachers of other Non-Government Aided Schools.

This judgment is sought to be distinguished by the Principal Secretary as well as the other officers of the Education Department who have filed separate affidavits in LPA No.1851 of 2015 to canvass upon the special status enjoyed by the minority schools under Articles 29 and 30 of the Constitution of India but in our opinion, the distinction so sought to be created are only artificial for 3 reasons, namely:-

(a) There is already a judgment in favour of the teachers and non-teaching employees of Aided Primary/Middle Schools in the case of **Madhav Mahaseth** (supra) which was noted with approval by the learned Single Judge while delivering his judgment in the case of Bihar Minorities/Aided Primary Teachers' Association (supra);

(b) The benefit of pay revision to the teachers of the Minorities Aided Primary/Middle Schools at par with teachers of government school was not allowed by virtue of their special status under Articles 29 and 30 of the Constitution rather it is because that the benefits were allowed to the other aided schools that treating it as a case of discrimination, that similar benefits were allowed to the Minority aided schools; and

(c) The resolutions of the State Government dated 13.04.1983, 31.03.1984, 20.02.1990, 05.11.1993, 12.04.1999 and 31.08.2013 does not refuse pay parity to the teachers/non-teaching employees of Non-Government Recognized (Aided) Sanskrit Schools, at par with Government Schools the matter of grant and/or revision of pay-scales together with the dearness allowance admissible thereon rather a deviation has taken place on the date of such admissibility.

A cursory glance at the resolution of the Secondary, Primary and Adult Education Department dated 12.04.1999 at Annexure 10 to CWJC No.2663 of 2015 would confirm that the State Government has admitted to the grant of benefits under the 4th Pay Revision to the teachers and non-teaching staff of the Non-Government Recognized (Aided) Madarsas and Sanskrit Schools with effect from 01.04.1981 and while bearing note of the fact that under the 5th Pay Revision, the government teachers were allowed revision with effect from 01.01.1986 vide resolution dated 18.12.1989 and actual payment from 01.03.1989, that the teachers and non-teaching staff of the Non-Government Recognized (Aided) Madarsas and Sanskrit Schools were granted the pay revision with effect from 01.04.1998 i.e. from a later date.

Until such stage we find not much of dispute in so far as the grant/revision of pay-scales to the teaching and non-teaching staff of the Non-Government Recognized (Aided) Madarsa and Sanskrit Schools is concerned rather it is at this stage that even while taking note of the effective date of 5th Pay revision i.e. 01.01.1986 with monetary benefits from 01.03.1989, which was allowed to the teachers and non-teaching staff in the Government schools, yet the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas were allowed from 01.04.1998 and the reasons were missing.

The appellant-writ petitioners represented against this discrimination in so far as the cut-off date of 01.04.1998 is concerned and which has culminated in the resolution dated 31.08.2013 to grant them the cumulative benefits of the pay revisions.

The resolution of the Education Department dated 05.11.1993 which allowed the benefit of pay revision from 01.01.1986 to the teaching and non-teaching employees of the Non-Government Recognized (Aided) Primary schools including the

Minority Schools with effect from 01.04.1993 was a subject matter in the case of **Bihar Minorities/Aided Primary Teachers Association** (supra) and while this matter was pending that the State Government in its Education Department issued another resolution on 12.04.1999 to make the revision effective in so far as the teaching non-teaching staff in Non-Government Recognized (Aided) Madarsas and Sanskrit Schools are concerned with effect from 01.04.1998. It is not in dispute that this judgment has been implemented although its applicability to the case of the writ petitioners is sought to be distinguished on grounds that it related to the Minority Schools exclusively which enjoyed the protection under Articles 29 and 30 of the Constitution of India.

It is surprising that the Principal Secretary, Education Department as well as the Director while filing their affidavit in LPA No.1851 of 2015 have not bothered to satisfy themselves that there was already a judgment in favour of the Teachers and non-teaching employees in Aided Primary/Middle Schools in the case of **Mahadev Mahaseth** (supra) whereby the cut-off date present in the resolution dated 05.11.1993 was interfered with and benefits of revision was allowed to all the teachers and non-teaching staff of the aided Primary/Middle schools with effect from 01.01.1986 with the financial benefits from 01.03.1989.

In such view of the matter and where the revision was already extended to all aided schools including the Minorities schools, the respondent-authorities in the Government are trying to read in between the lines to deny the benefits of the judgment to the teaching and non-teaching staff of Non-Government Recognized (Aided) Sanskrit Schools and Madarsas. In fact any attempt in this context would be arbitrary and discriminatory as argued by the appellant-writ petitioners.

