

IN THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:  
TRIPURA:MIZORAM AND ARUNACHAL PRADESH)  
SHILLONG BENCH

W.A. No.(SH)35 of 2011.

1. Shri Makanmi Kengoo,  
PGT,S/o Aphang Kengo
2. Shri PK Biswas,  
S/o Late KB Biswas
3. Shri Elvis B Chetri,  
S/o Late Podom B Chetri.
4. Shri Nabajyoti Borgohain  
S/o Late SK Borgohain
5. Shri Arindam Chakraborty,  
S/o Amrendra Chakraborty
6. Shri Baren Mishra,  
S/o Shaket Prasad Mishra
7. Shri PK Guha,  
S/o Manindra Narayan Guha
8. Shri Jitendra K Mishra,  
S/o Late Surcudra Mishra
9. Shri Vinay K Chowdhary  
S/o Abhay Kant Chowdhary
10. Shri HN Pandey,  
S/o Late Ram Janma Pandey
11. Shri Sebastian George  
S/o George Thomas
12. Shri Diganta Halder,  
s/o BR Halder
13. Shri Biju George  
S/o Varkey Micheal
14. Shri V Rajendran  
S/o Late PCS Menon
15. Shri Pascal Khyriem  
S/o Drasting Marbaniang
16. Shri Jayanta Thakuria

S/o Late Ramesh Ch. Thakuria

17. PP Jena  
S/o Baskar Chandra Jena
18. Ms Srilekha Das Purkayastha  
D/o Sisir Rj D Purkayastha
19. Ms Sulipi Halder  
D/o SK Dey
20. Ms Sindhu Pillai  
D/o KR Chellappan Pillai
21. Shri Rajesh Roy  
S/o Dharma Roy
22. Shri Anand Prakash  
S/o RP Singh
23. Shri Subrata Acharjee  
S/o Late Prangopal Acharjee
24. Shri LN Dhar Choudhury  
S/o Late NR Dhar Choudhury
25. Shri Kunwar Sen,  
S/o Late Janak Singh
26. Shri Kamal Roy  
S/o late SN Roy
27. Shri PK Chakraborty  
S/o Late Nepal Chakraborty
28. Shri Subir Sengupta  
S/o Late SR Sengupta
29. Smt Gypsey Kyriemmuja  
D/o T Meren Ao
30. Shri Sandeep S Rawat  
S/o Man Singh Rawat
31. Shri Prem B Thapa  
S/o AT Farshuba Thapa
32. Bir B Rai  
S/o Late Mun B Rai
33. Shri Jagdeo  
S/o Latkailash Ray
34. Shri Sakaldeo Ray  
S/o Late Ramilash Ray

35. Lakinder Ray  
S/o Sarug Ray
36. Durga B Gurung  
S/o Late Dharma Singh Gurung
37. Rameshwar Ray  
S/o Late Brhmdeo Ray
38. Shri Zamdali  
S/o Late Dil Mohammad
39. Smti Lamu Raini  
D/o Nima Rai
40. Shiv Nath Ray  
S/o Late Rajendra Ray
41. Hari B Gurung  
S/o Hindudal Gurung
42. Dhan B Lepeha  
S/o Late Dhany Lepeha
43. Mohabat Ali  
S/o Md Abdul Gani
44. Israque  
S/o Md Uzahat Husen
45. Shri Sukhdeo Ray  
S/o Late Sar Jug Ray
46. Shri Dinesh Prasad Singh  
S/o Late Sitaram Ray
47. Shri Ram Babu Ray  
S/o Rambilash Ray
48. Shri Lal Singh  
S/o Late Perbey Thapa
49. Shri Kumar Gurung  
S/o Late Madhorraja Gurung
50. Ram B Thap  
S/o Phul Prasad Thapa
51. Shri Jumrati  
S/o Md Babi
52. Jamaluddin  
S/o Md Sahabudin

