

A

STATE OF ORISSA AND ANR.
v.
ASWINI KUMAR DASH AND ORS. ETC.

MARCH 17, 1998

B

[MRS. SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

Service Law :

C

Revision of pay scale—Govt. resolutions dt. 6.10.1989 and 6.11.1990—Teachers—Aided non-Govt. Colleges—Note to paragraph 2(1) of Resolution dt. 6.11.1990—Colleges affiliated on or before 1st of April 1989—Eligible for benefit of revised pay scales—On challenge, High Court struck down the note to para 2(1) of the resolution dt. 6.11.1990—On appeal held, Resolution of 6th November 1990 does not curtail the scope of the Resolution of 6.10.1989—Cut off date 1st of April 1989 fixed for grant of aid not arbitrary or unreaonable—High Court not justified in striking down the note to para 2(1) of Govt. Resolution dt. 6th November, 1990.

D

E

The respondents were teachers in aided non-Government Colleges/Educational Institutions. By Resolution dt. 6th October, 1989, the appellant-State Government decided to revise the pay scales of teachers working in all the affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1st April, 1989. Thereafter, by a resolution dt. 6th November 1990 instructions were issued to regulate the revision of pay scales of different categories of teachers serving in non-aided Government Colleges of the State pursuant to its earlier Resolution of 6.10.1989. A note appended to para 2(1) of the Resolution dt. 6.11.1990 stated that colleges shall mean aided Colleges which were given Government concurrence and University affiliation for opening of 3+ Degree Colleges by 1st of April 1989 and not thereafter. The respondents filed a writ petition challenging the above note on the ground that the coverage which was given by the earlier resolution dt. 6.10.1989 was reduced as a result of the note appended to paragraph 2(1) of the Resolution dt. 6.11.1990. The High Court while allowing the writ petitions struck down the note to paragraph 2(1) of the Government Resolution dt. 6.11.1990 and held that the respondents were entitled to higher scales of pay. Hence the present appeals.

F

G

H

Allowing the appeals, this Court

HELD : 1.1. High Court erred in holding that the note to paragraph 2(1) of the Govt. Resolution of 6th November, 1990 was arbitrary and unreasonable. [283-B] A

1.2. The two Resolutions cover the same field and the Resolution of 6th November 1990 does not curtail the scope of the Resolution of 6th October, 1989. The Resolution of 6th November 1990 which deals with teachers serving in aided non-Government Colleges of the State provides in paragraph 2 that the instructions in that Resolution shall apply to all categories of full-time teachers working in all aided non-Government Colleges either covered or eligible to be covered under direct payment scheme till 1st April 1989. This language is similar to the language in paragraph 3.1 of the Resolution of 6th October, 1989. The note states that colleges shall mean aided colleges which have been given Government concurrence and University affiliation for opening 3+ Degree Courses from 1st April, 1989 and not thereafter. The note sets out specifically what is implied in paragraph 3.1 of the Resolution of 6th October, 1989, as also paragraph 2(1) of the Resolution of 6th November, 1990 since both are couched in similar language. [280-F] B
C
D

2. The cut off date of 1st April, 1989 fixed for grant of aid cannot be considered as arbitrary or unreasonable. In the instant case the State Government has decided to provide grants-in-aid to cover the revised U.G.C. scales of pay for those teachers in existing colleges which have received Government concurrence and University affiliation on or before 1st April, 1989. The date has a direct nexus with the date of the decision to provide for such higher pay scales in the grant-in-aid to be given to the concerned colleges. Colleges which have secured Government concurrence or affiliation from the University after 1st April, 1989, cannot claim any right to the higher grant-in-aid contrary to the policy as laid down by the State. The resolution of 6th November, 1990 cannot be challenged on the ground that it deprives the teachers of +2 institutions or intermediate colleges of the benefit of the resolution of 6th October, 1989 even though their colleges may have received affiliation for degree colleges subsequent to 1st April, 1989. Neither of the two resolutions intended such colleges to have the benefit of revised pay scales under those Resolutions. [282-H; 283-A] E
F
G

3. The clarification dt. 22.8.1991 cannot apply to a college which had merely applied for affiliation but had not received any kind of affiliation by H

- A** 1st April, 1989. The clarification issued by the Govt. of India, Education Department in respect of the resolution of 6th November, 1990 states that the revised U.G.C. scales of pay, 1986 will be applicable to the teachers of a Degree college which has received Government concurrence and University affiliation by 1st April 1989, irrespective of whether it has got temporary/
B provisional/permanent concurrence/affiliation. Thus the Colleges which had applied for affiliation prior to 1st April 1989 but received affiliation at a later date cannot claim the benefit of revised U.G.C. scales under the two resolutions.
[282-A-B; 281-G]

- C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8256 of 1996 Etc.

