

A

SUSHMITA BASU AND ORS.

v.

BALLYGUNGE SIKSHA SAMITY AND ORS.

SEPTEMBER 22, 2006

B

[H.K. SEMA AND P.K. BALASUBRAMANYAN, JJ.]

*Education/Educational Institutions:*

C *Teachers of private unaided school—Seeking pay scales as recommended by Third Pay Commission—Entitlement—Held: Not entitled, as the salaries and emoluments of teachers of private unaided institutions were not subject matter of reference to the Third Pay Commission.*

*Constitution of India, 1950:*

D *Article 226—Writ of mandamus by teachers of private unaided educational institution seeking hike in pay scales—Maintainability of—Held, not maintainable as public law element is not involved.*

E **The teachers of a recognized private educational institution filed Writ Petition in the High Court seeking issue of a writ of *mandamus* to their institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Subsequent to the filing of the Writ Petition, petitioners other than the five appellants herein, withdrew from the Writ Petition on their reaching an understanding with the authorities of the school. The five appellants pursued the Writ Petition.**  
F **Single judge of the High Court allowed the Writ Petition. The Management successfully filed appeal before the Division Bench of the High Court. Hence the present appeal.**

**Dismissing the appeal, the Court**

G **HELD: 1. There was no statutory provision, rule or Government order directing the private unaided educational institutions to implement the recommendations of the Third Pay Commission especially in the context of the fact that the salaries and emoluments of teachers of private unaided institutions was not a subject matter of reference to the Third Pay Commission.**

H

2.1. The fact that a few are not satisfied is no ground for interference by Court or for grant of relief in their favour when by and large the position adopted by the institution is found to be fair and just and is accepted by all other teachers. There has been just treatment of the teachers by the first respondent-Institution and there is no reason to interfere even on the ground that the appellants are being treated unfairly by their employer, the educational institution, or on the basis that this is a case in which the conscience of the court is shocked, compelling it to enter the arena to afford relief to the teachers. [510-B-D]

*Reserve Bank of India & Ors. v. C.N. Sahasranaman & Ors.*, [1986] 2 S.C.R. 881, relied on.

*Frank Anthony Public School Employees' Association v. Union of India & Ors.*, [1987] 1 S.C.R. 238, referred to.

2.2. Interference under Article 226 of the Constitution of India to issue a writ of *mandamus* by the court against a private educational institution like the first respondent would be justified only if a public law element is involved and if it is only a private law remedy no Writ Petition would lie. A writ of *mandamus* could not have been issued to the first respondent in this case.

[510-E-F]

*K. Krishnamacharyulu & Ors. v. Shri Venkateswara Hindu College of Engineering and Anr.*, [1997] 2 S.C.R. 368, relied on.

3. The profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfills a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. [510-F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1468 of 2005.

From the Judgment and Final Order dated 29.2.2000 of the High Court of Calcutta in A.P.O.T. No. 460 of 1999.

A Jitendra Kumar Sharma, Raja Chatterjee, Sachin Das, G.S. Chatterjee and P.N. Jha for the Appellants.

P.P. Rao, Dipanker P. Gupta, Dhruv Agarwal, Vikram Bajaj, Sanjeev Kumar (for M/s. Khaitan & Co.) and Tara Chandra Sharma for the Respondents.

B The Judgment of the Court was delivered by

**P.K. BALASUBRAMANYAN, J.** 1. The appellants are teachers of a recognized private school known as Ballygunge Siksha Sadan in Calcutta in the State of West Bengal. Originally they along with 26 others filed W.P. No. 4139 of 1992 in the High Court of Calcutta praying for the issue of writ of *C mandamus* directing the authorities of the school to fix the salaries of teaching and non-teaching staff of the school and to remove all anomalies in the scales of pay as recommended by the Third Pay Commission as extended to other Government aided schools and government schools. Subsequent to the filing of the Writ Petition, petitioners other than the five appellants herein, withdrew *D* from the Writ Petition on their reaching an understanding with the authorities of the school. The five appellants pursued the Writ Petition. A learned single judge of the High Court allowed the Writ Petition and directed the Director of School Education to enforce parity in payment to the Writ Petitioners in pay-scales and dearness allowances on par with the government aided institutions and to consider whether there has been any discrimination or *E* anomaly in the fixation of pay-scales of teachers by the first respondent management, with respect to the teaching staff in the institution. On appeal by the management, the Division Bench of the High Court allowed the appeal and set aside the decision of the learned single judge. Feeling aggrieved thereby, the five teachers who were pursuing the Writ Petition, came to this *F* Court with this appeal. Pending the appeal, appellant No.5 died and appellant No. 4 withdrew from the appeal, with the result that only three of the teachers of the institution remain as appellants in this appeal to pursue the cause originally put forward.

