IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 31.10.2007
Judgment delivered on: 04.07.2008

W.P. (C) No. 2040/1995

04.07.2008

All India Confederation of the Blind ... Petitioner
Through: Mr. P.N. Lekhi, Sr. Advocate
with Mr.Rajan Chaurasia and
Mr. Jaspreet Singh Rai, Advs.

Versus

Union of India and Others..... Respondents
Through: Mr. Rajive Mehra, Adv.

CORAM

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should Yes
be reported in the Digest?

VIPIN SANGHI, J.

1. In this petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus, directing the respondent not to treat teachers/employees of organisations run by the petitioner differently from teachers/employees of similar organisations run by the respondents in

the matter of pay scales, on the ground that the nature of work undertaken by both classes of teachers/employees are identical. A consequential declaration is sought that the pay sanctioned for the employees of the petitioner is arbitrary, discriminatory and unreasonable.

2. The petitioner society is registered under Andhra Pradesh (Telengana Area) Public Societies Registration Act, 1950 and has 18 affiliates all over the country providing educational and rehabilitative services for the blind. The petitioner states that it is an organisation which provides a wide range of educational, vocational and adjustment-training facilities, both to the congenitally blind as well as persons who may have developed visual handicaps later in life, in a systematic manner.

3. Union of India (Respondent No.1) has framed a scheme which provides for assistance in the form of grant-in-aid to eligible voluntary organisations/institutions to cover upto 90% of the expenditure incurred by voluntary organisations such as the petitioner, under specified heads, including salaries of the staff employed by such organisations. With the help of such assistance the petitioner claims that it has been able to run educational institutions like Captain Chandan Lal School for the Blind and The Shorthand Training Programme at Rohini. The Respondent No.1 also runs and funds organisations and institutes similar to that of the Petitioner, like National Institute of the Visually Handicapped, Dehradun (hereinafter referred to as NIVH). Respondent No.2, being the Govt. of National Capital Territory of Delhi, runs similar government schools for the blind.

4.The petitioner submits that the educational curriculum of the blind is far more onerous and demanding than teaching students not suffering from any such disability and this system of education is known as ?Special Education?. However, the petitioner contends that staff employed by the petitioner get 1/3rd the pay sanctioned to staff of the NIVH and the government schools for the blind run by the Respondent No.2. Thus, the Petitioner craves parity in pay scales invoking the principle of equal pay for equal work. It is also the grievance of the Petitioner that the policy formed by the Government only provides for a consolidated salary and no scale of pay is prescribed, nor any other allowances/ benefits are provided for.

5.The Petitioner has placed on record various comparative charts showing the difference in pay between the staff employed by NIVH and Respondent No.2 on the one hand, and the staff employed by the petitioner on the other hand. The Petitioner in order to further its submissions takes aid of the Scheme of Integrated Education for the Disabled Children 1992?, which provides for assistance to State Governments/UT Administrations/autonomous organisations having experience in the field of education and/or rehabilitation of the

disabled, the agencies through which the said scheme is purported to be implemented. The said scheme seeks to provide disabled students with an opportunity to integrate in the mainstream educational system in the form of common schools in place of special schools. The scheme further provides (a) teacher-pupil ratio of 1:8 (b) basic qualifications required for appointment as Special Teachers, and (c) scales of pay for such special teachers along with special allowance admissible to them. The petitioner relies upon the stipulation regarding scales of pay, as laid down in the said scheme in Clause 12.3, which states that ?The same scales of pay as available to the teachers of the corresponding category in that State/UT will be given to Special Teachers?. It further provides for payment of special pay, in recognition of the special type of duties that such teachers discharge.

6.The petitioner pleads that the work undertaken by it is facing insurmountable difficulties regarding retention of staff, since inferior scales of pay do not make employment under the petitioner an attractive proposition. The grant-in-aid granted by the Respondent no.1 can only go upto 90% of the approved expenditure incurred by it since, under the policy, specific basic pay is sanctioned for each type of teacher/employee employed by voluntary organisations and the grants are admitted, accordingly. The petitioner pleads that it does not have the funds to make the balance 10% payment to its employees and continue the work started by it. The petitioner claims that in the face of this resource crunch, it is confronted with the prospect of having to close down its services.