53. Shri Mangal Murmu  
S/o late Shom Murmu
54. Shri Haribansh Ray  
S/o Bake Ray
55. Shri Om Prakash Balmiki  
S/o Late Munchi Balmiki
56. Shri Bharat Prasad Yadav  
S/o Late B Yadav
57. Shri Lil B Gurung  
S/o Peny B Gurung
58. Abdullah Khandakar  
S/o Late Akhiluddin
59. Shri Shyam Babu Ray  
S/o Ram Bilash Ray
59. Shri Shiv Hasda  
S/o Late Bashit Hasda
60. Shri Shiv Hasda  
S/o Late Bashit Hasda
61. Shri Pancham Baitha  
S/o Ram Sunder Baitha
62. Shri Ashik Ray  
S/o Harekhan Ray
63. Shri Yam Prasad Ariyal  
S/o Dilli Ram Aryal
64. Shri Parimal Paul  
S/o Late DC Paul
65. Shri Ramesh Gurung  
S/o Dirgaman Gurung
66. Shri Ranjan Borah  
S/o Late Mema Kant Borah
67. Shri Motiul Islam Borbhuiyan  
S/o Late Md Arzumia
68. Shri Satur Murmu  
S/o Mangal Murmu
69. Shri Prakash Prasad  
S/o Late Dib Run

70. Shri Dominik Hasda  
S/o Charan Hasda
71. Shri Baban Baski  
S/o Late Thakur Baskey
72. Shri Soban Hembrem  
S/o Late Lakhi Ram Hembrem
73. Shri Suresh Boro  
S/o Late Mahendra Boro
74. Shri Bhurelal Balmiki  
S/o late Muthu Balmiki
75. Shri Sudhir Roy  
S/o Late Naba Ram Roy
76. Shri Birendra Balmiki  
S/o Nolurcuan Balmiki
77. Shri Gopali Balmiki  
S/o Late Yadram Balmiki
78. Shri Subash Prasad  
S/o Late Dilip Prasad Tamta
79. Shri Shatrudhan Singh  
S/o Umesh Prasad Singh
80. Shri KR David  
S/o KR Malungzing
81. Shri Sher B Thapa  
S/o Late Tara B Thapa
82. Shri Mon B Thapa  
S/o Late Kharka B Thapa
83. Shri Mahendra Baitha  
S/o Rajendra Baitha
84. Shri Biplab Sil  
S/o late Dhirendra Sil
85. Shri Baldev Singh  
S/o Amar Singh
86. Shri Hemant K Singh  
S/o Upendra Prasad Singh
87. Shri Bhim P Subedi  
S/o Manikantha Subedi

88. Shri Sonowar Husen  
S/o Md Sanichi Mula Husen

89. Shri Manindra Sharma  
S/o Mabakushar Sharma

:Appellants

Versus

1. Union of India,  
Represented by the Secretary,  
Government of India,  
Ministry of Home Affairs, New Delhi.
2. The Chairman,  
Governing Body Assam Rifles Public School  
Laitkor, Shillong 10, Meghalaya.
3. The Director General,  
Assam Rifles Laitkor, Shillong, Meghalaya.
4. Assam Rifles Public School,  
Through the Principal and Secretary  
of the School, Laitkor, Shillong-10  
Meghalaya.

: Respondents

B E F O R E

THE HON'BLE MR JUSTICE T VAIPHEI  
THE HON'BLE MR JUSTICE K MERUNO

For the petitioner

: Dr JL Sarkar  
Mr P Nongbri,  
Mr N Mozika,  
Mr SN Tamali  
Advocates

For the respondents

: Mr SC Shyam,  
CGC

Date of hearing

: 23.04.2012

Date of judgment & Order

: 05.09.2012

### JUDGMENT AND ORDER (CAV)

Whether a writ of mandamus can be issued against Assam Rifles Public School (ARPS), Laikor, Shillong, ("the School") an Unaided private educational institution registered under the Indian Registration Act, 1908 for directing the School to pay the appellants the pay scales and dearness allowances on par with the teaching and non-teaching staffs of the schools and institutions run by and through the Central Government strictly in accordance with the recommendations of the 6<sup>th</sup> Central Pay Commission ("6<sup>th</sup> CPC"), is the moot point in this appeal. The learned Single Judge has held that no mandamus can be issued against ARPS as the School is not an instrumentality of the State within the meaning of Article 12 of the Constitution of India whereupon this appeal is preferred by the appellants, who belong to the teaching and non-teaching staff of the ARPS.

