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Court : Kerala

Decided On : Mar-17-2006

Reported in : AIR2006Ker226; 2006(2)KLT135

Judge : V.K. Bali, C.J. and; J.B. Koshy, J.

Appeal No. : W.P. (C) Nos. 6668 and 6829 of 2006

Appellant : Babu

Respondent : Election Commission of India

Advocate for Def. : M. Ratna Singh, Adv. General,; P.C. Iype, State Attorney,;

Advocate for Pet/Ap. : Benoy Thomas,; Paulson Thomas,; N. Ratheesh and;

Judgement :

J.B. Koshy, J.

1. In these two Writ Petitions, petitioners question the action of the Election Commission directing the State Government to put on hold its decision to implement the recommendations of the Pay Commission from April, 2006. The pay of State Government employees was last revised in 1997. It is contended that as per previous practices, every fifth year there will be a wage revision. If that be so, pay ought to have been revised from March, 2002. Because Of the demands from the Government employees, State appointed a Pay Commission and Pay

Commission submitted its report. It was reported that Pay Commission would submit the report in March, 2006. Government decided to implement the Pay Commission report and budget allocation was also made. Paragraph 37 of the Budget Speech 2006-2007 made on 10-2-2006 is as follows:

37. Government has already declared that the pay and allowances of the Government employees for the month of March, 2006 will be at the enhanced rates on the basis of pay revision. The date of effect of the pay revision will be determined after discussions with the leaders of political parties and service organisations.

The Pay Commission report was submitted to the Government on 22-2-2006. On 1-3-2006, the Cabinet approved the Pay Commission report in principle and it was adjourned to a special meeting of the Cabinet on 2-3-2006, but, on 1-3-2006, the Election Commission announced programme for election. It is the stand of the Election Commission that after the announcement of the programme for general election, model Code of Conduct will come into force and, therefore, Pay Commission report cannot be implemented. The counsel for the Election Commission particularly relied on Ext.P1 Model Code of Conduct. Paragraph VII Sub-clause (vi) of the Model Code of Conduct is as follows:

VII Party in power:

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular....

(vi) from the time the elections are announced by the Commission, Ministers and other authorities shall not --

(a) announce any financial grants in any form or promises thereof: or

(b) lay foundation stones, etc., of projects or schemes of any kind; or

(c) make any promise of construction of roads, provision of drinking water facilities, etc.,

(d) make any ad-hoc appointments in Government, public undertakings etc., which may have the effect of influencing the voters in favour of the party in power.

According to the counsel for the Election Commission, the pay revision will amount to financial grant in a form and may have the effect of influencing the voters in favour of the party in power and hence it cannot be implemented till elections are over.

2. According to the petitioners, Code of Conduct of election will come into force only after election notification is published. Here, notification is not yet published. In Harbans Singh Jalal v. Union of India (Civil Writ Petition No. 270 of 1997), a Division Bench of the High Court of Punjab and Haryana held that model Code of Conduct adopted to be followed by all parties can be directed by the Election Commission to be followed from the date of commencement of election schedule by it and the contention of the petitioner therein that it can be brought into force only from the date of actual notification by the Governor of the State was rejected. According to the petitioners, even if such a view can be accepted in this case, the Pay Commission was appointed and it gave its report much earlier to the announcement of the election by the Election Commission on 1-3-2006. The Pay Commission conducted various sittings, heard various organisations, collected evidence and then finally submitted its report on 22-2-2006. The Pay Commission was an independent body and their report was submitted on 22-2-2006, much before the announcement of the election schedule by the Election Commission. It is also contended that on 10-2-2006 when budget was presented, the Finance Minster in his Budget Speech has categorically stated that recommendations of the Pay Commission will be implemented and budget allocation was also made. Thus, Government decided to implement the recommendations of the Pay Commission much before the announcement of the election schedule by the Election Commission on 1-3-2006. It is also stated that before the announcement of the election, the Cabinet on 1-3-2006 formally decided to implement the recommendations of the Pay Commission and only modalities were finally decided on 2-3-2006 by a special cabinet meeting, after the announcement of the schedule of election. Therefore, the decision to implement the recommendations of the Pay Commission was made before the commencement of the election schedule by the

Commissioner and before Model Code of Conduct came into force. There is substance in the argument. In view of the budget speech and announcement of the Government that recommendations of the Pay Commission will be implemented on 10-2-2006, it cannot be stated that the decision to implement the recommendations of the Pay Commission was made after the Model Code of Conduct came into force. Even the formal decision of the Cabinet was also taken on 1-3-2006, before the commencement of the election schedule. Only modalities were chalked out by the special cabinet meeting after the announcement of the election. Therefore, even if Model Code of Conduct came into force and implementation of the recommendations of the Pay Commission is against the Model Code of Conduct, the decision to implement the recommendations of the Pay Commission was taken before the announcement of election schedule and hence there is no embargo in implementing the Pay Commission report.

3. There is also force in the submission of the petitioner that pay revision granted as per the Pay Commission report is not a financial grant and, therefore, implementation of the Pay Commission report as announced in the budget speech on 10-2-2006 will not amount to a financial grant coming under paragraph VII, Clause (vi)(a) of the Model Code of Conduct. Salary revision to be given in implementation of the Pay Commission report are expected by the Government employees for long time and it cannot be stated that implementation of the Pay Commission report and pay revision is a financial grant so as to offend the model code of conduct. Above all, it is not the ruling party alone, but, opposition also wanted immediate implementation of the Pay Commission report. In this connection, the learned Advocate General produced before us a copy of the resolution unanimously adopted by the Kerala Legislative Assembly on 15-3-2006. The above resolution is quoted below:

This Legislative Assembly request to the Central Election Commission to grant permission to implement immediately the recommendations of Pay Revision Commission in the circumstance that, it has been declared in the Budget Speech of the Finance Minister in the Legislative Assembly on 10-2-2006 in respect of the pay revision, which was to be given on 1-3-2002 in Kerala where the principle of implementation of pay revision once in every 5 years is accepted, and the required amount is allocated in 2006-2007 Budget.

The Cabinet meeting held on 1st March, 2006 accepted the recommendations of the Pay Revision Commission in principle and deferred it for the consideration of the Special Cabinet meeting of 2nd March.

This Legislative Assembly unanimously request to the Election Commission to grant approval for the decision of the Government that, the recommendations of the pay revision commission submitted on 22-2-2006 to the Government alone need be implemented, in the circumstance that the declaration of election has been issued.

This shows that all the parties (whether ruling or opposition) including independent MLAs are in favour of implementation of the Pay Commission report itself. Therefore, it cannot be stated, on the facts of this case, that implementation of the same was intended for influencing the voters in favour of the party in power.

In the above circumstances, we are of the view that the restriction imposed in implementation of the Pay Commission report by the Election Commission on the basis of model code of conduct will not stand. There is no necessity for the employees to wait till the elections are over to receive the pay revision benefits merely because an election came in between and direction to the contrary by the Election Commission are set aside. Both the Writ Petitions are allowed.

At this stage learned Counsel for the Election Commission filed an additional statement stating that the Election Commission decided to permit the Government of Kerala to implement the recommendation of the Pay Revision Committee as per the decision of the Cabinet dated 2.3.2006. That is also recorded.