IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP-28539-2023
Reserved on: 22.12.2023
Pronounced on: 02.02.2024

SONIA DUDEJA .....Petitioner

Versus

UNION OF INDIA & ORS. ....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Amar Vivek Aggarwal, Advocate
for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Vibhor Bansal, Senior Panel Counsel
for respondent/UOI.

Mr. Anil Mehta, Senior Standing Counsel with
Mr. Aman Bahri, Addl. Standing Counsel
for U.T., Chandigarh.

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SURESHWAR THAKUR, J.

Factual Background

1. The petitioner herein is working as a Hindi Mistress with respondent No. 6 i.e. DAV Senior Secondary School, Sector – 8 Chandigarh, which is a Government Aided School. The petitioner is averred to attain the age of 58 years, on 31.12.2023. She is aggrieved against her proposed retirement at the age of 58 years, despite the fact that all the teaching and non teaching staff, thus working in the Government Schools of U.T., Chandigarh, are permitted to serve till the

age of 60 years, given the superannuation age rather standing enhanced to 60 years, owing to the adoption/applicability vide notification dated 29.03.2022 of the Central Pattern of Rules in U.T. Chandigarh.

2. In the writ petition (supra), a challenge has been also made to notification dated 23.05.2018 (Annexure P-11). The said challenge is grooved in the factum, that it denies the apposite parity to the petitioner, who is serving in a private educational institution but aided by the Union of India, thereby it creates an invidious discrimination with the petitioner's counterparts, rather serving in Government Schools, in respect of whom rather a beneficial notification (supra) became issued.

3. Furthermore, a prayer is also made for the quashing and setting aside of the communication dated 08.08.2022 (Annexure P-10), as, issued by the Chandigarh Administration, whereby the request of the co-respondent No. 6 – D.A.V. Senior Secondary School (Lahore) Sector 8- C, Chandigarh, seeking guidance with regard to retirement age, in the grant-in-aid schools, has been rejected, thus, in complete transgression of the Union Territory of Chandigarh Employees (Conditions of Service) Rules, 2022 (Annexure P-9).

4. The said challenge is grooved in the factum, that it has been made applicable, only to the employees/teachers, serving in the Govt. Schools under the Chandigarh Administration, whereas, the Chandigarh Administration rather has accepted and implemented, the recommendations of the Kothari Commission, hence relating to the age of superannuation as 60 years, of the teaching faculty, and, of the non teaching employees, serving in Government aided schools in the Union Territory, Chandigarh.

Submissions of the learned counsel for the petitioner.

5. The learned counsel for the petitioner has made a claim for grant of the writ reliefs inter alia on the following submissions.

(i) That the teaching faculty in the respondent school has been invidiously discriminated, through the drawing of Annexure P-11, despite Annexure P-9 detailing therein, the conditions of service of persons appointed to the services and posts under the administrative control of Administrator, and, which but are applicable to the teaching faculty of Government run schools, wherebys, the age of superannuation would be governed.

(ii) That since the teaching faculty in schools aided through grants made by the Union of India, thus perform similar or alike functions, to the teaching faculty which are governed by Annexure P-9. Resultantly, it is argued that with parity of rendition of services by teaching faculty in Government run schools, and, by the teaching faculty in schools aided by grants made by the Union of India, thereby, but necessarily same or similar conditions of service, were to be assigned, to the teaching faculty serving in schools aided through grants being made by the Government of India. If the said parity is not ensured thereby there would be perpetration of an invidious discrimination vis-a-vis the petitioner, besides thereby it would cause violation to the constitutional norm of equality, as contemplated under Articles 14 and 16 of the Constitution of India.

(iii) That since prior to 1991, the teachers of the Government aided privately manged schools in the Union Territory, Chandigarh, thus were governed by the Delhi School Education Rules, 1973, rather in the matter of their service conditions. Moreover, when the age of superannuation of the teachers alike the petitioner, is thus revealed thereins, to be as 60 years, therefore, parity with the said rules is claimed by the petitioner.