2. The facts material for disposal of the appeal may be noticed immediately. The case of the appellants, 89 in number, as pleaded by them, are that the School was established in the year 1980, is affiliated to the Central Board of Secondary Education (CBSE) and is under the deep and pervasive control of the Assam Rifles, financially as well as administratively: funding of the institution, provision of land for the School buildings and its infrastructures and payment of salaries of the employees are made by the Assam Rifles through grants, subsidy, etc. It is contended by the appellants that the School is an instrumentality of the State within the meaning of Article 12 of the Constitution. It is the further case of the appellants that the pay scales of the teaching and non-teaching staff of the School were made at par with the pay scales of

similarly situated employees of the Central Government Schools such as Kendriya Vidyalaya Sangathan (KVS), Jawahar Navodaya Vidyalaya (JNV) as per the recommendation of the Central Pay Commission (CPC) as evident from the office order dated 15-7-1998. The fact that the appellants have been getting the pay scales of the schools run by or through the Central Government is also evident from the open advertisement issued in the year 2007 for recruiting Post Graduate Teachers (PGT) and Hostel Superintendent with the closing date of application as 15-5-2007.

3. It is also the case of the appellants that the post of the Principal of the School was filled up by open advertisement in 2001 with the pay scale fixed in accordance with the recommendations of the 5<sup>th</sup> Pay Commission. Though the pay scales and allowances admissible under the 6<sup>th</sup> Central Pay Commission (CPC) were implemented in favour of civilian government employees of Central Government and the employees of KVS and JNV with effect from 1-1-2006, the pay scales of 6<sup>th</sup> CPC were granted to the appellants only with effect from 1-4-2008. Likewise, the dearness allowances have also been paid to the appellants on par with Central Government civilian employees only up to June, 2009, but the same has been kept in abeyance since then: the appellants are being given less DA due to non-implementation of the same as per the Central Government announcement from time to time. The representations submitted by the appellants to the respondent authorities from time to time to allow them to enjoy the pay and allowances and other service benefits as per recommendation of the 6<sup>th</sup> CPC as enjoyed by similarly situated employees of the Central Government and KVS as well as JNV did not



prove fruitful. Having no alternative, they filed the writ petition for appropriate reliefs.

4. The writ petition was opposed by the respondent authorities, who also filed their affidavit-in-opposition. It was contended therein that the writ petition was not maintainable inasmuch as the School is only a private institution registered under the Societies Registration Act, 1860, which was established with the aims and objectives, inter alia, of promoting education amongst the children of the Assam Rifles officers, employees and public: the management is fully under the administrative and financial control of the Managing Committee of the School constituted under the provisions of the Article of Association of the society. It was asserted by the respondent authorities that neither the Ministry of Home Affairs of the Union of India nor the Director-General of Assam Rifles have any administrative or financial control over the management of the School: the financial requirements of the School were met from the tuition fees and other fees collected from the students and, therefore, the School is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution. On the basis of the preliminary objection raised by the respondent authorities on the maintainability of the writ petition, the learned Single Judge, as already noticed, dismissed the writ petition by the impugned judgment by holding that the School is not an instrumentality of the "State" within the meaning of Article 12 of the Constitution, and, therefore, is not amenable to the writ jurisdiction of this Court. The learned Single Judge, nevertheless, observed as follows:

*"17. However, before parting with the case, I would like to put on record that so far the instant case is concerned, I find that ARPS is affiliated to CBSE. Granting affiliation by CBSE, I would like to put on record that so far the instant case is concerned, I find*

