

02.07.2025  
Court No.13  
Item No.1  
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**MAT 687 of 2014**  
State of West Bengal and Ors.  
Vs.  
Subrata Sadhu and others

Mr. Shamim Ul Bari.

..for the appellants.

Ms. B. Sadhu.

... for the respondent nos. 1 to 16.

Mr. Sanjay Kumar Baid.

... for the respondent nos. 17 to 19.

1. The challenge in the instant appeal is to an order dated 27<sup>th</sup> November, 2013 passed by a Single Bench of this Court directing the 5<sup>th</sup> Pay Commission benefits to be given to the teachers of the appellants w.e.f. 1<sup>st</sup> April, 2009.

2. Counsel for the State submits that the liability of payment of the benefits under ROPA 2009 cannot be saddled on the State and it is the school who is liable to pay such arrears.

3. Admittedly the school in question St. Lawrence High School is a religious minority institution recognized under Article 30 & 33 of the Constitution of India. It is run by the Jesuits society.

4. The school is aggrieved to the extent that the Single Bench has directed the benefits of ROPA 2009 to

be given to its teaching and non-teaching staff with retrospective effect 1st April, 2008.

5. The 5<sup>th</sup> Pay Commission was made effective pursuant to notification of 2009 in the State with retrospective effect from 1st January, 2008 (notification from 2006). The school has paid its employees both teaching and non-teaching staff scales as per ROPA 2009 w.e.f. March, 2009, i.e., the date on which the notification was published.

6. It is submitted by Mr. Sanjay Kumar Baid, learned counsel for the school that the primary source of income of the school is tuition fees of the students. It is submitted that the Single Bench committed error in compelling the school from giving effect to ROPA 2009 for its teaching and non-teaching staff with retrospective effect. The retrospective operation of the ROPA 2009 and consequential arrears cannot be paid by the school with as the school has no way of recovering the same from the students. Higher tuition fees cannot be levied on students with retrospective effect.

7. Reliance in this regard is place on a decision of the Supreme Court in the case of **Shivaji Shikshan Prasarak Mandal and others vs. State of Maharashtra and others** reported in **(2005) 13 SCC 407**, particularly paragraph 11 thereof.

**Para 11:** *Learned Senior Counsel for the Respondents 4 to 17 submitted that the High Court was not justified in holding that the salary and allowances should be paid from 1-5-1999. It is submitted that once it is accepted that the Fifth Pay Commission recommendation was applicable to the respondent teachers, it should be with effect from 1-1-1996 and as regards all other employees it has taken effect from 1-1-1996. The High Court has given a specific reason that the government order itself was issued in 1999 and the main source of income of the school was the fees collected from the students, therefore, the appellant Trust would not be in a position to recover any amount from the students who had already passed out of the school and hence they are not liable to pay the salary and allowance with effect from 1-1-1996. It may also be noticed that the Government while issuing the government order in 1999, the salary and allowances which had accrued for the period from 1996 to 1999, was not paid in cash but it was credited to the provident fund. Learned counsel for the appellant Trust also pointed out that the Government of Maharashtra, by a separate resolution, implemented the Fifth Pay Commission recommendations to the reaching and non-teaching staff of unaided engineering colleges including architectural and pharmacy colleges with effect from 1-8-2000. These colleges expressed their liability to pay the salary payable under the revision of pay scales with effect from 1-1-1996 and the Government was pleased to accept their application and implemented the same with effect from 1-8-2000. For the same reason the appellant Trust also was not bound to pay the salary with effect from 1-1-1996 and the reason given by the High Court was wholly correct.*

8. It is clear from the above that the Hon'ble Supreme Court has approved the reasoning of the Bombay High Court that while giving effect to the 5th Pay Commission Pay Scales to its teaching and non-teaching staff, the school cannot be compelled to pay such scales with retrospective effect. The Supreme Court approved the views of the Bombay High Court that the school has no

way of recovering the said dues from its students who have since passed out and left.

9. It would be appropriate in the context to set out paragraphs 9, 10 and 14 of the decision of the Bombay High Court, which was subject matter of the appeal before the Hon'ble Supreme Court. The appeal was carried by the aggrieved teachers.