(iv) That since Annexure P-4 indicates, that in the matters of overall service conditions, pay scales, sanction for appointment, applicability of allowances at par with Central Service Rules, etc., all such teachers of Government aided privately managed schools, in the Union Territory, Chandigarh, thus were earlier treated uniformily and were assigned treatment equivalent to the counterparts in the Government schools of Union Territory, Chandigarh. Therefore, it is argued that the now inter-se disparity created by Annexure P-11, with Annexure P-9, rather is required to be undone.

(v) That though till 1992, the terms and conditions of services of the teaching faculty in the Government aided privately managed schools in the Union Territory Chandigarh, were governed by the Central Service Rules, but with the issuance of a notification by the Government of India, on 13.01.1992 (Annexure P-5), whereby the Punjab Rules were made applicable to the Government aided privately managed schools in Union Territory, Chandigarh. Resultantly, it is argued that thus there onwards uptil 29.03.2022, when the Punjab Rules of 1992 were abrogated, there was no confusion as such with respect to the age of superannuation of the teaching faculty serving in Government aided privately managed schools, in the Union Territory of Chandigarh. However, vide notification dated 29.03.2022, whereby the Punjab Rules of 1992 became abrogated and the Central Rules came into force vis-a-vis the Chandigarh Administration vide notification dated 29.03.2022. Consequently, it is submitted that from 01.04.2022, the age of superannuation of the teaching faculty of the Government schools in Chandigarh Administration, thus is governed by the Central Service Rules. Therefore, it is argued that with the said notification being restricted only to the service conditions of the members of the teaching faculty of Government schools in the Chandigarh Administration, besides when the apposite Punjab Rules were abrogated vide notification dated 29.03.2022, thereby there are no rules governing the service conditions of the teachers of Government aided privately managed schools in the Union Territory, Chandigarh. Resultantly the petitioner is entitled to parity of service conditions with their counterparts working in Government schools in U.T., Chandigarh.

(vi) That both the Government of India and the Chandigarh Administration have been consistently laying down, the service conditions for the employees of the Government Aided Privately Managed Schools in Union Territory, Chandigarh, as but is evident from a communication made by the Chandigarh Administration, on 19.09.2016 (Annexure P-15). Resultantly with the said communication making clear speakings about the Chandigarh Administration rather extending the age of teaching and non teaching employees in Government aided privately managed schools, thus the said communication but enhances the effect, if any, of Annexure P-12, whereby concurrence of the Government of India, has been sought, to grant approval, to enchance the retirement age of teaching and non-teaching employees of 7 Govt. Aided Schools in U.T., Chandigarh, from 58 years to 60 years. In other words, it is contended that Annexure P-12 is contrary to Annexure P-15.

(vii) That though interim orders in alike cases, thus becoming passed by this Court respectively in cases **LPA No. 1212 of 2022**, in CWP-6266-2023, in CWP-12367-2023, in CWP-18133-2023, in CWP-21405-2023 and in CWP-25681-2023. Therefore, at par therewith such orders be also passed by this Court.

Submissions of the learned Additional Standing Counsel for the U.T. Administration.

6. (i) That the relief as claimed in the petition (supra) cannot be granted to the petitioner, who otherwise was to retire on 31.12.2023, as the said is the date of her superannuation in terms of Annexure P-11.

(ii) That the petitioner is a member of the teaching faculty of Government aided schools functioning in the Union Territory, Chandigarh. Therefore, she cannot claim parity with her counterparts working in Government owned schools, rather functioning in the Union Territory of Chandigarh.

(iii) In the above regard, reliance is placed upon a judgment made by this Court in **CWP-17920-2004**, titled as **'Raghbir Singh and Others Vs. Union of India and Others'**, decided on 29.10.2010, wherebys, the above claimed parity became rejected.

(iv) Be that as it may, the service conditions as made applicable through Annexure P-11, to the teaching faculty of the Government aided schools, thus functioning within the Union Territory of Chandigarh, rather thereby makes Annexure P-11, to also fall within the realm of a policy decision besides such a policy decision, as, made by the Government of India, but obviously cannot be termed to be either perverse or arbitrary. Therefore, too the relevant policy decision in Annexure P-11, is to be as such applied to the service conditions of the present petitioner besides no claim banked on Annexure P-9, can become well rested by the petitioner.