*that ARPS is affiliated to CBSE. Granting affiliation by CBSE is governed by the CBSE Affiliation Bye-Laws. Clause 3(v) of the said Bye-laws, amongst others, stipulates that the school in India must pay salaries and admissible allowances to the staff not less than the correspondent categories of employees in the State Government schools or as per scales, etc. or as prescribed by the Government of India. In other words, payment of salaries and admissible allowances to the staff of the institution concerned not less than the corresponding categories of employees in respective State Government schools or as per scales, etc. prescribed by the Government of India, is a condition precedent for granting affiliation to such institution by CBSE and therefore, it can be safely presumed that affiliation to ARPS was granted by the CBSE only on promise to implement the said provision of the bye-laws, more so, the petitioners were getting the pay and allowances earlier in terms of the recommendations of 5<sup>th</sup> CPC which is not denied or controverted by the respondents. This court thus hopes and trusts that the authority would examine the claims of the petitioners and redress their grievance, inasmuch as, on their promise to implement the provision of clause 3(v) of the bye-laws, the school was affiliated to CBSE.”*

5. On critical examination of the foregoing paragraph, the learned Single Judge more than suggested that the condition precedent for affiliation of a school with CBSE in terms of Clause 3(v) of the Bye-laws of the CBSE is payment by the school of salaries and allowances to its staff on par with or not less than the pay scales and allowances paid to the corresponding categories of the employees under the State Government or as prescribed by the Central Government., but it nevertheless refrained from issuing a writ of mandamus to that effect to the School. No cross appeal is preferred against the aforesaid findings. The first point for consideration, therefore, is whether the writ petition is maintainable in the present form?

6. The first contention of Dr. JL Sarkar, the learned counsel for the appellants, is that the learned Single Judge has confused the term “authority” contemplated in Article 12 of the Constitution with the terms “authority” and “person” used in Article 226 of the Constitution by

overlooking the construction placed by the Apex Court in ***Andi Mukta Sadguru SMVSJMS Trust v. VS Radani, (1989) 2 SCC 691*** and other subsequent decisions of the Apex Court and wrongly held that the writ petition is not maintainable. Once this misconception is clear by this Court and once it is correctly held that the writ petition is maintainable, according to the learned counsel, the writ petition can be allowed on the basis of her other findings that the appellants are entitled to the salaries and allowances paid to their counterparts in the KVS and JNV in accordance with the 6<sup>th</sup> CPC. Countering the submissions of the learned counsel for the appellants with considerable force, Mr. SC Shyam, the learned CGC, however, maintains that the School is merely an Unaided private institution over which neither the Assam Rifles or the Central Government have any control, financially or otherwise, much less having deep and pervasive control over it. It is contended by the learned CGC that a writ petition will lie only against an authority within the meaning of Article 12 of the Constitution as held by the seven-Judge Bench of the Apex Court in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others, (2002) 5 SCC 111*** and by the five-Judge Bench of the Apex Court in ***Zee Telefilms Ltd. and another v. UOI and others, (2005) 4 SCC 649***, and the instant writ petition directed against the inaction of an Unaided private institution is not maintainable and is liable to be dismissed as correctly held by the learned Single Judge. On merit also, it is contended by the learned CGC that the respondent authorities are not bound by the instructions issued by the CBSE to follow a particular pattern of pay scales and allowances, and they have the discretion to apply the pay scales and allowances admissible under the 6<sup>th</sup> CPC to the civilian employees of the Central Government or

the schools and institutions run by, or through, them wholly or in part keeping in mind their financial position, for which the petitioner-association has no legitimate grievance to make. Accepting the contention of the petitioner-association to the contrary, on the facts and circumstances of this case, according to the learned CGC, would amount to converting a purely private educational institution into a Government educational institution, which is impermissible, and no interference by this Court with the impugned judgment is, therefore, warranted.