7.In its reply respondent No.1 has stated that the grant-in-aid is sanctioned upto 90% of the expenditure approved by the Ministry and not upto 90% of the total expenditure incurred by the voluntary organisation. The grant-in-aid covers 90% of the approved basic pay of the staff employed by a Voluntary Organisation, and that there is no provision for allowance like DA, HRA etc. Furthermore, the respondent submits that the scheme under which grant-in-aid is considered, prescribes compensation in different ranges depending upon the qualification of the incumbent. No parity can be drawn between the employees of autonomous organisations fully aided by the Government and under its administrative and financial control, and employees of a voluntary organisation to which Government provides only limited assistance. The Respondent also contends that one of the conditions of the said scheme is that the grant-in-aid may be considered only upto 90% of the expenditure approved by the Ministry and is admissible to such a voluntary organisation, which has the capability of meeting the remaining expenditure either through its own resources or through

voluntary effort. If an organisation is not able to meet its balance expenditure, it is not eligible for grant-in-aid from the Ministry. The respondent points out that the petitioner had made the proposal for getting grant-in-aid and also receives the amount after expressly accepting this condition.

8.The petitioner in its rejoinder maintains that the employees of the organisation run by it are entitled to parity in all emoluments in addition to basic pay. The petitioner maintains that the disparity in the pay scale is apparent from a bare perusal of the appended comparison charts, and therefore, it claims equality of pay.

9.By an order dated 20.01.1997, this Court had asked the petitioner to file an affidavit bringing out the comparison between the pay of employees of the petitioner and the respondent and their work and responsibilities. We have taken the affidavit dated 06.02.1997 filed in response to that order into consideration. The Union of India, during the pendency of the petition, came out with a new comprehensive scheme, and an additional affidavit in this respect was allowed to be filed vide order dated 09.09.2002. The Union of India has filed a comprehensive affidavit dated 20.09.2002 of Sh. P.K. Ravi, Under Secretary to the Govt. of India, Ministry of Social Justice and Empowerment. In the said affidavit the respondent submits that at the time when the petition was filed, the Ministry of Social Justice and Empowerment (formerly known as Ministry of Welfare) had five distinct schemes, dealing with the welfare of handicapped/disabled persons through non-government organisations. Of these five schemes, four schemes envisaged, inter alia, the grant of aid for salaries/honorarium to be paid to the employees/personnel of the NGOs. At the time of filing of the petition the petitioner NGO was receiving grants-in-aid towards contribution in respect of salaries/ honourarium for its personnel under two schemes, viz. Scheme of Assistance to Organizations for the Disabled for its project called Braille Shorthand and Typing Training Programme, and under Scheme of Assistance to Voluntary Organizations for Special School for Handicapped Children for its Chander Lal Special School for Blind.
10.A new umbrella scheme called Scheme to Promote Voluntary Action for Persons with Disabilities was introduced and made effective from 1999-2000, which substituted the earlier schemes under which petitioner was receiving aid. The

said scheme was formulated to fulfill the obligations cast on the Government under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The respondent submitted that the assistance/grant provided by the Central Government was not unlimited and was tendered and fixed on the twin criteria of firstly, merits of each case and secondly, availability of the funds from the overall budget allocated for welfare activities for physically handicapped/disabled person. It has been stated that when the grant-in-aid was sanctioned to the petitioner, it was made clear that the grant-in-aid from the Central Government will be tendered on the merits of each case and will not exceed 90% of the non-recurring and recurring expenditure. The remaining expenditure will be normally borne by the organisation. The respondent emphasizes that the figure of 90% grant-in-aid is with reference to the eligible and approved amount of expenditure, and not the total amount of its expenditure, incurred by the NGO. Therefore, the 90% of the approved allocation was the ceiling limit under the earlier scheme, which could not be enhanced any further under the schemes which were prevalent earlier as well as the new scheme. However, under the new scheme the budgetary allocations have been substantially increased in comparison to the allocation prevalent at the time of the filing of the petition. Over the years the number of organisations receiving aid have gone up. It is also submitted that since state has limited resources and private organisations are capable of raising their own resources, unnecessary burden should not be imposed upon the Respondent. It is also submitted that the Respondent has never questioned the desirability or entitlement to higher honorarium of the personnel employed by the NGOs.

