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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6540 of 2010

Order Reserved on : 28.6.2022

Order Passed on : 8.8.2022

Ku. Veena Pal,

---- Petitioner

versus

1. Sri Sankara Education Society, Sector X, Bhilai, a Society Registered under the C.G. Societies Act, having office at Sector X, Bhilai, District Durg, Chhattisgarh
2. Central Board of Secondary Education, Preeti Vihar, Delhi
3. Union of India through the Secretary, Department of Human Resources, Government of India, New Delhi

--- Respondents

For Petitioner : Shri Chetan Singh Chauhan, Advocate on behalf of Shri Ashish Surana, Advocate
For Respondent No.1 : Shri Vipin Tiwari, Advocate
For Respondents No.2 & 3 : None

Hon'ble Shri Justice Arvind Singh Chandel

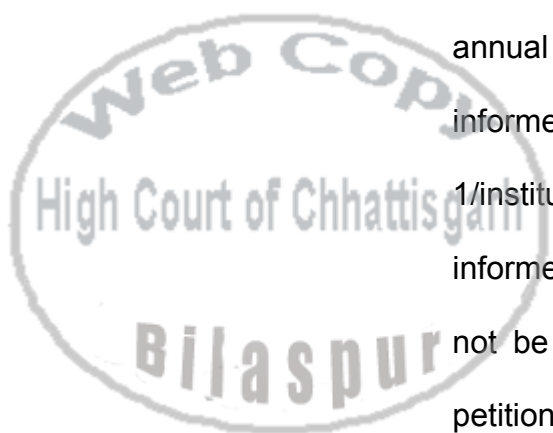
C.A.V. ORDER

1. The instant petition has been preferred by the Petitioner under Articles 226 and 227 of the Constitution of India being aggrieved by the arbitrary act committed by the Respondents in not giving her benefit of revised pay scale.
2. Respondent 1 is running a higher secondary school, namely, Sri Sankara Vidyalaya at Sector 10, Bhilai, which is affiliated with



Respondent 2. Respondent 2 is established by and functions under Respondent 3 and is empowered to grant affiliations to schools imparting higher secondary education in the country. The Petitioner has been an employee/Assistant Teacher of Respondent 1 since 1997. On 18.7.2009, Respondent 1 had declared to grant benefit of 6th Pay Commission to all its teachers and their pay shall stand revised and increased. It was also declared that pay of the Petitioner shall also be increased and will be effective from July, 2009. All other teachers were paid their increased pay, but the Petitioner was not paid. Not only the revised pay but also her annual increment due from July, 2009 was not paid. It was informed that she had filed a civil suit against Respondent 1/institution and thus committed an act of indiscipline. It was also informed that unless and until she withdraws the civil suit she will not be granted the benefit of 6th Pay Commission. Hence, this petition.

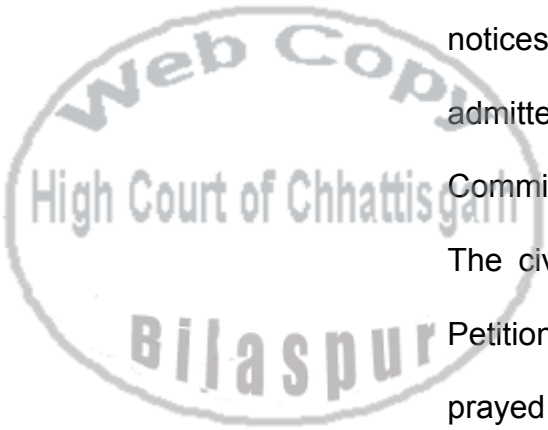
3. Learned Counsel appearing for the Petitioner submitted that in spite of the repeated representations and notices (Annexures P4, P5 and P7), Respondent 1/institution is adamant and not granting the benefit of 6th Pay Commission to the Petitioner. Respondent 2/ Central Board of Secondary Education, vide letters dated 19.4.2010 (Annexure P6) and 20.7.2010, especially requested Respondent 1/institution to make the payment to the Petitioner as per the affiliation by-laws. Despite that, the benefit of 6th Pay Commission has not been granted to the Petitioner. Rather, the Principal of Respondent 1/institution, vide letters dated 28.7.2010 (Annexures





P8 and P9), informed Respondent 2/Board that the Petitioner has taken a small matter to the Court and the same is an act of indiscipline and despite direction to withdraw the said civil suit the Petitioner has not obeyed the direction. It was further submitted that the Petitioner has not been granted the benefit of 6th Pay Commission merely because she has refused to withdraw the civil suit. It was further submitted that the civil suit has already been dismissed and presently the Petitioner is not an employee of Respondent 1/institution since 13.1.2016. But, despite that, the amount due has not been paid to the Petitioner. In reply to the notices and in reply to the instant writ petition, the Respondents admitted that the benefits of annual increment and 6th Pay Commission are kept in abeyance till the outcome of the civil suit. The civil suit has already been dismissed, but, despite that, the Petitioner has not been paid the aforesaid benefits. Therefore, it is prayed by Learned Counsel that the Respondents be directed to pay the Petitioner her dues as early as possible.

