

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Writ Petition No.274 of 2001.

Judgment Reserved on: 23.9.2008

Date of decision: 31.10.2008

Dr. Karan Singh Rana & OrsPetitioners.
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Versus

Sate of H.P. and ors.Respondents.
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The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹

For the Petitioner:	Shri Rajnish Maniktala, Advocate.
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For Respondent No.1:	Ms. Ruma Kaushik, Additional Advocate General.
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For Respondents No.5 & 6:	Mr. Sandeep Sharma, Asstt. Solicitor General of India.
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Dev Darshan Sud,J.

This writ petition has been instituted by the petitioners who are working as lecturers in different disciplines in Baba Balak Nath College Chakmoh, district Hamirpur. The details of their qualifications and date of engagement have been mentioned in the writ petition which facts have not been disputed.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

The College in which the petitioners were working is managed by the Baba Balak Nath Temple Trust Deoth Sidh. This is a public charitable endowment which was taken over by the state government pursuant to the provisions of Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984. (hereinafter referred to as the Act).

On 1st September, 1998, notification Annexure P-1, was issued by the government of Himachal Pradesh pursuant to the proviso to Article 309 of the Constitution of India revising the pay scales of employees including lecturers of schools and vocational and science supervisors. This was followed by another notification dated 7.5.1999 Annexure P-2 whereby, pursuant to the recommendation of University Grant Commission and on the basis of Punjab pattern, the Government of Himachal Pradesh revised the pay of the teaching, academic staff and other employees. One of the conditions as incorporated in the Notification was that arrears of pay from 1.1.1996 to 30.4.1999 would be sanctioned later on. Vide Notification Annexure P-3, the Himachal Pradesh University issued orders revising the pay scale University/College teachers and other non-academic staff, governed under the University Grant Commission pay pattern (as adopted by the Himachal Pradesh Department of Education) w.e.f. 1.1.1996. Regarding arrears of pay annexure P-4 was issued by the Commissioner-cum-Secretary (Education) to the Government of Himachal Pradesh granting such arrears from the date of pay revision.

The Sub Division officer (Civil) who is the Chairman of the Trust of Baba Balak Nath Mandir issued an office order Annexure P-5

directing that employees of the school cadre and teachers and other employees of Baba Balak Nath Sanskrit College and Baba Balak Nath High School who are working in the regular scale of Himachal Pradesh government are sanctioned revised pay scales w.e.f. 1.1.2000. The College fixed pay scale of the petitioners on the revised pattern w.e.f. 1.1.1996. However, no financial benefits were given to the petitioner from 1.1.1996 to 31.12.1999, but the pay was notionally stepped up. The grievance of the petitioner is that for the period 1.1.1996 to 31.12.1999 they are entitled to the revised pay as they are governed by the University Grant Commission pay pattern as mandatorily required by the statutes of the Himachal Pradesh University which are binding on the Trust. They submit that there is no rationale in denying monetary benefit to them from 1.1.1996 to 31.12.1999. This action of the respondents is in violation of Article 14 of the Constitution of India and subjects them to invidious discrimination. The pay of the petitioners so fixed is shown in Annexures P-6 to P-19 which is not disputed.

The petitioners immediately represented to the respondents bringing to their notice through the Secretary of the Baba Balak Nath College Lecturer Association that although the pay on Revised Pay Pattern basis was implemented by the college from 1.1.1996, yet the petitioners have not been given the benefit from 1.1.1996 from this date from which it was effective, but from 1.1.2000, although the recommendation has been accepted by all departments for all colleges in Himachal Pradesh and such financial benefits have been granted from 1.1.1996. They requested an early action in the matter which has not been taken.