From the Judgement and Order dated 4.11.94 of the Orissa High Court in O.J.C. No. 4085 of 1993.

- D** P.N. Misra and S. Misra for the Appellants.

Jana Kalyan Das and Ajit Pudussery for the Respondents.

The Judgment of the Court was delivered by

- E** MRS. SUJATA V. MANOHAR, J. Delay condoned.

Leave granted.

- F** The respondents in these appeals are teachers in aided non-Government colleges/educational institutions. They claimed the revised scales of pay recommended by the University Grants Commission on the basis of Government Resolutions of the State of Orissa in Education and Youth Services Department dated 6th of October, 1989 and 6th of November, 1990. The respondents objected to a note attached to paragraph 2 of the Government Resolution of 6th of November, 1990 as a result of which the higher pay scales were given to full-time teachers in aided non-Government colleges which had received Government concurrence and University affiliation for opening of 3
G + Degree course by 1st of April, 1989 and not thereafter. The writ petitions of the respondents were allowed by the Orissa High Court. The High Court struck down the note to paragraph 2 of the Government Resolution of 6th of
H November, 1990 and held that the respondents were entitled to higher scales

of pay. The judgment of the High Court dated 4.11.1994 in O.J.C. No. 4085-4090 of 1993 which is the subject-matter of Civil Appeal No.8256 of 1996 has been followed in the impugned High Court judgments in the other appeals. Hence all these appeals have been heard together.

The State of Orissa by its Resolution dated 6th of October, 1989, decided to revise pay scales of teachers in colleges. In paragraph 2 of the Resolution it is stated that following the appointment of the Fourth Pay Commission for Central Government Employees, the University Grants Commission had appointed a Committee under the Chairmanship of Professor R.C. Meherotra to examine the present structure of the emoluments and conditions of service of University and College Teachers. After considering the recommendations of the Committee, the University Grants Commission submitted its recommendations to the Government of India for their consideration and implementation. The Government of India communicated its decision on the recommendations of the University Grants Commission to the State Government of Orissa by their letter dated 17th of June, 1987 and further clarifications on 17th September, 1987 and 22nd of July, 1988 and requested the State to implement the scheme in the State after taking local conditions into consideration. In paragraph 3 it stated that after careful consideration the State Government has been pleased to decide to implement the scheme of revision of pay scales for college teachers on the terms and conditions set out in that Resolution. Paragraph 3.1 of the Resolution is headed "coverage". It provides as follows:-

"Coverage - The revised scales and other measures for improvement of standards in Higher Education shall be applicable to all categories of full time Teachers working in all affiliated Government Colleges and aided non-Government Colleges either covered or eligible to be covered under direct payment schemes till the 1st April 1989. The scheme will also be extended to full time eligible Teachers working in the College of Accountancy and Management Studies, Cuttack."

In paragraph 3.3 pay scales of different categories of teachers in colleges are laid down. Sub-paragraph A deals with general colleges. The designations are of Lecturers. Lecturers (Senior Scale), Lecturers (Selection Grade), Reader, Professor and Principals of colleges. The Principals of colleges are further divided into (i) Degree Colleges, (ii) 3 post-graduate Colleges and (iii) Lead

A Colleges situated at State and District Headquarters and Colleges having post-graduate courses as per list appended. The list appended is of degree colleges.

B Thereafter by a Government Resolution dated 6th of November, 1990, issued by the Government of Orissa, Education & Youth Services Department, the Government issued instructions to regulate the revision of scales of pay of different categories of teachers serving in aided non-Government colleges of the State pursuant to its earlier Resolution of 6th of October, 1989. Paragraph 2 of this Resolution is as follows:-

C “Category of teachers to whom these instructions shall apply-

(1) Save as otherwise provided by or under these instructions, these instructions shall apply to all categories of full-time teachers working in all aided non-Government Colleges either covered or eligible to be covered under Direct payment scheme till the 1st day of April, 1989.

D NOTE —“Colleges” under these instructions shall mean aided Colleges which have been given Government concurrence and University affiliation for opening of 3+ Degree courses by the 1st April, 1989 and not thereafter.”

E Sub-paragraph 2 of paragraph 2 excludes from the purview of the Resolution in clause (v), teachers who are appointed primarily in +2 institutions existing as on 1st April, 1989 including Intermediate Colleges converted +2 institutions and (vi) teachers appointed after 1st April, 1989 to teach in +2 courses in existing Degree Colleges or +2 institutions.