4. Learned Counsel appearing for Respondent 1 submitted that the instant writ petition is not maintainable as it is filed against a private school. It was further submitted that since the Petitioner filed the civil suit against Respondent 1/institution, they were awaiting the result of the civil suit and the payments of revised pay and annual increment are kept in abeyance, which does not amount denial of the payments.
5. I have heard Learned Counsel appearing for the parties and





perused the material available with due care.

6. As regards maintainability of the instant writ petition, undisputedly, Respondents 1 and 2 are running the private school. Dealing with the issue in **(2020) 14 SCC 449 (Marwari Balika Vidyalaya v. Asha Srivastava)**, the Supreme Court observed as under:

“15. Writ application was clearly maintainable in view of aforesaid discussion and more so in view of the decision of this Court in *Ramesh Ahluwalia v. State of Punjab*, (2012) 12 SCC 331 in which this Court has considered the issue at length and has thus observed: (SCC pp. 336-37, paras 13 & 14)

“13. In the aforesaid case *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukti Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under: (*V.R. Rudani case*, SCC pp. 700-701, paras 20 & 22)

‘20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to





the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

* * *

22. Here again, we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: “To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract”.* We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available “to reach injustice wherever it is found”. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellant on the maintainability of the writ petition.’



The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in *Unni Krishnan, J.P. v. State of A.P.*, (1993) 1 SCC 645 and *Zee Telefilms Ltd. v. Union of India*, (2005) 4 SCC 649 brought to our notice by the learned counsel for the appellant Mr Parikh.

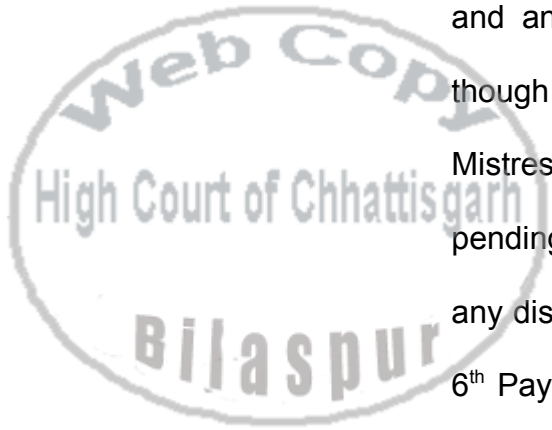
14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge *Ramesh Ahluwalia v. State of Punjab*, 2009 SCC OnLine P&H 11755 as also the Division Bench *Ramesh Ahluwalia v. State of Punjab*, 2010 SCC OnLine P&H 13111 of the High Court cannot be sustained on the proposition that the writ petition would not maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically



taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.”

16. It is apparent from the aforesaid decisions that the writ application is maintainable in such a matter even as against the private unaided educational institutions.”

7. Keeping in view the above observations of the Supreme Court, it is well established that the instant writ petition is clearly maintainable.
8. With regard to non-payment of the benefits of 6th Pay Commission and annual increment to the Petitioner, it is not in dispute that though the Petitioner filed a civil suit for damages against the Head Mistress of the school, no preliminary or departmental inquiry is pending against her. There is also nothing on record to show that any disciplinary action has been taken against her. The benefits of 6th Pay Commission and annual increment are also given to other employees by Respondent 1/institution. The Petitioner has been denied the above benefits only on the ground that she had preferred a civil suit against the Head Mistress of the school and even after being asked she did not withdraw the said civil suit. This only reason for withholding the annual increment and the benefit of 6th Pay Commission is arbitrary.
9. As submitted by Learned Counsel for the Petitioner, now, since 13.1.2016, the Petitioner is not an employee of Respondent 1/institution and the civil suit, i.e., Civil Suit No.9A of 2014 filed by the Petitioner has already been dismissed by the 2nd Additional





District Judge, Durg vide judgment dated 10.5.2016, the Respondents have no reason to withhold the dues of the Petitioner.

10. Accordingly, the instant writ petition is disposed of with a direction to the Respondents to pay all the monetary benefits and dues of the Petitioner as early as possible preferably within a period of one month from the receipt of this order.

Sd/-

(Arvind Singh Chandel)
JUDGE

Gopal

