

Court No. - 18

Case :- WRIT - A No. - 1820 of 2018

Petitioner :- Ashutosh Kumar Pathak And 20 Others

Respondent :- Union Of India And 4 Others

Counsel for Petitioner :- Shivendu Ojha,Radha Kant Ojha

Counsel for Respondent :- C.S.C.,A.S.G.I.,Arun Kumar

Hon'ble Mahesh Chandra Tripathi,J.

Heard Sri R.K. Ojha, Senior Advocate assisted by Sri Shivendu Ojha, learned counsel for the petitioners, Sri Rajesh Tripathi appears for first respondent, Sri P.K. Pandey, learned Addl. Chief Standing Counsel appears for State respondents and Sri Arun Kumar for respondent no. 5.

Petitioners are before this Court for a direction commanding the State Government to make full salary to the petitioners as Assistant Teachers, Primary School run and established by the State Government along with incentives as provided to the petitioners under the scheme of IEDC as well as IEDSS. Record in question reflects that the scheme in the name of Integrated Education for Disabled Children has been launched by Ministry of Human Resources, Government of India, New Delhi. The said scheme is a Centrally sponsored scheme under the Central Government and will assist States/ Union Territories for its implementation on the basis of criteria laid down. Assistance for all the items covered in the scheme will be on 100% but assistance in program would be conditional on provision of professionally qualified staff.

The item no. 12 of the said scheme provides appointment of special teachers wherein 12.1 talks about the teachers and pupil ratio for special education teachers envisaged under this scheme is 1:8. The qualification is given in clause 12.2 which provides special teachers so appointed passed the primary as well as secondary education. It is not disputed that petitioner had been inducted in the scheme in question and they all fulfilled the minimum qualification as prescribed in the scheme in question. Much emphasis has been placed on 12.3 which talks about scale of pay. The same scales of pay as available to the teachers of the corresponding category in that State/ Union Territory will be given to special teachers. Considering the special type duty special pay of Rs. 150/- per month in urban areas and Rs. 200/- per month in rural areas. The State Education Department may recruit such teachers for this purpose following the normal recruitment procedures. It has also claimed that the aforesaid scheme in question had been in the form of Centrally Sponsored

Scheme (CSS) that inclusive education of children (IEDSS). The emphasis has also been placed on para 4 type of scheme and this is a Centrally Sponsored Scheme under which Central Government will assist the States/ Union Territories and autonomous bodies of stature in the field of education in its implementation on the basis of criteria laid down. Assistance for all the items covered in the scheme will be on 100% basis but assistance for the program would be subject to policy guidelines issued and initiatives to be taken by the appropriate Government for implementing the educational provisions of the P.W.D. Act.

Sri R.K. Ojha, Senior Advocate has also placed reliance on Annexure-IV which is part of scheme in question namely Proposal for Finance Assistance under the Scheme of Integrated Education of the Disabled Children from Voluntary Organizations. Regarding the qualification and other eligibility of petitioner, he has also placed reliance on judgment of Apex Court (Annexure No. 1) of teachers of pre school, nursery and play school regarding the grievance of the petitioner he has also placed reliance on the similar controversy has been decided by Gujarat High Court at Ahmedabad in Special Civil Application No. 33 of 2005 and other connected matters by judgment and order dated 22.03.2013 (contained as Annexure No. 11 to the writ petition) and a such it is claimed that the grievance of the petitioner is liable to be addressed by the State Government in the light of judgment passed by Gujarat High Court.

Sri R.K. Ojha, Senior Advocate also made allegation that even though in the present matter, the Central Government is providing assistance to the scheme in question but the amount in question has been syphoned to the other department.

On the other hand, Sri P.K. Pandey, Addl. Chief Standing Counsel states that it is a Centrally sponsored Scheme and at present he is not in position to say that the Central Government is providing 100% assistance in this regard or not. To certainly assure to the Court that so far as grievance of the petitioner addressed to the Principal Secretary by this Court would also be considered at the earliest. So far as the counsel for Union also prays for sometime so that assistance may in the matter after receiving instructions in the matter.

All the respondents are accorded six weeks' time to file response. One week thereafter is granted to petitioner to file rejoinder affidavit.

List on 07.03.2018.

In the meanwhile, it is directed that the Principal Secretary, State of U.P. shall decide the representation dated 30.03.2017 moved by the petitioner (Appended as Annexure No. 13 to the writ petition) and also apprise on the next date fixed in the matter regarding the outcome of the decision.

Order Date :- 16.1.2018

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