*G* 2. There is no dispute that the institution in which the appellants are working is a recognized private educational institution in the State of West Bengal. In the State of West Bengal there are government schools, aided schools and unaided private schools. In this case, we are not concerned with aided schools or government schools. As far as private schools like the one run by respondent No.1 are concerned, they do not receive any aid from the government, but, they do get from the government dearness allowance *H* component of the approved teachers working in the school. There is no

dispute that the recommendations of the First Pay Commission and that of the Second Pay Commission, though they did not cover private unaided schools, were implemented by the schools as part of their agreement with the teachers. Though, the management also implemented the recommendations of the Third Pay Commission in the sense that the salaries of the teachers were hiked in terms of the said report, the institution refused to give retrospective effect to the enhancement. In other words, the institution refused to give effect to the recommendations of the Third Pay Commission with effect from 1.1.1988, as recommended by the Commission and as implemented by the government.

3. It was mainly complaining about the refusal of the management to implement the recommendations of the Third Pay Commission with effect from 1.1.1988 retrospectively, that the teachers went to court. We asked learned Senior Counsel for the appellants as to whether there was any Act, statutory rule or even Government Order directing private unaided educational institutions to implement the recommendations of the Third Pay Commission especially in the context of the fact that the salaries and emoluments of teachers of private unaided institutions was not a subject matter of reference to the Third Pay Commission. Learned counsel fairly submitted that there was no statutory provision, Rule or binding Order, but referred to the decision of this Court in *Frank Anthony Public School Employees' Association v. Union of India & Ors.*, [1987] 1 S.C.R.238 and submitted that the principle recognized therein should be applied to teachers like the appellants as well. Learned counsel conceded that there was no provision corresponding to Section 10 of the Delhi School Education Act, 1973 in the Bengal Act. But the submission was that the appellants were approved teachers and they were also doing the same work as teachers of government schools and aided schools and in the circumstances 'equal pay for equal work' principle could be directed to be implemented and in that context the appellants could be granted relief. This was met by learned Senior Counsel appearing for the respondents by pointing out that the institution had not only implemented the recommendations of the Third Pay Commission but has also implemented the recommendations of the Fourth and Fifth Pay Commissions, though it was not bound to do so and there could be no grievance that teachers are being paid salaries that are not comparable with that of the teachers of government schools and aided schools. With reference to the pleadings, it was pointed out by the learned Senior Counsel that the teachers of the first respondent - Institution, in fact, were enjoying some additional benefits which are not available to teachers of government institutions and aided institutions. It was also pointed out that

A out of the very many teachers in the school, only three of them, the appellants before us, have refused to enter into an agreement with the First Respondent and as observed by this Court in *Reserve Bank of India & Ors v. C.N. Sahasranaman and Ors.*, [1986] 2 S.C.R. 881, the fact that a few are not satisfied, is no ground for interference by court or for grant of relief in their favour when by and large the position adopted by the institution is found to be fair and just and is accepted by all other teachers. We find considerable merit in the submissions on behalf of the respondents. In the absence of a statutory provision, we are not in a position to agree with learned counsel for the appellants that interference by the High Court under Article 226 of the Constitution is warranted in this case. We find on the whole that there has been just treatment of the teachers by the first respondent— Institution and there is no reason to interfere even on the ground that the appellants are being treated unfairly by their employer, the educational institution, or on the basis that this is a case in which the conscience of the court is shocked, compelling it to enter the arena to afford relief to the teachers.

D 4. In this context, we must also notice that the Writ Petition in the High Court is filed for the issue of a writ of *mandamus* directing a private educational institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by learned counsel for the appellants, namely, *K. Krishnamacharyulu & Ors. v. Shri Venkateswara Hindu College of Engineering and Anr.*, [1997] 2 S.C.R. 368 shows that interference under Article 226 of the Constitution of India to issue a writ of *mandamus* by the court against a private educational institution like the first respondent herein, would be justified only if a public law element is involved and if it is only a private law remedy no Writ Petition would lie. We think that even going by the ratio of that decision, a writ of *mandamus* could not have been issued to the first respondent in this case.

5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the 'guru'. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart. If teachers clamour for more salaries and perquisites, the normal consequence in the case of private educational institutions, if the demand is conceded, would be to pass on the burden to the students by increasing the fees payable by the students. Teachers must ask themselves whether they

should be the cause for putting education beyond the ken of children of parents of average families with average incomes. A teacher's profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the Guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.

6. The Division Bench of the High court has held that there is no ground to interfere in the case on hand and have rightly set aside the directions issued by the single judge. We find no reason to interfere with the decision of the Division Bench of the High Court. We therefore confirm that decision and dismiss this appeal. We make no order as to costs.

D.G.

Appeal dismissed.