Respondents No.2 and 3, in the reply filed by them, have pleaded that they are not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India as the Trust Baba Balak Nath Ji is not a State within the meaning of Article 12 of the Constitution of India. It is admitted that the revision of pay scale was made and was binding on the respondents but actual monetary benefits were sanctioned w.e.f. 1.1.2000. The only reason for not implementing the pay revision w.e.f. 1.1.1996 is that it would impose a huge financial burden on the Trust which it is not able to bear. The respondents plead that the Trust is generating income only through offerings to the temple/shrine of Baba Balak Nath Ji by its devotees. Out of the offerings, the funds are to be applied for maintenance of the *sanctum sanctorum*, performance of religious worship, Pooja and Archana etc., maintaining a free Langar for the pilgrims and devotees, welfare of the pilgrims by providing them facilities at the Shrine, maintenance of hospital on which crores of rupees have been spent. A conscious decision, not to grant arrears of pay, was taken only after the financial position of the Trust and Temple was considered. There was no availability of surplus funds for payment of arrears which according to the respondents are more than 48 lacs rupees.

The applicability of the provisions of the Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowments Act, 1984 and the Acts and Statutes of the University to the respondent must are not disputed. There is also no dispute that the syllabus prescribed by the University and all other conditions imposed necessary for maintaining the institution and the affiliation are applicable. So far as the State of Himachal

Pradesh is concerned, it has conveniently washed its hands off the entire responsibility, legally forgetting that the provisions of the Act as aforesaid provide a deep and pervasive control to it in the management of the respondent Trust and its finances and vesting the final decision making authority in the State through the Commissioner.

The petitioner filed a rejoinder denying the averments made on behalf of the respondents that there is any paucity of funds. They have placed on record material/calculations to show that the burden would not be more than Rs.20 lacs and the Trust is possessed of ample surplus funds to meet this liability as the cash and bank balances with the Trust are about more than Rs.1,75,000,00/-. The petitioners also submit that on 1.7.1999 a sum of Rs.15 lacs was donated to the Chief Minister's Soldiers Welfare Fund (Annexure P-24), Rs.10 lacs to the Chief Minister's Relief Fund for the flood victims of District Kinnaur (Annexure P-23), Rs.26 lacs for installation of hand pumps in different areas of Deotsidh (Annexure P-25) and Rs.20 lacs for construction of Saloni Deotsidh and Shah Talai Deotsidh Roads (Annexure P-26) which activity was otherwise of the respondents. In addition, it is said that Rs.70 lacs has been spent for construction of a huge building of hospital at Chakmoh. The case set up by the petitioners is that these donations should or should not be made, and that the Trust has no right to deny that they have crystallized rights and then make donations to other activities which though laudable are entirely voluntary and not statutory. I do find force in this contention. It is not for me to pronounce on the legality of the donations made and other activities of the Trust, but I must notice that the excuse of paucity of funds, cannot in any manner be

accepted as the Trust had ample funds for making liberal donations for other activities. The respondents are duty bound to implement their Statutory/Constitutional obligations. They cannot plead impossibility due to financial stringency while liberally donating to other causes. Surely, the petitioners herein who are working as teachers deserve a better deal not as charity, but as their Constitutional right. I may also notice that Notification issued by the Government of India, Ministry of Human Resource Development (Department of Education) has been placed on the record, makes it clear that the Central Government/University Grant Commission would also be providing funds to meet these liabilities. The Notification reads:-

***“UNo.F-1-22/97-U.I
Government of India
Ministry of Human Resource Development
(Department of Education)

New Delhi, the 27th July, 1998

To

*The Education Secretaries
Of all States/union Territories*

***Subject: Revision of pay scales of teachers in
Universities and Colleges Following the
revision of pay scale of Central
Government employees on the
recommendations of Fifth Pay
Commission.***

Madam/Sir,

*I am directed to say that in fulfillment of the
constitutional responsibilities for coordination,
determination and maintenance of standards in higher
education, the Central Government and the university
Grant Commission (UGC) have taken, from time to*

time, several measures. As a part of these efforts, the Central Government has revised the pay scales of teachers in Central Universities and Colleges there under in order to attract and retain talent in the teaching profession. A copy of the letter addressed to the UGC giving details of the revised scales of pay and other provisions of the Scheme of revision of pay scale is enclosed:

2. In discharging its constitutional responsibility, the Central Government has decided to continue to provide financial assistance to the State Governments who wish to adopt and implement the Scheme of revision of pay scales subject to the following terms and conditions:

- (a) The Central Government will provide financial assistance to the State Governments which have opted for these revised pay scales to the extent of 80% of the additional expenditure involved in the implementation of the revision.*
- (b) The State Government will meet the remaining 20% of the expenditure from their own sources.*
- (d) The financial assistance, indicated above, would be provided for the period from 1.1.1996 to 31.3.2000.*
- (e) The entire liability on account of revision of pay scales, etc., of university and college teachers would be taken over by the State Government w.e.f. 1.4.2000.*
- (f) The Central assistance would be restricted to revision of pay scales in respect of only those*

posts which were in existence and filled up on 1.1.1996.

