

Madhu Sharma and Others Vs. State Council of Educational Research and Training (Scert) and Others

Madhu Sharma and Others Vs. State Council of Educational Research and Training (Scert) and Others

SooperKanoon Citation : sooperkanoon.com/1150130

Court : Central Administrative Tribunal Principal Bench New Delhi

Decided On : Jan-23-2014

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mr. Shekhar Agarwal, Member (a)

Appeal No. : OA.No. 1823 of 2011

Appellant : Madhu Sharma and Others

Respondent : State Council of Educational Research and Training (Scert) and Others

Judgement :

Shekhar Agarwal, Member (A):

1. Following relief has been sought in this O.A.:-

(a) To fix the pay of the petitioners in the pay scale of Rs.6500-200-10500 w.e.f. 01.01.1996 and pay all arrears accrued on such fixation along with interest @ 12% per annum computable from 01.01.1996 till the date of payment of arrears.

(b) To fix the pay of the applicants in accordance with the recommendations of 6th Pay Commission with effect from 01.01.2006 taking into account the basic pay of the applicant on 01.01.2006 what so ever arrived on the basis of their re-fixation of

their pay in the pay scale of Rs.6500-200-10500.

(c) Quash and set aside the order dated 06.04.2011 (Annexure-A2) whereby the order dated 14.01.2009 (Annexure-A2a) is kept in abeyance.

Award the cost for the present application.

2. The applicants of this O.A. are Librarians working under the State Council of Educational Research and Training (SCERT) under the Government of NCT of Delhi. Their grievance is that they have not been given the pay scale of Rs.6500-10500 as recommended by the Vth CPC and instead of that their pay has been fixed in the pay scale of Rs.5500-9000.

2.1 The applicants were appointed on the post Librarian in DIETs in the pay scale of Rs.1640-2900 on different dates between 1992 to 1996. W.e.f. 01.01.1996 the pay scales prescribed by the Vth CPC were to be extended to them. The Ministry of Finance issued a Notification on 30.09.1997 to this effect. On 02.12.1997 the said revision of pay scales was also extended to autonomous bodies. During the period from 06.11.1997 to 04.01.2001 the applicants made several representations to revise their pay and grant them the pay scale of Rs.6500-10500. The respondents replied to some of these representations stating that the matter was under consideration. On 07.08.2000 Joint Director even wrote to Under Secretary of Ministry of HRD requesting for directions regarding grant of pay scales to the applicants. When no satisfactory action was taken by the respondents the applicants approached the Honble High Court of Delhi by filing Writ Petition No. 4084/2001 on 09.07.2001. However, this was dismissed by the Honble High Court of Delhi on 08.09.2009 on the ground that since SCERT was not a State within the meaning of Article 12 of the Constitution, a Writ under Article 226 of the Constitution of India was not maintainable.

2.2 Separately, on 21.08.2007 Secretary (Education), Government of NCT of Delhi, who is also ex-officio Member present of SCERT, constituted an Anomaly Committee for considering this issue. On 10.04.2008 this Committee decided to place this matter before the Executive Committee. On 18.08.2008 the Executive Committee decided to refer this matter to the Finance Department of the

Government of NCTD. On 19.08.2008 the Governing Body of SCERT decided to take up the cases of the applicants separately on file. The Governing Body had also resolved that there was no need to refer this matter to Finance Department of Ministry of HRD. On 14.01.2009 the applicants were granted the grade pay of Rs.4600. Meanwhile, the applicants, particularly, applicant No.5 continued to represent against his grievance. On 11.10.2010 he was informed that the matter has been referred to the Finance Department of Government of NCT of Delhi. On 06.04.2011 by the impugned order the respondents decided to keep in abeyance the order dated 14.01.2009 by which the applicants had been given the grade pay of Rs.4600. Aggrieved by the same, they have filed this O.A. before us.

3. In their reply the respondents have stated that Honble Supreme Court in catena of judgments has held that it is for the Expert Bodies and the Government to decide the pay scale of a particular post. Honble High Court of Delhi in CWP No.122/2002 vide their judgment dated 22.03.2002 categorically dealt with this issue regarding grant of higher pay scale to the employees of Central Social Welfare Board and held that such a decision must be taken by the Government with the approval of Finance Department. Further they have stated that in the matter of Delhi Jal Board Vs. Workman of the Erstwhile Delhi, 127(2006) DLT 722 the Honble High Court of Delhi has held as follows:-

œ25 The Courts must, therefore, exercise judicial restraint and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales etc. are all executive or legislative functions, and it is ordinarily improper for Judges to step into this sphere, except in a rare and exceptional case.?

3.1 The respondents have gone on to state that SCERT is a Society registered under the Societies Registration Act. It is an autonomous organization of Government of NCT of Delhi. It receives 100% grant from Government of NCT of Delhi. DIET are bodies working under the Administrative Control of SCERT and funded by Ministry of HRD, Government of India. As per Vth CPC report, the revised pay scales have been provided in Part-A, B and C of the first schedule. As far as DIETS are concerned, the proposal regarding the grant of pay scale of

Rs.6500-10500 to Librarians was placed before the Anomaly Committee which decided to refer the matter to the Executive Committee.

3.2 The respondents have further stated that the Finance Ministry O.M. dated 02.12.1997 states that there is no objection to the autonomous Organizations etc. adopting the Central Civil Services (Revised Pay Scales 1997). However, it was clarified that revised scales of pay as incorporated in Para-A of the first schedule to the Rules alone may be adopted. The respondents have admitted in their counter that the matter regarding grant of pay scale of Rs.6500-10500 to the applicants as per the Cth CPC Report (Part-B) is currently under process for seeking approval of Finance Department of the Government of NCT of Delhi.

4. We have considered the submissions made by both sides. Since the respondents have stated that the matter is still under consideration of the Finance, Department, in our opinion this O.A. is pre mature and not ripe for judicial review. It is for the respondents to first decide and take a decision on this issue and only thereafter the applicants can approach this Tribunal. We, however, notice that the matter has been pending for very long and the respondents have not taken any decision in the same.

5. We, therefore, dispose of this O.A. by directing the respondents to take a decision in this case within a period of eight weeks from the date of receipt of a certified copy of this order. They shall communicate their decision to the applicants by means of a reasoned and speaking order. In case the applicants are still aggrieved by the decision, they will be at liberty to challenge the same by means of appropriate judicial proceedings, if they so desire. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com