F The respondents contend that the coverage which was given to the earlier Resolution of 6th of October, 1989 is reduced as a result of the note which is appended to paragraph 2 (1) of the Resolution of 6th of November, 1990. However, under paragraph 3.1 of the Resolution of 6th of October, 1989 which deals with the coverage of that Resolution, it is stated that the Resolution will apply to full-time teachers working, inter alia, in all affiliated aided non-Government colleges either covered or eligible to covered under direct payment schemes till 1st of April, 1989. The term ‘affiliated’ in paragraph 3.1 has a reference to the Orissa Universities Act, 1989 which came into force on 15th of November, 1988. Section 2(b) of the Orissa Universities Act, 1989

defines affiliated institutions to mean a college or an institution affiliated to a University whether in whole or in part. While the term 'college' is defined in Section 2(d) to mean an institution admitted to a University in accordance with the provisions of this Act and the statutes and includes a college managed by a University, but does not include a school whether it is an independent institution or forms part of a college as defined herein. The Resolution of 6th of October, 1989, therefore, applied to those aided non-Government colleges which were affiliated to a University.

The reference in paragraph 3.1 to colleges covered or eligible to be covered under direct payment schemes till 1st of April, 1989 has a reference to the scheme of the Government of Orissa for direct payment of salary by the Government to the teaching and non-teaching staff of aided colleges. The circular letter/order of 27.5.1978 covers those who have been appointed against sanctioned posts and have completed five years from the date of the creation of such posts provided the creation of such posts and the appointments made against them have been duly approved by the competent authority. By a circular letter dated 17th of March, 1983, the Government of Orissa, Education and Youth Services Department, had clarified the Government Order No. 19462-EYS dated 27.5.1978 to the effect that direct payment of full salary cost of the teaching and non-teaching staff of non-Government colleges as admissible according to the prescribed yardstick shall be payable to such colleges which have been accorded Government concurrence prior to the academic session 1979-1980. The colleges who have received Government concurrence with effect from the academic session 1979-1980 or thereafter shall be governed by the new grant-in-aid principles which were as follows:-

- (1) Colleges in advance areas will receive 1/3rd of the deficit as grant-in-aid after 5 years from the date of Government concurrence (recognition), 2/3rd after 7 years and full deficit after 9 years.
- (2) In backward areas these periods will be 3, 5 and 7 years respectively.

For the purpose of computing qualifying period of 5 years for a college to receive grant-in-aid the date with effect from which the college has been accorded Government concurrence shall be taken into account. This concurrence has a reference to Section 18(b) of Orissa Universities Act, 1989,

A Section 18 deals with admission of educational institutions as colleges i.e. institutions admitted to a University vide definition Section 2(d). Sub-section (1) provides that no educational institution shall be admitted as college unless the following conditions are complied with, namely, (a) it is a college recognised by the Government as such, imparting higher education, (b) concurrence of the Government to the proposal has been obtained. There are other conditions with which we are not concerned.

C Paragraph 3.1, therefore, refers to only those aided non-Government colleges which are affiliated to a University and are eligible to be covered under direct payment schemes which also have a reference to colleges being admitted to University, prior to 1st of April, 1989. Under the Resolution of 6th of October, 1989, "plus two" institutions or Intermediate colleges were not to be covered; as also those Degree colleges which obtained affiliation to the University after 1st of April, 1989.

D The Resolution of 6th of November, 1990 which deals with teachers serving in aided non-Government colleges of the State provides in paragraph 2 that the instructions in that Resolution shall apply to all categories of full-time teachers working in all aided non-Government colleges either covered or eligible to be covered under direct payment scheme till 1st of April, 1989. This language is similar to the language in paragraph 3.1 of the Resolution of 6th of October, 1989. The note states that colleges shall mean aided colleges which have been given Government concurrence and University affiliation for opening 3+ Degree courses from 1st of April, 1989 and not thereafter. In view of what has been said in paragraph 3.1 of the Resolution of 6th of October, 1989 as explained above, the note sets out specifically what is implied in paragraph 3.1 of the Resolution of 6th of October, 1989, as also paragraph 2(1) of the Resolution of 6th of November, 1990 since both are couched in similar language. Sub-paragraphs 2 (v) and (vi) are also clarificatory in this context. The Resolution of 6th of November, 1990 therefore, cannot be challenged on the ground that it deprives the teachers of +2 institutions or Intermediate colleges of the benefit of the Resolution of 6th of October, 1989 even though their colleges may have received affiliation for Degree courses subsequent to 1st of April, 1989. Neither of the two Resolutions intended such colleges to have the benefit of revised pay scales under those Resolutions.