7. Before proceeding further, we may straightaway reproduce hereunder the provision of Article 226(1) of the Constitution:

**"226. Power of High Court to issue certain writs.—(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to *any person* or authority including in appropriate cases, any government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of the rights conferred by Part III and for any other purpose.**

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(Italic mine for emphasis)

8. In *Andi Mukta(supra)*, the question as to whether a mandamus under Article 226 of the Constitution can issue against a private body came up for consideration before the Apex Court. In that case, the Apex Court noticed the distinction carved out in the earlier case of *Dwarkanath v. ITO, (1965) 3 SCR 536* between the powers of the High Court in India under Article 226 and the powers of English Courts to issue prerogative writs and reproduced the same: (SCR pp. 540-41)

*"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person and authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs is also widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparative small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."*

7. The Apex Court thereafter enunciated the legal principles in ***Andi Mukta (supra)*** in following manner:

*"20. The term "authority" used in Article 226, in the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers powers on the High Courts to issue writs for enforcement of fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."*

9. While approving the principles so laid down, the Constitution Bench of the Apex Court in ***Zee Telefilms Ltd.(supra)***, explained the terms "public function" and "public law" as under:

*"138. The concept of public law function is yet to be crystallised. Concededly, however, the power of judicial review can be exercised by this Court under Article 32 and by the High courts under Article 226 of the constitution only in a case where the dispute involves a public law element as contradistinguished from a private law dispute. (See*

***Dwarka Prasad Agarwal v. B.D. Agarwal*, SCC at p. 242.)**

*139. General view, however, is that whenever the State or instrumentality of the State is involved, it will be regarded as an issue within the meaning of public law but where individuals are at loggerheads, the remedy therefore has to be resorted to in private law field. Situation, however, changes with the advancement of the State function particularly when it enters in the fields of commerce, industries and business as a result whereof either private bodies take up public functions and duties or they are allowed to do so. The distinction has narrowed down, but again concededly such a distinction still exists. Drawing inspiration from the decisions of this court as also other courts, it may be safely inferred that when essential governmental functions are placed or allowed to be performed by a private body they must be held to have undertaken a public duty or public function."*

(Underlined for emphasis)

10. Perhaps the best illustration for the term "public duty" can be found in the decision of the Apex Court in ***K. Krishnamacharyulu and others v. Sri Venkateshwara Hindu College of Engineering and others, (1997) 3 SCC 571***. In that case, the admitted position is that the appellant and six others had been appointed to the post of Lab assistant on daily wages basis as non-teaching staff of the respondent-private college. The writ petition and the appeal seeking equal pay having been dismissed, they filed an appeal before the Apex Court for direction to pay them equal pay for equal work on par with the other government employees. Allowing the appeal, the Apex Court held:

*"4. It is not in dispute that executive instructions issued by the Government have given them the right to claim 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 a 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 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 also not in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition thereafter 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 the 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 that 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."*

11. In the instant case also, the learned Single Judge has found that the appellants are entitled to the salaries and allowances payable to the corresponding categories of the employees in the institutions affiliated to the CBSE, which insisted such payment by the School as the condition precedent for its affiliation to it. Chapter II of the Bye-laws of the CBSE deals with the norms for affiliation of educational institutions to CBSE. Clause 3(vi) of Chapter II of the Bye-laws is in the following terms:

**"(vi) The School in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the state Government schools or as per scales etc., prescribed by the State Government schools or as per scales etc. prescribed by the Government of India. The schools outside India should pay salaries not lower than those of the teachers in government schools of that country or not less than the salaries and foreign allowances payable to KVS teachers if**

**officially posted to that country. A certificate to that effect should be obtained from the Indian Diplomatic Mission."**

12. The provision extracted above clearly indicates that any school affiliated to the CBSE is under an obligation to pay salaries and allowances to their staff which should not be less than the salaries and allowances paid to the corresponding categories of employees of the State Government schools or as per the pay scales prescribed by the Central Government. The core of the appellants' case is found at paragraphs 9 and 10 of the writ petition, which read thus:

**"9. That by the office order dated 15-7-1998 the pay scale at par with Central Govt. Scale (5<sup>th</sup> CPC) has been given effect to. The employees of ARPS have been continued at par with other Central Govt. employees and Kendriya Vidyalaya Sangathan in particular. The same is continued for Jawahar Navodaya Vidyalaya Samiti.**

