

DL. January 4,
14 2021
&
15.

M.A.T. 394 of 2020
With
M.A.T. 188 of 2020

Re: CAN 2834 of 2020 (stay)
filed on March 13, 2020
in M.A.T. 394 of 2020
and
CAN 4 of 2020 (further order)
Filed on November 2, 2020 in
M.A.T. 188 of 2020.

Mr. Kishore Dutta,
Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag,
...for the appellant.

Mr. Tale Md. Siddeique,
Mr. Ranjan Saha,
...for the State respondents.

Mr. Lakshmi Kumar Gupta,
Mr. Anindya Bose,
Mr. Chandrachur Chatterjee,
Mr. Diptendu Mondal,
...for the writ
petitioners/respondents.

Although the matters are appearing under the heading application, by consent of the parties, the appeals itself are taken up for hearing together by treating those as on day's list.

The report filed in terms of the order dated December 1, 2020 is taken on record. It appears that the Sixth Pay Commission has complied with the orders impugned in the appeals by filing report.

Mr. Lakshmi Kumar Gupta, learned senior advocate appearing on behalf of the writ petitioners/respondents, has

submitted that the Sixth Pay Commission has committed various errors, which are apparent from the record, and denial of right to the writ petitioners from higher scale of pay was not justified. It is submitted that the grant of higher pay scale and grade pay to those with higher qualification is unassailable. The grievance of the writ petitioners appears to be that while recommending and granting pay scale and grade pay to post graduate teachers, the central rates were taken into consideration as per guidelines in terms of reference and are made available, however, such consideration by both the Pay Commission and State is absent in case of graduate teachers. The Pay Commission was obliged to have followed the central pay structure which was not done for graduate teachers.

It is further submitted that while recommending central pay scale and grade pay to Post Graduate teachers and the State accepting the same, three parameters of the guidelines mentioned in paragraph 5 of the terms of reference, namely, (i) the prevailing pay structure under the Central Government; (ii) the economic condition of the country, financial responsibility of the Government of India and the pattern of allocation of revenues to the State and (iii) the resources of the State Government and the demands thereon on account of the commitment of the State Government to the developmental activities, were considered to be the constraints for the State.

It is submitted that the equality before law is breached as in the terms of reference granting of central pay structure to post graduate teachers was allowed but similar treatment for revision of the pass graduate teachers have not been provided.

These submissions, in our view, cannot be considered at this state for two reasons. Firstly, the learned Single Judge disposed of the writ petitioners by directing the Member Secretary of the Sixth Pay Commission to give a hearing to the writ petitioners and then submit a report to the State for consideration of the same. The report so submitted cannot form the subject matter of an appeal. Secondly, the Sixth Pay Commission is an expert body and has submitted its recommendation to the State Government. The recommendations are not binding on the State Government. Whether the State Government would accept the said recommendations or would modify or disregard it is a matter for the State to decide. We are confident that the State Government while considering the recommendations shall taken into consideration the grievances, as raised by Mr. Gupta, learned senior advocate appearing on behalf of the writ petitioners, during the hearing of the appeal, if they are found to be relevant during consideration of the recommendations of the Sixth Pay Commission. At this stage, we are not inclined to go into the recommendations of the pay commission and to give our opinion as to suitability of such recommendations vis-à-vis the writ petitioners.

On such consideration, we modify the orders impugned in these appeals that the Sixth Pay Commission being an expert body has decided the representation of the writ petitioners in stead the matter being decided by the Member Secretary of the Sixth Pay Commission. The State Government shall consider the recommendation of the Sixth Pay Commission as expeditiously as possible.

With the aforesaid observations, the appeals being MAT 394 of 2020 and MAT 188 of 2020 succeed in part.

In view of disposal of the appeals, nothing remains in the connected applications and those being CAN 2834 of 2020 and CAN 4 of 2020 are disposed of.

There will be no order as to costs.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)

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