11.The respondents further submit that, in any event, the qualifications prescribed for employees of voluntary organisations are more relaxed when compared to Government institutions and institutions such as NIVH. In NIVH there are specific requirements relating to various aspects such as the number of posts in the organisation; scale of pay; whether the post is a selection post or a non-selection post; age limit for direct recruitment; method of recruitment; educational qualification for direct recruitment; experience required for direct recruitment etc. In clear contradistinction, the schemes under which the grants-in-aid are given to the voluntary organisations do not contemplate or provide any rules for recruitment of finalisation of pay scales for the personnel of such organisations. Therefore, there can be no parity in posts or in pay. Further, having agreed to abide by the terms and conditions of the scheme, and having obtained an advantage under the same, it is no longer

open to the petitioner to question the norms of assistance under the scheme. 12.From the record, it appears that the qualifications/ experience required for teachers/employees of NIVH/Government schools were also higher than those laid down for a voluntary organisations. We may reproduce hereinbelow the composite position extracted from Annexure P-4 to the writ petition, which is as follows.

Sl.No.
Name of the post
Qualification fixed by Welfare Ministry for voluntary organizations
Qualification fixed by N.I.V.H.
1. **Braille Instructor**
Graduate from recognized University. Sound knowledge of Braille. Degree from a recognised Indian or Foreign University (relaxable in the case of blind candidates otherwise well qualified. Sound knowledge of Bharati and Standard English Braille including the ability to read and write fluently. English and at least one Indian language. 2 years teaching experience.
2. Mobility Training Instructor
Degree/Diploma/ Certificate in Orientation of Mobility. Formal Training from and institute of repote and 3 years experience of work with the blind.
3. Typing Instructor/ Vocational Instructor
Matriculation or equivalent Certificate course in related trade. Matriculation or equivalent examination. Typing speed in English of 40 words per minute. Typing speed in Hindi 30 words per minute. 2 years experience of teaching Hindi and English Typewriting.
4. Teacher/Trained Graduate Teacher
Degree from a recognized University. Decree in Teaching of Handicapped. Graduate in Art/Science/Sanskrit (according to the nature of vacancy). Diploma in Teaching or Equivalent 2 years experience as teacher preferably in any institution for the blind, or Diploma in Teaching the Blind.Knowledge of Bharati and Standard English Braille (Visually Handicapped no bar).

5. Junior Teacher/ Asstt. Teacher
Matric. Diploma in Teaching or Handicapped. High School, Higher Secondary School or equivalent. Junior Training Certificate or equivalent or Montessorie trained. 2 years experience as a teacher. Diploma or Certificate in Teaching the Blind.
6. Cook
Experience in Cooking ,Thorough knowledge of cooking Vegetarian and Non-vegetarian meals. At least 3 years experience in cooking.
7. Braille Shorthand Instructor (Hindi)/ Braille Instructor
A good Bachelor's Degree (relaxable in the case of candidates otherwise well qualified) Thorough knowledge of Bharati Braille. Hindi Braille Shorthand speed 80 w.p.m. 2 years teaching

experience of Hindi Braille Shorthand in a reputable Institution.

8. Music Instructor/ Music Teacher

Sound knowledge of vocal and Instrumental Music and ability to teach.
Decree or Diploma in Music.

9. Chokidar/ Watchman

No qualification is required

10. Sweeper

No qualification is required

11. Aya

Matriculation/ Hr. Sec.

13. The additional affidavit dated 06.02.1997 filed by the petitioner gives the difference in the pay in respect of different categories of staff in the petitioner organisation and in the corresponding governmental organisations. There is no doubt that the governmental pay/pay scales are higher than those paid by the petitioner. The question is, can the petitioner demand as a matter of an enforceable right that the respondents provide the grants-in-aid to the extent that the petitioner is able to pay the same scale of salary and other allowances, such as DA, HRA etc. as is admissible to personnel employed in Government Organisations/Autonomous Organisations such as the NIVH. Both sides have relied upon a few decisions which shall be dealt with presently.