**Copy of the office order dated 15-7-1998 is enclosed as Annexure-C.**

**10. That it is stated that the respondent Assam Rifles, DGAR, the Governing body, Managing Committee of ARPS have always been just and fair and have treated the employees of ARPS at par with other Central Government employees and paid pay & allowances as per the CPC recommendations, and the other conditions of service were made applicable to the employees, in particular the employees have been treated at par with employees of Kendriya Vidyalaya Sangathan and Jawahar Navodaya Vidyalaya Samiti which are also under CBSE affiliation with Central Govt. Pay Scales and conditions of service. Certificate showing parity with Central Govt. employees has also been issued. When called for conditions of service in ARPS have been amended with change in Central Govt. conditions. For example, under Govt. of India notification No. GI/Deptt. P&T/CM 12/9/94-JCA dated 14-1-1998 casual leave was reduced from 12(twelve) days per year to 8(eight) days per year w.e.f. 1-1-1998 and the same change was made applicable in ARPS office order dated 18-3-1998.**

**A copy of a certificate dated 13-3-1994 from the Chairman ARPS is enclosed as Annexure-D."**



13. The replies of the respondent authorities to the foregoing extracts are found at paragraphs 17 and 18 of their affidavit-in-opposition, which are reproduced below:

**"17. That with regard to the statement made in para 9, it is respectfully submitted that the Assam Rifles Public School (ARPS) is a private institution, so it cannot be compared with Kendriya Vidyalaya Sangathan (KVS) and the Jawahar Navodaya Vidyalaya (JNV).**

**18. That with regard to the statement made in paragraph 10, it is respectfully submitted that giving pay and allowance to the employees of ARPS at par with the employees of KVS and JNV other Central Govt employees does not and cannot make the respondent school a govt. institution and the same cannot confer any vested right to the petitioners to continue the benefit irrespective of the financial capability of the school."**

14. As already noticed, the controversy is not about the equation of the employees of the School with the employees of KVS and JNV: it is about the liability of the School to extend the benefits of 6<sup>th</sup> CPC to their employees in accordance with the terms and conditions of its affiliation to the CBSE. At this stage, it may be noted that by the Office Order dated 15-7-1998 (Annexure-C to the writ petition), the Governing Body of the ARPS approved the implementation of 5<sup>th</sup> CPC and sanctioned the revised pay scale of all categories of staff i.e. Teaching, Adm & Gd-IV staff as per the pay scale laid down for KVS with effect 1-1-1998. The Chairman, Management Committee ARPS had earlier issued the Certificate dated 13-4-1994 (Annexure-D to the writ petition) certifying that the teaching, both administrative & Grade-IV employees of ARPS were being paid since 1-5-1991 as per Central Govt Pay Scales and other allowances as admissible under the Central Govt rules to the corresponding categories of staff. It

may also be noticed that by the Office Order dated 18-3-1998 (Annexure-E to the writ petition), the reduction of casual leave entitlement of the employees of the Central Government in terms of the Notification dated 14-1-1998 from 12 days to 8 days per year w.e.f. 1-1-1998 was also made applicable to the teaching and non-teaching staffs of the School. Furthermore, the Advertisement issued by the ARPS for the Senior Faculty Members such as Post Graduate Teachers, etc. in the year 2007 clearly mentioned that DA & other allowances would be as per Govt. rules. This is also reflected in the advertisement for the post of Principal of the school issued in 2001 (Annexure-H to the writ petition). Government Rules mentioned therein are none other than the Central Government Rules as indicated by Annexure-C, Annexure-D and Annexure-E referred to earlier. These are quite consistent with the claim of the appellants that the School is required to follow the said instructions of the CBSE, which mandated any school to be affiliated with CBSE to pay their staff the salaries and allowances payable to the corresponding categories employees of the State Government or the Central Government. In this case, the School followed the pay scales and allowances of the Central Government employees as recommended by the 5<sup>th</sup> CPC and partly of the 6<sup>th</sup> CPC with effect from dates later than the date on which the latter was implemented in the case of Central Government civilian employees and the schools run by or through them without the dearness allowance prescribed therein.