**Para 9:** *The only question that remains to be considered is from what date these benefits should be extended to the petitioners. It is evident that the Government of Maharashtra for the first time, vide Government Resolution dated 13<sup>th</sup> May, 1999 extended the benefits of the 5<sup>th</sup> Pay Commission Recommendations to the teachers and non-teaching staff in primary, secondary and higher secondary school run by private institutions and stated in para 3 of the said Government Resolution, as under:*

**Para 10:** *To the case of Swaminarayan Education Trust. Ahmedabad and etc. etc. V. State of Gujarat and others, a Division Bench of the Gujarat High Court inter alia held that (i) the Government Resolution revising the pay scales of teachers in aided schools are applicable to the teachers in unaided schools as well; (ii) such payment is a statutory obligation of the management and the teachers concerned have a right to get it enforced and (iii) such resolutions regarding revision in pay scales cannot be made applicable retrospectively to unaided private schools and the decision to make them retrospectively applicable would be unreasonable and violative of Article 14 of the Constitution. Para 23A of the said judgment more particularly reads, as under:*

*"23A. ... When the liability for the past period is sought to be fastened them, they have no opportunity to get the amount recovered by raising tuition fees or by raising funds by adopting another legitimate means. As far as the raising of tuition fees is concerned, it is subject to restrictions under the Act and the Rules. It is not pointed out that it was open to the school*

*management to raise tuition fees to meet with the increased financial liability for the retrospective period. Even if it is assured that such permission were granted, it would be impossible to recover increased amount of the fees from the pupils, some of whom might have left the school. At any rate when the school management is deprived of any opportunity to get the amount of difference in salary payable to the teachers obtained or recovered from any legitimate source, the direction contained in the resolution for actual payment of salary to the teachers at the revised pay-scale with retrospective effect... .. is unreasonable and arbitrary and, therefore, it is required to be held to be violative of Article 14 of the Constitution of India.....”*

*In the State of Maharashtra the private schools do not have the freedom to enhance the tuition fees chargeable to the students and they have to approach the State Government making out a specific case for revision. It is only the State Government who has the powers to finally fix the tuition fees in such schools as well. The private managements are, thus, at the mercy of the State Government for enhancement of tuition fees as well as its effective date. The decision of the Gujarat High Court is, thus, squarely applicable to the case at hand inasmuch as the management has no freedom to increase the fees and even if the fees is allowed to be increased by the State Government there is no possibility that its retrospective effect could be entertained.*

**Para 14:** *We, therefore, allow the petition partly in terms of the following order:-*

*(i) The petitioners are entitled for the benefits of the 5<sup>th</sup> Pay Commission Recommendations on par with the teachers employed in private aided secondary and higher secondary school.*

*(ii) Such pay scales and all other benefits, pursuant to the 5<sup>th</sup> Pay Commission Recommendations shall be payable to the petitioners with effect from 1<sup>st</sup> May, 1999.*

*(iii) In case any teacher has retired during the pendency of this petition, the pay scale of such teacher shall be revised as on 1<sup>st</sup> May, 1999 and the salary for the purpose of retiral benefits shall be fixed accordingly.*

*(iv) The arrears, if any, on account of dearness allowance or other allowances with effect from 1<sup>st</sup> May, 199 as well as the arrears in salary and/or the allowances payable under the 4<sup>th</sup> Pay Commission Recommendations shall be paid to the petitioners within a period of three months from today.*

10. This Court is in complete agreement with the views of the Bombay High Court and approved the same.

11. Learned counsel for the teachers/writ petitioners, in the fag end of the dictation of the judgment submits that the Managing Committee of the school had taken a resolution and had decided to pay arrears.

12. On the question as to whether the tuition fees could have been increased retrospectively and imposed on the students, the learned counsel for the teachers could not give any satisfactory explanation.

13. In view of the above, this Court is inclined to interfere with the impugned order directing payment of the benefits of the 5th ROPA 2009 to the teaching and non-teaching staff of the school w.e.f. 1st April, 2009.

14. It is, however, made clear that in the event the teachers are able to procure any evidence that the school had collected any extra fees from the students to meet its liability towards the said arrears under ROPA 2009 w.e.f. 2008, an independent proceeding may be taken out by the teachers in this regard.

15. With the aforesaid observations, MAT 687 of 2014 is disposed of.

16. Consequently, all applications, if any, shall also stand disposed of.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***

***(Ajay Kumar Gupta, J.)***