

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2338 OF 2008

PETITIONER :- Vidarbha Madyamik Shikshak Sangha,
Gadchiroli, through its Secretary, Ajay
Bhauraoji Londhe, R/o Near Chemist
Bhavan, Chamorshi Road, Gadchiroli.

...VERSUS...

RESPONDENTS :- 1. State of Maharashtra, through its
Secretary, Department of Education
Mantralaya, Mumbai 32.

2. Dy. Director of Education Nagpur
Division, Nagpur.

3. Education Officer (SEC)
Zilla Parishad, Gadchiroli.

Mr. Uday Changle counsel h/f Mr.Anand Parchure, counsel for the
petitioner.

Mr.N.S.Rao, A.G.P for respondent

CORAM :SUNIL B.SHUKRE &
ANIL L. PANSARE, JJ.

DATE : 11.10.2022.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.
2. The learned counsel for the petitioner submits that
although, the grievance of the petitioner has been partially

redressed by issuance of the new Government Resolution dated 14.08.2008, some grievance of the petitioner still remains. According to him, in giving benefit of one step increment to those teachers rendering their service in naxal affected/tribal areas for the first six years and not giving it thereafter is arbitrary. He further submits that in denying this benefit to those teachers and non teaching staff, who rendered their service in naxal affected/tribal areas from the date of their appointment to the date of their retirement, the State Government has made impermissible distinction between government employee and teaching/non teaching staff of private schools. Thus, in the opinion of learned counsel for the petitioner, such denial flowing from GR dated 14.08.2008 is violative of Article 14 r/w Article 21 of the Constitution of India. Learned AGP submits that the decision taken by the State Government which is reflected in the Government Resolution dated 14.08.2008 is a matter of policy and the policy framed being for conferring some benefits on certain conditions cannot be said to be discriminatory, arbitrary and violative of any fundamental right of the petitioner. He submits that ultimately, the Government has to consider granting

additional benefits and incentives to the private employees working in various schools located in naxal affected/tribal areas by taking into consideration its financial capacity. He further submits that while, it is the duty of the Government to provide education to children residing in naxal affected/tribal areas, but this is not so for private schools. He further submits that private societies have a choice to start or not to start schools in such areas and it is also the choice of the private employees to accept the appointment or not to accept the appointment in such areas. Therefore, there can not be any question of the classification made between government employees and private employees as being hit by the rule of equality and rule against arbitrariness embedded in Article 14 and Article 21 of the Constitution of India.

3. On a deeper consideration of the issue raised by the petitioner in this case, in the light of the rival arguments, we are of the opinion that there is no substance in the submissions of the learned counsel for the petitioner and a great merit in the argument advanced on behalf of the State.

4. The petitioner is aggrieved by two conditions of Government Resolution dated 14.08.2008. The first condition is about giving of benefit of the Government Resolution for the period of first six years spent in naxal affected/tribal areas by a teacher and non teaching staff. The second condition is about non availability of the benefits of the Government Resolution to those teachers and non teaching staff, who spend their entire tenure right from their initial appointment till retirement in naxal affected/tribal areas.

5. The first condition cannot be said to be arbitrary for the reason that it incorporates a safeguard of transfer of the employee after completion of his tenure of six years in naxal affected/tribal areas in any case. There is an embargo placed upon continuation of such an employee in such an area beyond a period of six years. Therefore, there would be no question of continuing to grant benefits of Government Resolution dated 06.08.2002 after completion of tenure of six years in such an area.

6. As regards the second condition which excludes particular class of teachers/non teaching staff from the benefits of the Government Resolution, we must say that even this condition cannot be said to be discriminatory and arbitrary and violative of rule of equality and principle of absence of arbitrariness on the part of the State. The reason being that such an employee who gets his first appointment in naxal affected/tribal areas would have a choice to either accept the appointment or reject the offer. There is no compulsion upon such an employee to go and join in such an area on such a post, come what may. Similarly, there is also a choice available to a private society to start a school in such an area or not. This option is not available to the Government because it is the duty of the Government to provide education to all children. Similarly, the choice to join or not to join the posting would not be available to a government employee, because he has already joined the service elsewhere and is being sent on transfer to naxal affected/tribal areas.

7. Then, giving of additional benefits and incentives as has been done by the Government Resolution dated 14.08.2008, is a

matter of policy and as long as the policy is not seen to be violative of any fundamental right or is not considered to be arbitrary or standing against any law or public policy, the policy framed by the State cannot be interfered with by this Court. While, framing the policy as stated in the Government Resolution dated 14.08.2008, the State Government has taken into consideration its financial capacity, the choice available with private societies running schools in such areas and the option available with the teacher or non teaching staff to accept or not to accept the appointment in such an area. Availability of these options would differentiate employees of private schools from those of government schools. Besides, the matter of sanction of grants-in-aid, there is no doubt, is a pure question of policy and if the State Government, depending upon its fundamental capacity, decides that it would not be in a position to spend its amount for incurring the additional financial liability arising on account of giving of certain financial benefits and allowances to employees of the private school, the decision, in our considered view, would be a decision taken in the financial interest of the State and therefore, it would be a decision which would be consistent with public

policy. Such decision, in fact, serves the object of judicious spending of public money on the one hand and has a reasonable relation with the criterion of the differentia which is carved out by putting private employees in a separate class. Therefore, we are of the view that the impugned conditions of Government Resolution dated 14.08.2008 cannot be said to be arbitrary, unreasonable, discriminatory and violative of the principles of equality, fairness and reasonableness which run through the Article 14 and 21 of the Constitution of India like a common thread of a fabric.

8. We thus find that there is no merit in this Writ Petition. The Writ Petition stands dismissed.

9. Rule is discharged.

(ANIL L. PANSARE,J)

(SUNIL B. SHUKRE,J)