H In this context our attention was also invited to the Orissa Education

Act, 1969 as amended with effect from 21st of August, 1989. Section 3(b) defines an aided educational institution to mean a private educational institution which is recognised by and is receiving aid from the State Government. A college is defined under Section 3(d) to mean an educational institution imparting instructions in higher general education leading to any degree conferred by any of the Universities established under the Orissa Universities Act, 1989. Therefore, an aided college even under the Orissa Education Act will be an institution where instructions in higher general education leading to a University degree is imparted. For this purpose, such a college requires to be affiliated to a University under the Orissa Universities Act, 1989. Section 7-D provides that no private educational institution which has not been recognised by the State Government under this Act shall be entitled to be recognised by any of the Universities established under the Orissa Universities Act, 1989 or to receive any aid from the State Government. Therefore, even under the Orissa Education Act which covers all educational institutions including colleges, the colleges require recognition under the Orissa Education Act. In order to be eligible to send up its students for a degree they require affiliation to a University under the Orissa Universities Act and for the purposes of grant-in-aid the private colleges require recognition by the State Government under the Orissa Education Act. Although direct payment schemes may apply not merely to Degree colleges but to other educational institutions including Intermediate colleges which do not require any affiliation to a University, the Resolution of 6th of October, 1989 in paragraph 3.1 refers expressly to affiliated colleges. This affiliation has a reference to affiliation to a University for a Degree course. In respect of such colleges, the direct payment scheme requires that the colleges should have concurrence from the Government and University affiliation. Therefore, these two Resolutions cover the same field and the Resolution of 6th November, 1990 does not curtail the scope of the Resolution of 6th of October, 1989.

It is next contended by the respondents that the cut-off date of 1st of April, 1989 prescribed in these two Resolutions is arbitrary and irrational. It has deprived teachers of aided non-Government colleges who were affiliated after 1st of April, 1989 from the benefit of the two Resolutions. In the case of some of the teachers who are before us, the college in which they are working had applied for affiliation prior to 1st of April, 1989 but received affiliation at a later date. In case of other colleges, the application for affiliation

A as well as affiliation are from a later date. The respondents contend that at least in the case of those colleges which had already applied for affiliation prior to 1st of April, 1989, the teachers should get the benefit of revised U.G.C. scales under the two Resolutions. They rely upon a clarification issued by the Government of Orissa, Education Department, dated 22.8.1991 in respect of the Resolution of 6th of November, 1990 where it is stated that the revised U.G.C. scales of pay 1986 will be applicable to the teachers of a Degree college which has received Government concurrence and University affiliation by 1st of April, 1989, irrespective of whether it has got temporary/provisional/permanent concurrence/affiliation. The clarification, however, cannot apply to a college which had merely applied for affiliation but had not received any kind of affiliation by 1st of April, 1989.

The only other contention relates to the arbitrariness of the cut-off date 1st of April, 1989. In this connection, the appellants have pointed out that the Resolutions deal with the quantum of grant-in-aid which the State will provide, inter alia, to aided non-Government colleges; and the basis on which such grant-in-aid will be provided. For this purpose the State will provide for revised scales of pay as per the University Grants Commission's recommendation. The State Government has framed a scheme for such grant-in-aid looking to its own financial resources and the number of educational institutions to which it will be required to give such grant. No educational institution can claim grant-in-aid as a matter of right. This is a matter of policy which the State Government will decide looking to its financial capacity and other relevant circumstances. There may be, as a result, differences in the pay scales of teachers of colleges affiliated prior to 1.4.1989 and colleges affiliated subsequently, although neither of the Resolutions prevent the colleges from giving higher pay scales if they so desire. In this context, the appellants have pointed out that even the extent of grant-in-aid varies from college to college, depending, for example, upon the number of years for which the college has been functioning. Since the entire burden of providing grant-in-aid is now on the State, the State regulates by policy the extent of aid and the colleges to which it will be given.

In the present case the State Government has decided to provide grants-in-aid to cover the revised U.G.C. scales of pay for those teachers in existing colleges which have received Government concurrence and University affiliation on or before 1st of April, 1989. The date has a direct nexus with

the date of the decision to provide for such higher pay scales in the grant-in-aid to be given to the concerned colleges. The date which is so fixed cannot be considered as arbitrary or unreasonable. Colleges which have secured Government concurrence or affiliation from the University after 1st of April, 1989, therefore, cannot claim any right to the higher grant-in-aid contrary to the policy as laid down by the State. The High Court was, therefore, not right in coming to the conclusion that the Note to paragraph 2(1) of the Government Resolution of 6th of November, 1990, was arbitrary and unreasonable.

The appeals are, therefore, allowed. The impugned judgments and orders of the High Court are set aside and the writ petitions filed by the respondents before the High Court are dismissed. There will, however, be no order as to costs.

S.V.K.I.

Appeals allowed.