3. *The State Governments, after taking local conditions into consideration, may also decide in their discretion, to introduce scales of pay different from those mentioned in the Scheme, and may give effect to the revised scales of pay from January 1, 1996, or a later date. In such cases, the details of the modifications proposed either to the scales of pay or the date from which the Scheme is to be implemented, should be furnished to the Government of India for its approval and, subject to the approval being accorded to the modifications, Central assistance on the same terms and conditions as indicated above will be available to the State Government for implementation of the Scheme with such modifications, provided that the modified scales of pay are not higher than those approved under the Scheme.*
4. *The payment of Central assistance for implementation of the Scheme is also subject to the condition that the entire Scheme of revision of pay scales, together with all the conditions to be laid down in this regard by the UGC by way of Regulations, is implemented by the State Government as a composite scheme without any modification except to the date of implementation and scales of pay as indicated above.*
5. *It shall be necessary for the universities and managements of Colleges to make necessary*

changes in their statutes, ordinances, rule regulations, etc., to incorporate the provisions of this Scheme.

6. *The detailed proposal for implementation of the Scheme on the lines indicated above, may kindly be formulated immediately and sent to the Department of Education in the Ministry of Human Resource Development for examination so that Central assistance to the extent indicated above can be sanctioned for the implementation of revised scales of pay.*
7. *Anomalies, if any, in the implementation of the Scheme may be brought to the notice of Department of Education in the Ministry of Human Resource Development for clarification.*
8. *The Scheme applies to teachers in all Universities (Excluding Agricultural Universities) and colleges (excluding Agricultural, Medical and Veterinary Science Colleges) admitted to the privileges of the Universities.”*

It is thus apparent that irrespective of the fact that the liability of the respondents is 20 lacs or 48 lacs, as pleaded, the respondents would be getting financial assistance as provided for in the notification noticed above, if they meet the condition set out therein..

Learned counsel appearing for respondents No.2 and 3 has taken a preliminary objection that this writ petition is not maintainable as

respondents No.2 and 3 are not amenable to the writ jurisdiction of this Court. The submission made is that the Temple Trust is not a State within the meaning of Article 12 of the Constitution of India. This submission requires to be rejected as the provisions of the Himachal Pradesh Hindu Public Religious Institutions and Charitable Endowment Act, 1984 clearly provides for a deep and pervasive control of the State Government through the Commissioner as appointed by the Government on the Trust. Section-3, of the Act provides for controlling of governance of finance and conducting of the secular/non-secular functions of the Temple. The hereditary right of worship and performance of Pooja has been kept intact. The Government controls the appointment of officers and staff as contemplated by Chapter-II, maintenance of records, directions to be issued from time to time and annual verifications of registration as detailed in Chapter-III, administration and management of the Institution as contemplated by Chapter-IV which provides that all Trustees shall be bound by the directions given by the Commissioner in accordance with the Act. Accounts and other information regarding finances is to be rendered to the Commissioner in the manner so prescribed by him, powers of inspection of property and documents, restriction or alienation of immovable properties, recovery of properties unlawfully alienated, removal of encroachment from land and power of the Commissioner to control the functioning of the Trust which would include issuance of temporary injunctions or order to prevent waste etc., appointment and removal of Trustee and Pujari as contemplated by Chapter-V. The provisions are not being set out in detail, but a reading of the Act leaves no doubt in my mind that the control exercised by the