In our opinion the resolution dated 31.08.2013 further seeks to discriminate in between the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas as it though allows the pay-scales on the same pattern as admissible to the government teachers together with the dearness allowance admissible thereon with effect from 01.01.2006 but to allow the financial benefits have been allowed from 01.04.2013. The said resolution also bears notice of the resolution of the Human Resources Development Department bearing Memo no.774 dated 08.07.2008 whereby the dearness allowance to the extent of 300% was sanctioned with effect from 01.04.2008 on the scale admissible to the teaching and non-teaching employees of Government Schools from 01.01.1986, to the teaching/non-teaching employees of Non-Government Recognized (Aided) Sanskrit Schools and Madarsas.

The fact that until 20.02.1990 the teachers in Non-Government Recognized (Aided) Sanskrit Schools were treated at par with the teaching and non-teaching employees of the Government Schools in the matter of pay-scales and allowances thereon, even if the State Government decided to restrict the aid only to the payment of salary and dearness allowance thereon, the very fact that this resolution dated 20.02.1990 has been referred to by the respondents themselves in the resolution dated 05.11.1993 and that the Government has been taking decision on the pay-scales bearing in mind the scale admissible to the teaching and non-teaching employees in the Government Schools, until such time that the Government resolves to draw a new pay-scale for such Non-Government Recognized (Aided) Sanskrit Schools and Madarsas as having been done vide paragraph 6 of the resolution dated 31.08.2013 whereby it has been resolved to appoint teachers and non-teaching staff on the post falling vacant with effect from 15.02.2011 on a fixed pay-scale which decision of the State Government was upheld by a Division Bench of this Court in the judgment rendered in the case of **Imran Alam vs. State of Bihar** arising from CWJC No.985 of 2015 which was heard analogous with other writ petitions filed by the teachers employed in such Government Aided Madarsas and Sanskrit Schools appointed after 15.02.2011 but prior to resolution dated 31.08.2013 on fixed scale.

The Division Bench has been pleased to uphold the decision of the State Government to grant fixed pay-scale to those teachers/non-teaching employees who were appointed after 15.02.2011.

In our opinion the State Government is well within its jurisdiction to draw a pay-scale for institutions of the present kind which though are managed by the private managing committee yet have been given not only recognition by the State Government in its Education Department but also are aided towards payment of salary etc. and since a decision is taken to make payment of salary to teachers and non-teaching employees appointed in such schools and Madarsas after 15.02.2011 on a fixed scale vide resolution dated 31.08.2013, this by itself confirms the right of the appellant-writ petitioners appointed prior to the said date to the pay-scale as well as revision at parity with the teachers and non-teaching staff in Government Schools.

For the discussions above the resolution dated 31.08.2013 in so far as it discriminates the teachers and non-teaching employees of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas for revision of pay-scales under the 5th and 6th Pay Revisions at parity with the revision allowed to the teaching and non-teaching staff in Government Schools, as well as the fixation of arbitrary date for monetary payment is held discriminatory and not backed by a possible explanation.

For the reasons and discussions above, we are satisfied to record that the appellant-writ petitioners have made out a case for indulgence and consequently we direct the respondent authorities in the Education Department including the Principal Secretary to accord the benefits of revision of pay-scales under the 5th and 6th Pay Revisions to the teachers and non-teaching staff of the Non-Government Recognized (Aided) Sanskrit Schools and Madarsas in the same manner as allowed to the teaching and non-teaching staff in the Government Schools together with dearness allowance admissible thereon and let the exercise together with the payment of differential amount of salary to which the teaching and non-teaching staffs in these schools are entitled, be made within a period of three months from today.

We, however, bearing note of the Constitution Bench judgment of the Supreme Court rendered in the case of **Krishna Kumar Singh** (supra) are not persuaded to allow the payment of superannuation benefits to these teaching and non-teaching staffs in these schools because they are employees of the schools which are run by the private managing committees and thus cannot be held government employees for such admissibility. To such extent we refuse the relief of superannuation benefits for the retired employees of the schools for they do not acquire the status of a government employee and the relief that we have allowed is strictly limited to the revision of pay-scales under the 5th and 6th Pay Revisions together with the dearness allowance admissible thereon.

The judgment and order passed by the learned Single Judge dated 12.08.2015 on the writ petitions bearing CWJC No.2663 of 2015, CWJC No.2464 of 2015, CWJC No.3022 of 2015, CWJC No.3444 of 2014 and CWJC No.5109 of 2015 stands modified to such extent.

These Letters Patent Appeals are allowed to the extent indicated above.

(Jyoti Saran, J)

(Partha Sarthy, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.08.2019
Transmission Date	NA