(v) That as apparent on a reading of the notification (Annexure P-9), it is made applicable, singularly to the employees of the Union Territory Chandigarh besides defines their conditions of service. Therefore, Annexure P-9 is only applicable to the employees working under the administrative control of the Administrator to the Union Territory, Chandigarh, but is not *ipso facto* applicable to the employees or to the teaching faculty serving in Government aided schools hence functioning in the Union Territory Chandigarh.

(vi) That no claim can be raised by the petitioner on the basis of Annexure P-12, as thereins occurs only a proposal for increasing the age of retirement of teaching and non teaching staff in Government aided schools in Union Territory of Chandigarh, especially when the said proposal has not been granted approval by the Union of India.

(vii) That consequently, it is submitted that in terms of Annexure P-11, the age of retirement of the petitioner is restricted to 58 years and the petitioner cannot claim that her age of superannuation be extended to 60 years.

ANALYSIS OF THE SUBMISSIONS BY THE LEARNED COUNSELS FOR THE PARTIES.

For the reasons to be assigned hereinafter the contention(s) raised by the counsel for the petitioner are rejected and submissions addressed before this Court by the counsel for the respondent-U.T. are accepted.

7. The learned counsel for the petitioner has made a

misfounded submission before this Court, that after abrogation of the Punjab Rules, through the issuance, on 29.03.2022, thus of a notification by the Government of India, thereby there are extantly no functional applicable service conditions, especially relating to the age of superannuation of the present petitioner.

8. The reason for the above inference, becomes rested on the trite premise, that all the service conditions of the employees, of the Government aided schools, is regulated by The Punjab Privately Managed recognized Schools Employees (Security of Service) Act, 1979, as became notified on 23.05.2018 (Annexure P-11), by the Ministry of Home Affairs, Govt. of India. Conspicuously the applicability of the said notification (Annexure P-11) is singularly restricted to the employees of Government aided schools. Therefore, but naturally the notification dated 29.03.2022 (Annexure P-9), cannot *ipso facto* be made applicable to the teaching faculty in Government aided schools functioning within the Union Territory Chandigarh.

9. The reason being that since the said is a policy decision and when this Court in a verdict passed in CWP-17920-2004 (supra), has declared that a policy decision made by the Government of India cannot be interferred with. Therefore, at par therewith a policy decision as made through Annexure P-11, cannot be either tinkered with nor can be quashed by this Court.

10. That conspicuously the classification created through the said Annexure P-9, whereby it has been made applicable singularly to the employees of Government schools, and, not to the employees serving in Government aided schools, is but a reasonable classification, inasmuch as, it justly segregates the employees of Government schools

thus from the employees of Government aided schools. Consequently, thereby the said classification cannot be termed to be either unreasonable nor it can be construed to be arbitrary.

11. The above marked distinction also becomes fortified from the factum that the liability(ies) towards discharging of salaries, allowances and post superannuation benefits are respectively different, to the above two distinct classes of employees, serving in the apposite schools, thus, thereby but naturally a reasonable classification amongst the afore is created. Reiteratedly, the said reasonable classification is based upon an intelligible differentia having a close nexus, but with dis-similar imposable apposite liabilities appertaining to employees serving in Government schools and those serving in Government aided schools.

12. Furthermore, the said well made apposite classification but naturally well empowers the Government financing such schools, to escape from the enhanced financial liabilities, as would accrue, on theirs yet taking to lend budgetary support, towards the salaries and allowances of the teaching faculty in the Government aided schools.

13. Though the counsel for the petitioner has, laid a challenge to the consitutional vires of Annexure P-11, thus on the ground that, it creates an invidious discrimination with the counter parts of the petitioner rather serving in Government schools, who are rather governed by Annexure P-9.

14. Though, the said ground is grooved in the factum, that though the teaching faculty serving in the Government run schools within the Union Territory of Chandigarh, but naturally perform functions alike the one which are also performed, by the teaching

faculty serving in Government aided private schools, hence within the Union Territory of Chandigarh. However, the conspicous distinction inter-se the above, also lies in the further factum, that the teaching faculty in Government run schools in the Union Territory Chandigarh, thus rather perform functions in Government sanctioned schools, but after rendition of perennial budgetary support, in respect of all liabilities, thus may be towards the management, upkeep besides towards the salaries of all employees serving thereins, whereby such fastened liabilities, thus become legitimately encumbered upon the State Exchequer exclusively.