Commissioner who is an appointee of the Government and also takes directions from the Government and reports it, is all pervasive. This is not one of those cases where the control is merely regulatory. Learned counsel submits that no financial aid is being taken but the Trust is being run on the offerings made to the shrine. Non receipt of financial assistance is of no consequence as Trust itself is generating substantial income and it was inter alia this reason that the management of the corpus of the Trust that respondent No.2 was included in the schedule to the Act as a Public Religious Endowment. Moreover, respondents No.2 and 3 are discharging important public duties in the nature of imparting education etc. The respondents are also bound by the mandatory conditions imposed by respondent No.4, Himachal Pradesh University, for the purposes of affiliation which not only provides for rigorous conditions of the requirement buildings playgrounds etc., the syllabus to be taught at the College, material equipment and books etc. to be prescribed/used for education purposes, regular inspection to ensure compliance and participation in the selection of teachers etc., but the most vital factor is that the College has to pay salaries to its staff on the University Grant Commission pattern which condition is mandatory.

In these circumstances, the ratio of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others* vs. *V.R.Rudani and Others*, (1989) 2 SCC 691, is squarely attracted. The Court found therein that although the petitioner was a Trust, but it was bound hand and foot in terms of the pervasive control exercised by the Government.

In *K. Krishnamacharyulu and Others vs. Shri Venkateswara Hindu College of Engineering and Another*, (1997) 3 SCC 571, the Supreme Court held:

“4. It is not in dispute that executive instructions issued by the government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grants-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decisions of this court holding that when there is an interest created by the government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on a par with the government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions

cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the government. The question is as to which forum one should approach. The High court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under Article 39(d) of the Constitution.”

In *Zee Telefilms Ltd. And Others vs. Union of India and Others*, (2005) 4 SCC 649, the court held that it is pervasive control of the Government and re-affirms the law that deep and pervasive control over a particular institution, brings it within the ambit of Article 12 of the Constitution of India. In this case, the Supreme Court has re-affirmed the decision in ***Pardeep Kumar Biswa vs. Indian Institute of Chemical Biology and Others*, (2002) 5 SCC 111.**

The respondents then submit that they are not possessed of sufficient funds to meet the financial liability. This submission cannot be accepted both in law or on fact as I have noticed that respondents No.2 and 3 have been making liberal donations for other causes. This act of the Trust

is not compatible with the insufficiency pleaded. How and where the money received by the respondents is to be applied/utilized is to be determined and applied within the provisions of the Act. But the Constitutional obligations of paying the teaching/administrative staff at par in accordance with the University Grant Commission scale cannot be denied. In ***State of Maharashtra vs. Manubhai Pragaji Vashi and Others, (1995) 5 SCC 730***, the Supreme Court has reaffirmed that paucity of funds cannot be an excuse. The Supreme Court held:-

*“13. We hold that the aforesaid reasoning and conclusion of the High Court is fully justified and no exception can be taken to the decision so arrived at by the High Court. The High Court has further referred to the plea of paucity of funds pleaded by the State and has held that paucity of funds can be no reasons for discrimination, placing reliance on the decision of this Court in ***Municipal Council v. Vardichan, (1980)4 SCC 162***. This reasoning of the High Court is also fully justified and no exception can be taken to the said proposition as well. We hold so.”*

The submission made by the respondents is, therefore, rejected.

The University Grant Commission and Union of India were added as party-respondents by an order of this Court on 17.4.2007 when this Court was informed by the Deputy Commissioner, Hamirpur who is the Chairman of the Temple Trust, that for payment on University Grant Commission's Scales the financial burden is to be shared by the Central

Government and the State Government. The Notification has already been noticed by me hereinabove. Both the respondents have not filed their reply(s) to the writ petition despite repeated opportunities having been granted.

In the facts and circumstances of the case, I allow this writ petition and hold that the respondents were not justified in withholding the arrears of pay of the petitioners on the basis of the University Grant Commission Scales from 1.1.1996 to 31.12.1999. A direction is issued to the respondents to pay such arrears to the petitioners in accordance with law. It will be open to the State to seek financial assistance from the Central Government, if available. The arrears so payable will be credited to the provident fund accounts of the petitioners herein. There shall be no order as to costs.

October 31, 2008
(aks)

(Dev Darshan Sud)
Judge