

“REPORTABLE”**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****I.A.NO.4 OF 2008****IN****Special Leave Petition No. 19188 of 2008**

State of M.P. & Ors.

....Petitioners

Versus

V.V. Ashthana & Ors.

.... Respondents

ORDER

1. State of Madhya Pradesh, the original petitioner in the Special Leave Petition, has renewed its prayer for Stay. In the above said Special Leave Petition, a notice is already issued on the limited point as to whether any direction can be issued in a proceeding arising out of contempt. The impugned order in the Special Leave Petition is passed by the Learned Single Judge of the High Court in the contempt jurisdiction on a petition having been filed before him by the 30 school teachers complaining of the non-compliance of Order dated 29.1.2003 passed by the High Court in Writ Petition No. 2029 of 2000. The Learned Single Judge, while disposing of the said Writ Petition No. 2029 of 2000 had observed as under:-

“Considering the totality of the facts and circumstances and the legal position that emerges from the series of judgments referred to hereinbefore, there cannot be any doubt that in the present case also, the petitioners are entitled to benefit of revised pay scales as is being granted to other similarly situated teachers, who are employed in the Govt. Institute. The respondents cannot deny the aforesaid benefit to the teachers working in the institute receiving grant-in-aid. As has been considered in the cases referred to hereinabove and in particular in the case of Ashok Kumar Gupta (supra), wherein Rule 33(1) of the Adhinyam of 1978 was considered in view of the aforesaid position and the direction given by this Court in various cases, the present petition is also allowed. The respondent/State is directed to extend the same benefit to the petitioners also in the present case and grant benefit of revision of pay scale to the extent as has been directed by the Division Bench of this Court in the case of Suresh Kumar Vs. State of M.P. and others. Needless to emphasize that grant of aforesaid benefit shall always be subject to statutory rules as is applicable from time to time in this regard.

Accordingly, the petition is allowed. Respondents are directed to make the payment in accordance with the aforesaid direction.”

The teachers complained that in spite of this order, the payments were not being made in the revised pay scales (which were revised as per the Vth Pay Commission and which pay scales were been paid to the teachers employed in the Government Institutes). It was an admitted position that in Writ Petition No. 2029 of 2000, that Court relying on some other decisions, clearly held that the teachers, who were employed in the private aided schools, also were entitled to the benefits of the revised pay scales. It was on that basis that the contempt application was moved, since those benefits were not being passed to the teachers of the private schools, aided by the Government. The Learned Judge in the contempt petition also noted that the entitlement, as was found by the Learned

Single Judge in the Writ Petition was challenged before the Division Bench in Letters Patent Appeal (LPA) No. 48 of 2003, however, the Division Bench had also dismissed the said Letters Patent Appeal (LPA), thereby confirming the judgment of the Learned Single Judge. The matters did not stop here and the Learned Judge had further noted that the State had challenged the judgment passed in the LPA before this Court in SLP(C) No. 1085 of 2004 and had also prayed for staying the order of the Learned Single Judge, however, this Court did not grant the stay, though the leave was granted (now, C.A. No. 6399 of 2004). The Learned Judge also noted the intervention of an Act called M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyaon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (hereinafter called 'Adhiniyam' for short), under which the State Government had issued an order dated 21.1.2000, directing that after 1.4.2000, the grant-in-aid, which was granted to the private institutions, would be reduced every year by 20% and thus, after five years, the aforesaid amount would be entirely stopped. The constitutional validity of the amending Act 26 of 2000 to this Adhiniyam was challenged in various petitions before this Court. The Division Bench had declared the said Amendment Act No. 26 of 2000 as ultra vires and constitutional invalid, having been hit by Article 14 and 21 of the Constitution of India, and further that this judgment was challenged before this Court, where this Court had passed an order dated 6.5.2002 in SLP(C) No. 8534 of 2002, issuing notice and staying the operation of the judgment. However, a condition was imposed that the State shall

continue to give grant-in-aid at the rate of 50% for the year 2002-03 to the respondent educational institutions. This Court then, in the same matter, passed an order on 23.1.2004, whereby, petitioner-State was directed to pay the entire arrears of salary, as per the orders of the Court to the respondent teachers within a period of four weeks.

2. It appears that these arrears were paid. The State Government paid all its liabilities even as per the Vth Pay Commission, starting from 1.1.1996 to 31.3.2000, however, thereafter, the State Government did not pay as per the Vth Pay Commission, and the teachers of the private-aided institutions got their old pay only, that too at the rate of 50% as ordered by this Court in SLP(C) No. 8534 of 2002. After considering in details the subsequent orders passed by the Madhya Pradesh High Court in Division Bench, which had attained finality by the orders dated 27.1.2006 and 9.2.2007 passed by this Court, the Learned Judge came to the conclusion that the teachers were entitled to get the benefits of the Vth Pay Commission since the question of benefits of Vth Pay Commission had attained the finality before this Court. The Learned Judge, dealing with the contempt matter, therefore, ordered to make payment of the 50% of the amount calculated on the grant-in-aid after extending the benefit of the Vth Pay Commission.

3. Dr. Rajeev Dhawan, Learned Senior Counsel, appearing on behalf of the respondents, pointed out that the question of non-entitlement of the Vth Pay Commission benefits on the part of the teachers, could not have been wrecked up by the State, particularly, in the wake of the fact that the

Writ Petition in their behalf was allowed, and the said judgment was confirmed in the LPA, and the stay was refused by this Court. Dr. Dhawan pointed out that even otherwise, it would be unfair to deprive the teachers of the benefits of the Vth Pay Commission, particularly, in the wake of the fact that they were being paid only 50% of the amount, in view of the orders passed by this Court in ***SLP(C) No. 8534 of 2002 State of Madhya Pradesh & Ors. Vs. Sharique Ali & Ors.***, wherein the judgment passed by the Madhya Pradesh High Court, holding the Adhiniyams to be constitutional invalid, was pending.

4. Shri U.U. Lalit, Learned Senior Counsel appearing on behalf of the State Government, however, pointed out that whole policy of the state Government had been changed and the State Government had decided to withdraw the grants in a phased manner in five years' time and pour all the funds, so saved by withdrawal of the grants, for the cause of primary education. The Learned Counsel further pointed out that the basic question of the payment of grants, itself was not finally decided before this Court and was pending, therefore, under such circumstances, the State Government could not be compelled to take up the additional burden, created by the Vth Pay Commission. The Learned Counsel pointed out that if ultimately this Court holds the Adhiniyam to be valid, then apart from the 50% of the grants, which have been ordered to be paid by this Court, even the additional amounts required for payments as per the Vth Pay Commission, would be a total waste and the whole amount will go into the drain, and thereby, the State Government would

suffer a serious financial debacle. The Learned Counsel, therefore, said that the direction given by the Learned Judge in the contempt proceedings, is liable to be stayed.

5. We will not go into the depth of the matter at this stage, however, it will be better if the teachers are paid the benefits of the Vth Pay Commission upto 31.3.2009. The matter shall be heard in the first week of April, 2009 peremptorily. We further clarify that this payment of additional benefit as per the Vth Pay Commission, will of course be subject to the judgment in this case, as also in the main matter of ***State of Madhya Pradesh & Ors. Vs. Sharique Ali & Ors. (cited supra)***, where the question of constitutionality of Adhiniyams is pending. The parties are agreed that both the matters should be tagged together, and even that matter should be heard in the first week of April, 2009. We accordingly dispose of this stay application in the light of observations made above.

.....J.
(Tarun Chatterjee)

.....J.
(V.S. Sirpurkar)

New Delhi;
December 18, 2008

