

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2010

(CC 14614/2010)

(From the judgement and order dated 14/09/2009 in SBCWP No.
10881/2009 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

DIRECTOR, SECONDARY ED. RAJASTHAN

Petitioner(s)

VERSUS

KAN SINGH AND ANR.

Respondent(s)

With I.A.1 (C/delay in filing SLP and office report)
WITH S.L.P.(C)...CC NO. 14662 of 2010
With I.A.1 (C/delay in filing SLP and office report)
S.L.P.(C)...CC NO. 14733 of 2010
With I.A.1 (C/delay in filing SLP and office report)
S.L.P.(C)...CC NO. 14830 of 2010
With I.A.1 (C/delay in filing SLP and office report)

Date: 27/09/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Irshad Ahmad,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

These petitions are directed against order
dated 14.9.2009 passed by the learned Single Judge of
the Rajasthan High Court in a batch of writ petitions
filed by the petitioner questioning the orders of the
executing Court. The petitioner has also filed
applications for condonation of the delay of 248 days
in filing the special leave petitions.

We have heard Shri Irshad Ahmad, learned
counsel for the petitioner and perused the record. The

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explanation given by the petitioner for delay in filing
of the special leave petitions is not only laconic on
material aspects but is wholly unsatisfactory.
Therefore, we do not find any justification to condone
the delay.

We are also of the view that the impugned
order does not suffer from any legal error warranting
interference under Article 136 of the Constitution.

Respondent no.1 in these special leave
petitions, who are employed in private educational
institutions, filed applications under Section 21 of
the Non-Government Institution Act, 1989 for grant of
selection grade in the light of order dated 25.1.1992
issued by the State Government. The Tribunal allowed
the applications and directed the petitioner and the
Management of the schools to give the benefit of
selection scale to the concerned teachers. Writ
petitions filed against the order of the Tribunal were

dismissed by the learned Single Judge with the clarification that the State Government would make payment to the employees in proportion to aid given to the institutions and the balance amount would be paid by the management. The special appeals filed by the petitioner were dismissed by the Division Bench.

When the concerned teachers filed execution applications, an objection was raised by the petitioner that the State Government cannot be made responsible to give the benefit of selection grade to the teachers of the private educational institutions. The Executing Court rejected the objection and ordained the petitioner to make payment as per Government Order dated 25.1.1992 in the proportion of aid given by the Government to the institutions.

The petitioner challenged the order of the Executing Court by filing writ petitions, which have

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been dismissed by the learned Single Judge by recording the following observations:

"Having heard the learned counsel for the parties and perused the impugned order as also the judgment passed by the Tribunal and single bench and division bench of this Court, I do not find the judgment of Tribunal dated 31.5.99 was substantially modified by learned Single Judge of this Court in S.B. Civil Writ Petition No.2441/01 decided on 14.8.2002. In that writ petition, the State Government was also a party. It was directed that the management of the respondent-educational institution shall be liable to pay only a portion of the arrears and that the State Government would pay arrears to the concerned employee in proportion of the grant in aid, which it was giving to the institution. That judgment has indeed attained finality because the division bench dismissed D.B. Special Appeal (W) No.1119/02 filed by the State Government with other identical appeals. The State Government or for that matter, the Director, Secondary Education, Rajasthan, Bikaner has not filed any special leave to petition against the aforesaid order. Even if it is assumed that the appeal filed by the State Government in the case of Farooq Ahmad now decided by judgment of Supreme Court should be applied to the present case, that would only mean that the respondent-teachers would not to be entitled to the benefit of selection

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scale from the date of their initial appointment and that they would be claiming such selection scale from the date of their substantive regular appointment, whereas there is no such controversy in the present case because the respondents themselves claimed the benefit of selection scale from the date of their substantive appointment and no such argument was set up by the petitioner or for that matter, by the respondent institution before the Tribunal or before even this Court that

the benefit was being claimed by the respondent from the date of their ad hoc/temporary appointment. Even otherwise, the benefit of selection scale was being claimed in terms of the Larger Bench judgment in S.R. Higher Secondary School & Anr. Vs. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors. 2002 (3) WLC page 586. This Court held that payment of selection scale would be part of the salary and, therefore, part of the approved expenditure and grant-in-aid and the selection scale to the employees of the non-Government cannot arbitrarily declined to give grant-in-aid towards payment of the non-Government Educational Institutions, which are receiving grant-in-aid from it. The petitioner in any case would be obliged in law to grant aid to the respondent Educational Institutional in proportion of the grant-

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in-aid, which was otherwise giving to it."

Admittedly, the petitioner did not challenge order dated 16.5.2005 passed by the Division Bench of the High Court in the special appeals filed against the order of the learned Single Judge. Therefore, the petitioner has no option but to comply with the order passed by the Tribunal, as modified by the learned Single Judge of the High Court and extend the benefit of selection grade to the concerned teachers.

With the above observations, special leave petitions are dismissed on the ground of delay and also on merits.

The petitioner is directed to pay the amount due to Shri Kan Singh, respondent no.1 in SLP(C)No...CC 14614/2010, Shri Kalyan Mal Jat, respondent no.1 in SLP(C)No...CC 14662/2010, Smt. Madhur Mathur, respondent no.1 in SLP(C)No...CC 14733/2010, and Mr. Rajveer Singh Tyagi, respondent no.1 in SLP(C)No...CC 14830/2010 and other similarly situated persons within a period of one month from today and submit a report to the High Court.

The Registry of the High Court shall place the report before the learned Single Judge, who decided the batch of writ petitions vide order dated 14.9.2009. If the learned Single Judge finds that the petitioner or the State Government has failed to pay the amount due to the teachers then he may suo motu initiate proceedings against the concerned officers under the Contempt of Courts Act, 1971.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master