15. Contrarily, the privately run schools within the Union Territory of Chandigarh, who also receive grants-in-aid, from the Union of India, do thus discharge the liabilities towards the salaries and pensionary benefits to all employees serving thereins, hence not only from funds garnered from their sources, but more importantly, from the grants in aid received from the Government of India.

16. Therefore, the assigning of grants-in-aid by the Government of India to such schools is dependent upon auditing of the Government aided funds being made by the auditors concerned. In sequel, if the said schools are able to mop up funds sufficient to discharge all the relevant liabilities, thereupon the Government of India may stop the releases of, grants-in-aid, to the privately run schools in the Union Territory of Chandigarh.

17. Therefore, the releasing of grants-in-aid to the privately run schools with the Union Territory of Chandigarh, thus naturally cannot foist a perpetual apposite liability upon the Government of India.

18. The privately managed Government aided schools within the Union Territory, Chandigarh, are not shown by any tangible evidence placed on record, to be wholly non profiteering organizations nor is there any tangible evidence adduced on record, thus suggestive that a holistic philanthropic purpose, is the bedrock of the opening and running of the privately managed Government aided schools, in the Union Territory of Chandigarh. Therefore, but only for want of the above evidence, thus leads this Court to form a conclusion, that such schools rather became established and are also being managed by the Managements concerned, hence for a profiteering purpose.

19. Though, the audit of such schools may be done by the auditors concerned, and may also thus lead to satisfaction being drawn by the Government of India, to release grants-in-aid for all the relevant purposes, to such schools. However, yet it is neither apprised to this Court by the counsel for the petitioner or by the counsel for the opposite party, that the makings of audits for the relevant purpose, thus were completely by a non-partisan agency, irrespective of such herebefore auditings being done by the agency of the Government of India.

20. Nonetheless, to ensure that no perpetual encumberance, is cast upon the Government of India, to release grants-in-aid to, the Government aided profiteering schools, within the Union Territory of Chandigarh but managed by non Government organizations, this Court has hereafter made certain directions, upon, the Comptroller and Auditor General of India, to appoint an independent qualified auditor, to make auditings of the financial resources garnered by the Government aided private schools concerned, so that, thereby any

purported faults, if any, in earlier audits, thus do become detected, and, subsequently responsibility becomes fixed upon the auditor(s) concerned.

21. The above would ensure, that the above becomes done also from an incisive analysis by the concerned, of the Income Tax Returns filed by such institution(s), before the Income Tax Authorities, so that, therefrom the correctness or otherwise of the previously made auditings, becomes earmarked, thereby but naturally this Court would be led, to form an opinion, that the privately managed Government aided profiteering schools within the Union Territory Chandigarh, are mis-utilizing the financial resources, rather independently garnered by them. Resultantly thereby their may not have any well made projection before this Court, to yet ask for grants-in-aid being released to them by the Government of India, nor they would become well empowered, to claim that therebys, the liabilities towards the salaries of the teaching faculty, be yet encumbered upon the Government of India.

22. The effect, thereof, is that, the teaching faculty of privately managed profiteering schools in the Union Territory of Chandigarh but naturally cannot be endowed, with any legitimate expectation, that the financial liabilities relating and arising from the age of superannuation, being increased at par, with the teaching faculties with the Government run schools, thus be perpetually fastened upon the Union of India, through the latter in perpetuity, thus releasing grants-in-aid to the schools, thus aided by funds becoming released by the Government of India. If the said legitimate expectations are endowed, thereupon, there would be an impermissible onerous encumbrance upon the State Exchequer, besides would breed a propensity in privately managed

profiteering schools in the Union Territory of Chandigarh, to stake claims for release(s) of grants-in-aid, for all relevant purposes, despite theirs mis-managing such grants-in-aid or mis-utilizing the financial resources, as become independently marshalled by them.

23. In other words, schools run by the Government of India through budgetary approvals, thus stand, on a completely different footing, than privately run schools which receive grants-in-aid from the Union of India.

