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WA-647-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 7th OF APRIL, 2025

WRIT APPEAL No. 647 of 2025

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

ASHOK KUMAR GUPTA

.....
Appearance:

Shri Anubhav Jain - Government Advocate for the Respondent/State.
.....

ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

The present appeal has been filed by the State Govt. challenging the Order passed by the learned Single Judge whereby the learned Single Judge has allowed payment of salaries as per 7th Pay Commission recommendations to an employee working in a College receiving grant-in-aid from the State Govt.

2. Learned counsel for the appellant has pressed the appeal relying on the case of Balco Employees Union BALCO Employees' Union (Regd.) Vs. Union of India reported in 2002 2 SCC 333 wherein the Hon'ble Supreme Court observed as under:-

"93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be



demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 01/03/2001.

98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

3. He also relied upon the case of Directorate of Film Festivals v. Gaurav Ashwin Jain reported in (2007) 4SCC 737 wherein the Hon'ble Supreme Court has observed as under:-

"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."

4. Learned counsel appearing on behalf of the appellant submitted that in view of the judgments cited above, the benefit of extension of pay scale or



pay revision is exclusively in the domain of policy maker.

5. In the present case, the State Govt. has not taken any decision with regard to the extension of 7th Pay Commission benefits to the employees of aided non Government Institution.

6. Upon considering the arguments of the appellant/State Govt. as also the Rule position applicable in the present case, it is appropriate to mention here that the grant-in-aid to private educational institutions is granted under Madhya Pradesh Ashashkiya Shikshan Sanstha Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 which has been extensively amended by the State Govt. by Amendment Act of 2000 made applicable w.e.f.01.04.2000. By the said amendment, the State Govt. decided to curtail the Grant-in-aid in phased manner. However, the amendment was declared ultra vires by a Division Bench of this Court in the case of **Dr. Sharique A Ali Vs. State of M.P. and Others reported in 2002 1 MPHT 315**. But the validity of the said amendment was upheld by the Hon'ble Supreme Court in the case of **State of M.P. Vs. Sharique A Ali reported in 2020 20 SCC 450**. Hon'ble Supreme Court held that the amendment shall not be applicable to those employees who were appointed before promulgation of the amendment Act i.e, prior to 31.03.2000.

7. The respondent in the present case is appointed prior to 31.03.2000 and therefore, the unamended Adhiniyam of 1978 as well as the Rules framed thereunder would apply to the present respondent. Though, the said Rules have been replaced by new set of Rules in terms of the amendment carried out in the Act w.e.f.01.04.2000.



8. Hon'ble Supreme Court in the case of Sharique A Ali (supra) also upheld the entitlement of the teachers and non teaching staff working in private educational institutions to be entitled for 5th and 6th Pay Commission which was applicable till that time because the said judgment, though reported in the year 2020 but was delivered on 07.01.2014. Thereafter, 7th Pay Commission recommendations have been received by the State and accepted by the State Govt. for its staff and undisputedly, the 7th Pay Commission recommendations are applicable to the Colleges run by the State Govt. and all the teaching and non-teaching staff are being paid as per 7th Pay Commission recommendations as accepted by the State Govt.

9. The State Govt. had framed Rules for Grant-in-aid to non Government Educational Institutions known as Revised Rules for Grant-in-aid to non-Government Educational Institutions in Madhya Pradesh which were in terms of the unamended Act. As per Rule 1 (ii) of the said Rules, the said Rules apply to grant receiving institutions such as Colleges, Higher Secondary Schools, Teachers Training Institutions, Sanskrit Institutions, Institutions for Blind and Deaf, etc.

10. Rule 1 (ii) is as under:-

"These rules shall apply to grant receiving institutions such as Colleges, Higher Secondary Schools, Middle Schools, Primary Schools and Special Institutions like Pre-primary Schools, Balak Mandirs, Teachers Training Institutions, Music and Art Institutions, Institutions for study of Sanskrit and oriental languages, Institutions for Blind and deaf and such other institutions as are recognised as special institutions by Government."

11. Further as per Rule 33(i), a right has been created in favour of the Teachers and other employees that their pay scales shall be in accordance



with those sanctioned for corresponding categories of employees in Govt. educational institutions.

12. Rule 33(i) is as under:-

"The scales of pay of the teachers including the 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 institutions."

13. The applicability of Rule 33 (i) of the Grant-in-aid Rule quoted supra have also been considered earlier by this Court in the case of **Suresh Kumar Dwivedi Vs. State of Madhya Pradesh and Others** reported in 1993 **MPLJ 663** when the State Govt. denied parity of 4th Pay Commission Pay Scales to employees and Teachers in aided Institutions in the State and the Division Bench had issued a Writ of Mandamus holding that such teachers are entitled to revised fixation in 4th Pay Commission pay scales w.e.f.01.01.1989.

14. The aforesaid Rules do apply to the petitioner as he is an appointee prior to 01.04.2000 and therefore, he is entitled to a protection under Rule 33 (i). The State cannot violate the Rules framed by itself and then take shelter of the same being a policy matter because no policy can be framed by the State contrary to its own Rules and there cannot be any other example of arbitrariness and illegality in the policy, once it is contrary to the Rules framed by the State itself.

15. In view of the above, we do not find any perversity or error in the impugned Order passed by the Learned Single Judge. The petitioner is held entitled to receive salary in accordance with 7th Pay Commission



recommendations w.e.f.01.01.2016 on same scale and subject to same benefits as are being granted to corresponding category of employees/teachers in Govt. run institutions.

16. With the aforesaid directions, the appeal is **dismissed**.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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