15. In view of the above, the question to be considered now is, whether the appellants can insist that such benefits of pay scales and dearness allowance admissible under the 6<sup>th</sup> Central Pay Commission be extended to them in toto. In our opinion, the answer must be in the affirmative for more than one reason. As found by the learned Single

Judge, with which we are in respectful agreement, the condition precedent for affiliation of any school to CBSE is that such school do pay the salaries and allowances to their staff which shall not be less than the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Central Government. In the instant case, the ARPS had already opted to pay the appellants the salaries and allowances payable to the corresponding categories of employees in the Central Government schools like KVS and JNV vide Annexure-C, Annexure-D and Annexure-E to the writ petition, and not the salaries and allowances payable to the corresponding categories of employees in the State Government. In our judgment, the refusal on the part of the respondent authorities to the appellants to pay the salaries and other allowances payable to the corresponding categories of employees in the Central Government is contrary to the affiliation rules of the CBSE and is, therefore, unfair, unjust and illegal. Moreover, such consistent past practice of paying the salaries and allowances to the appellants on par with their corresponding counterparts in the Central Government such as the staff of KVS and JNV cannot be set at naught at this stage without reasonable justification as that would be arbitrary. Once the claim of the appellants is found to be justified, financial constraints can hardly be a ground to deny the benefits payable to the appellants. That was the submission urged on behalf of the State-appellant in ***State of Mizoram v. Mizoram Engg. Service Assn., (2004) 6 SCC 218***. The answer of the Apex Court is found at para 7 of the judgment: this is what it said:

*"7. The learned counsel for the appellant also argued that if the scale of Rs. 5900-6700 is to be allowed to the Chief Engineers, the State government will have to allow the same scale to other heads of departments in the service of the State government which will be heavy burden on the financial resources*

*of the State Government and for that reason we should restrict the scale for the post of Chief Engineer and Additional Chief Engineer to Rs. 5700 and Rs. 4100-5300 respectively. In our view this is hardly any ground to interfere with the decision of the High Court. It has been found that the claim of the respondents is fully justified by the facts on record. The Central Government as well as the State government accepted the recommendations of the Fourth Central Pay Commission and the scales being allowed to the members of the respondent-Association are based on those recommendations.”*

(Emphasis added)

16. No other contentious issue survives for consideration. In our considered view, the learned Single Judge, having found that the respondent authorities are under obligation to pay the appellants the salaries and allowances payable to the corresponding categories of employees in KVS and NVS in terms of the Bye-laws of CBSE regulating affiliation of schools to it, however, should not have stopped there but should have applied principles laid down by the Apex Court in ***K. Krishmachalyulu*** (*supra*) and allowed the writ petition: she has in the process failed to exercise her writ jurisdiction of mandamus vested in her by the Constitution. After all, the legitimate expectation of the appellants that the past and consistent practice of the school allowing them to enjoy the salaries and allowances payable to the schools run by or through the Central Government will continue cannot be discontinued without reasonable justification. Financial constraints cannot be a ground to deny the rights available to them under the law. Moreover, the respondent authorities are also barred by the principle of *promissory estoppel* from breaking the promise held out by them in the advertisements that the teaching staff would be paid the salaries and allowances paid to the Central Government employees.

17. For the reasons stated in the foregoing, this writ appeal succeeds. The impugned judgment and order of the learned Single Judge is hereby set aside. The respondent authorities are directed to implement the pay and allowances in terms of the 6<sup>th</sup> CPC to the teaching and non-teaching staffs of the School with effect from 1-1-2006 together with the increased Dearness Allowance with effect from July, 2009 and the arrears payable in connection therewith and extend the service benefits including retirement benefits at par with the employees of Kendriya Vidyalaya Sangathan and Jawahar Navodaya Vidyalaya with arrears and implement the applicable Assured Career Progression (ACP) and SDA to them without further delay. The entire exercise of implementation of the 6<sup>th</sup> CPC for the benefit of the appellants shall be carried out by the respondent authorities within a period of three months from the date of receipt of this judgment. There shall be no order as to costs.

JUDGE

JUDGE

*daphira*