24. The further effect of the above distinction, is but naturally, that despite performance of alike functions by the teaching faculty in Government Schools, with the teaching faculty in privately run profiteering educational institutions, yet the above marked distinction, but does not create any indefeasible right, in the teaching faculty of privately managed schools, to claim parity with the teaching faculty serving in Government managed schools. Retieratedly, the above inter-se classification is both a reasonable and valid classification.

25. The further conspicuous reasons, for making the above conclusion also becomes stemed, from the factum that the privately run schools are normally profit making organizations, whereas, Government run schools are non profit ventures, rather completely meant for sub-serving the salutary purpose of catering to the educational requirements of the children studying thereins.

26. Therefore, the learned counsel for the petitioner, has mis-argued, that as of now after abrogation of the Punjab Rules of 1992, vide notification dated 29.03.2022 (Annexure P-9), there are no functional rules applicable to the service conditions of the teaching faculty in Government aided schools in the Union Territory,

Chandigarh.

27. The reason for the above conclusion emanates, from the factum, that in terms of the notification dated 23.05.2018 of the Ministry of Home Affairs (Annexure P-11), wherebys 'The Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979, becomes extended to the Union Territory, Chandigarh, whereins, becomes embodied rather the service conditions but including the ones relating to the age of superannuation of the teaching faculty, serving in privately managed schools receiving grants-in-aid by the Government of India, thus comprising the relevant applicable extant norm vis-a-vis the teaching faculty in the privately managed aided schools.

28. Retieratedly, for all the reasons (supra), the said notification, does not create an ill classification inter-se, either with the employees of privately managed Government aided schools within the Union Territory, Chandigarh, and, the employees in Government owned schools nor reiteratedly creates an ill classification with the petitioner's counterparts in Government run schools in the Union Territory of Chandigarh. Consequently, no valid challenge can be made to the vires of Annexure P-11.

29. Furthermore, since the proposal, as contained in Annexure P-12, for increasing the retirement age of teaching and non-teaching staff of 7 Government aided schools in U.T. Chandigarh, but is awaiting concurrence thereto becoming granted by the Government of India. Therefore, merely on the plank of the apposite proposal, the petitioner's claim for increase of her age of superannuation, thus in terms of Annexure P-9, cannot be accepted.

30. The learned counsel for the petitioner though has argued, that in cases LPA No. 1212 of 2022, in CWP-6266-2023, in CWP-12367-2023, in CWP-18133-2023, in CWP-21405-2023 and in CWP-25681-2023, interim orders permitting the petitioner(s) therein, to serve uptil 60 years, have been passed, thereby at par therewith similar treatment be meted to petitioner, but the said argument is also a mis-founded argument.

31. The reason for the above is comprised in the factum, that the said orders were passed in *personam* and were not in *rem,* especially also when the writ petitions (supra), remain not finally adjudicated upon by this Court, but only are interim orders, whereas, when this Court making a final determination with respect to all the contention(s) as raised before this Court, and, which were also raised in the writ petitions (supra).

32. Therefore, and when all the submissions relating to the merits of the case have been decided against the petitioner. In consequence, the force, if any, of the interim orders, to the considered mind of this Court, thus holds no validity in law nor thereby the above claimed parity in terms therewith, but cannot be assigned to the petitioner.

33. Furthermore, if the privately managed schools concerned, require to retain or avail the services of teaching faculty beyond the age of 58 years, they may do so from their own resources and the said liability cannot be fastened upon the Government of India.

FINAL ORDER OF THIS COURT.

34. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed.

35. However, this Court makes the hereinafter mandamus upon the respondent concerned.

36. The Comptroller and Auditor General of India is directed to appoint an independent qualified auditor to make an incisive auditings of all the independent financial resources garnered by the Government aided private schools concerned, so that, thereby any purported faults, if any, in the earlier made auditings, do become detected, and subsequently responsibility becomes also fixed, upon, the earlier auditors concerned.

37. The above would ensure that the above be done also from the Income Tax Returns, filed by such institution(s) before the Income Tax Authorities, so that, therefrom the correctness or otherwise of the previously made auditings, does becomes earmarked.

38. For report of the qualified auditor, in respect of the direction (supra), being placed before this Court, the matter be listed for 30.04.2024.

39. No order as to costs.

40. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

02.02.2024
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No