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W. P. No. 8909 / 2013

31/07/2013

Parties through their counsel.

The petitioner before this Court, an Assistant Teacher working in a Government aided institution is claiming the benefit of 5th Pay Commission w.e.f. 1.1.96 and the same rate of dearness allowance and house rent allowance.

Learned counsel for the petitioner at the outset has drawn the attention of this Court towards a judgment delivered in the case of **Rajendra`Kumar Tiwari Vs. State of M.P. & Ors, in W.P. No.2474/05** and his contention is that in an identical case the State of Madhya Pradesh has been directed to grant the benefits of 5th Pay Commission to the identically placed employees in the entire state of Madhya Pradesh and in spite of there being an order dated 3.3.2005, the benefit of 5th Pay Commission w.e.f. 1.1.96 has not been granted to the petitioner.

Learned G.A. has not disputed the aforesaid judgment delivered in the case of Rajendra`Kumar Tiwari (supra). The Principal Seat of this Court in the case of Rajendra`Kumar Tiwari (supra) has held as under :-

“Petitioner's main grievance is against respondents No. 1 & 2. They have not complied with the law laid down in the several decisions rendered by this Court. Matter is covered by the decision of this Court in W.P.S. No.10591/2004 & other connected matters, decided on 14.10.2004 and large number of decisions rendered by this Court. Petitioners are being made to suffer and unnecessarily to rush to this Court. Order ought to have been complied with, with respect to all institutions in the State. Following order was passed :-

Petitioner in this writ petition has prayed for the relief on the parity with the Govt. teacher. Petitioner is working as an employee in Govt. aided Institution. Petitioner has claimed the benefit of directing the respondents to ensure full payment of salary. Further direction is sought to give benefit of 5th pay commission w.e.f. 1.1.96 and same rate of Dearness Allowance and House Rent Allowance.

Matter has been dealt with by this Court in number of decisions and direction has been issued to the respondents to give the benefit of the similar pay scale at par with the corresponding categories of employees in the Govt. schools. The school in question is affiliated to the Board of Secondary Education. The Regulation 73 of Board of Secondary Education reads as under :

The scale of pay of the staff in Educational Institution which are in receipt of Government Grant shall not be less than those sanctioned for the corresponding staff in Government Institution.

In the case of Educational Institution which are not aided there shall be scale of pay the minimum of which shall not be less than that in Govt. Educational Institution.”

Rule 33 of the revised Grant-in-aid rules reads thus :

“Rule 33:

The scale of pay of the Teachers including head of the institution and other employees of an Educational Institution which is in receipt of Government Grant shall be in accordance with those sanctioned for the corresponding categories of employees in Government Educational Institution.”

M.P. Ashaskiya Shikshan Sanstahn (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978, defines the salary thus :-

“2(j) Pay and dearness allowance payable to a teacher or employee”

The definition of salary has been amended by amendment Act 26/2. The amended definition is quoted below :-

“Pay and other allowance payable to the teachers or employee as may be defined by the Institution.”

As the School is affiliated with the Board of Secondary Education, similar pay scale has to be given. In W.P.S. No.6006/2001 – Kundan Singh Parihar Vs. State of M.P. and Others, this Court has granted relief to the petitioner of similar pay scale, same rate of Dearness Allowance and House Rent Allowance. In W.P.S. No.1841/2001 – Indore Regional Shikshak Karmachari Sangh Vs. State of M.P., decided on 18.11.2003, similar pay scale, dearness allowance and house rent allowance from 1.1.96 to 31.3.96 was granted, which was the prayer made in the said writ petition on the ground of parity. In M.P. No. 862/1990 – Madhya Pradesh Ashaskiya Mahavidyalanin Ashaishinik Karmachari Sangh Vs. State of M.P. and others, decided on 2.1.2000, same scale of pay, dearness allowance and addl. Dearness allowance was imposed. In W.P.S. No.s2029/2000 – V.V. Asthana and others Vs. State of M.P. and others, decided on 29.1.2003, benefit of similar pay scale has been extended. L.P.A. No.48/2003 against the decision of V.V. Asthana (supra) was dismissed by the Division Bench of this Court on 16.6.2003. In W.P. No.2013/2000 Prof. R.K. Malviya and others Vs. State of M.P. & other writ petitions, similar direction has been issued. In W.P. No.277/01 R.P. Rai and others Vs. State of M.P. and others, decided on 7.5.2004, decision rendered in V.V. Asthana (supra) has been followed.

In W.P. No.1902/2003- Kanchan Kumar Adhamane and ors. v. State of M.P. and ors, this court granted same relief on consideration of definition of salary,

Rule 33(1) of Revised Grant-in-aid Rules, Regulation 65 framed by the Board of Secondary Education and on consideration of the decision of **suresh Kumar Dwivedi Vs. State of M.P. 1994 J.L.J 73**, which was remitted by the Supreme Court and decided afresh by the Division Bench on 18.10.1994 against which SLP No.920/1995 was dismissed by the Apex Court. The decision of the Apex Court in **Frank Anthony Public School Employees' Association v. Union of India and ors. - AIR 1987 SC 311; Haryana State Adhyapak Sangh v. State of Haryana and ors. (199=88) 4 SCC 571 and Haryana State Adhyapak Sangh and ors. v. State of Haryana – 1990 (supp) SCC 306; State of Haryana and ors. Vs. Rajpal Sharma and ors. - (1996) 5 SCC 273; Chandigarh Administration and others v. Rajni Vali (Mrs.) and ors. - (2000) 2 SCC 42; State of Haryana v. Ram Chander – (1997) 5 SCC 253; State of Maharashtra v. Manubhai Pragaji Vashi – (1995) 5 SCC 730**, were considered. This Court has laid down thus :-

“7. Thus, in view of the above discussion, it is clear that the teachers of the non-government institutions are entitled for the similar pay scale and dearness allowance as is being paid to the government schools of the corresponding category are entitled for the same benefits. Let the arrears be worked out and payment be made within six months. The liability of the State of M.P. and the Management shall be as per the scheme of grant-in-aid and the final order which may be passed as to scheme of grant-in-aid by the Apex Court as to the extent of the liability, but the payment has to be made as per prevailing rate of grant-in-aid time to time.

Number of petitions are being received. Respondents are expected to apply the law equally to all the similarly situated employees. Petitioners have to be treated similarly in the light of the directions issued in the above writ petitions. With the aforesaid direction writ petition is disposed of.

Let the case of the petitioner be treated similarly as case is similar; it is surprising that law is not being applied to all similarly situated employees equally; it cannot be said to be proper. There are large number of decisions rendered by this Court. Matter has also travelled earlier up to the Apex Court. Apex Court has also directed in the matter of **Suresh Kumar Dwivedi Vs. State of M.P.** (supra), to pay the similar pay-scale; still pay-scale & allowances are not being paid; still large number of petitions are received. State is expected to take care of the situation and to apply the rules itself equally to all and the law laid down by this Court.

In view of the above order this writ petition is also disposed of.”

Keeping in view the aforesaid judgment delivered by the Principal Seat at Jabalpur of this Court, the writ petition is allowed. The respondents are directed to extend the benefit of 5th Pay Commission w.e.f. 1.1.96 to the petitioner and all other benefits which have been extended to Rajendra Kumar Tiwari as well as other persons in whose favour orders have been passed by this Court in the earlier round of the litigation. The exercise of granting the benefits for 5th Pay Commission to the petitioner be concluded within a period of 6 months from the date of receipt of certified copy of this order.

With the aforesaid, the writ petition is disposed of.

No order as to costs.

(S. C. SHARMA)

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