14. Having considered the submissions of the parties, we are not inclined to agree with the aforesaid submission of the petitioners. Firstly, we may note that the employees of the petitioner organisation are not the employees of the Government. The two employer being distinct, resort to Article 14 to seek parity of pay is, therefore, misconceived. Admittedly, the educational qualifications and experience for the various posts prescribed by the Government for institutions established, run and managed by it or for autonomous organisations such as the NIVH are higher than those prescribed for similar posts in the NGOs/voluntary organisations such as the petitioner. It is settled law that even where the employer is the same, to be able to seek pay parity on the principle of equal pay for equal work, one of the essential ingredients that is required to be met is that the educational qualifications/experience prescribed in the similar posts are the same. Since this condition is not met, this is another reason why the employees of the petitioner organisation cannot seek pay parity with the employees of Government established, run and managed schools and of autonomous institutions. Reference may be made to the decision of the Supreme Court in S.C. Chandra v. State of Jharkhand? (2007) 8 SCC 279. In CA

Nos.6595, 6602-03 and 6601 of 2005, the writs petitioners-appellant, who were serving as secondary school teachers in a school, sought parity in their pay scales with pay scale of Government secondary school teachers or with Grade-I and Grade-II Clerks of Bharat Cooking Coal Limited (BCCL). They also sought facilities such as provident fund, gratuity, pension and other retiral benefits and also prayed that the State Government should take over the management of Ramkanali School under the provisions of the Bihar Non-Government Secondary Schools (Taking Over the Management and Control) Act, 1981. The BCCL contested the aforesaid claims on the ground that the said school was not owned by BCCL. It was run by a managing committee. The petitioners were not appointed by BCCL and were not employees of BCCL. BCCL used to release the non-recurring grants to the privately managed schools on the recommendations of the welfare committee subject to certain conditions. This non-recurring grant and aid did not make the school a part of the management of BCCL and any teacher in such privately managed school could not be said to be a employee of BCCL thereby entitling him to all benefits as are available to regular employees of BCCL.
15.From the aforesaid, it would be seen that the factual background in S.C. Chandra (supra) was quite similar to the one in hand. The Supreme Court dismissed the appeal preferred by the petitioner-appellant S.C. Chandra, against the decision of the Division Bench of the Jharkhand High Court. There are two concurring judgments, one rendered by A.K. Mathur, J. and the other by Markandey Katju, J. In his decision A.K. Mathur, J. observed:

Firstly, the school is not being managed by the BCCL as from the facts it is more than clear that the BCCL was only extending financial assistance from time to time. By that it cannot be saddled with the liability to pay these teachers of the school as being paid to the clerks working with BCCL or in the Government of Jharkhand. It is essentially a school managed by a body independent of the management of BCCL. Therefore, BCCL cannot be saddled with the responsibilities of granting the teachers the salaries equated to that of the clerks working in BCCL.

12. Learned counsel for the appellants have relied on Article 39(d) of the Constitution. Article 39(d) does not mean that all the teachers working in the school should be equated with the clerks in the BCCL or Government of Jharkhand. For application of the principle of equal pay for equal work. There should be total identity between both groups i.e. the teachers of the school on the one hand and the clerks in BCCL, and as such the teachers cannot be equated with the clerks of the State Government or of the BCCL. The question of application of Article 39(d) of the Constitution has recently been interpreted by this Court in State of Haryana and Ors. v. Charanjit Singh and Ors. [(2006) 9 SCC 321] wherein

their Lordships have put the entire controversy to rest and held that the principle, 'equal pay for equal work' must satisfy the test that the incumbents are performing equal and identical work as discharged by employees against whom the equal pay is claimed. Their Lordships have reviewed all the cases bearing on the subject and after a detailed discussion have finally put the controversy to rest that the persons who claimed the parity should satisfy the court that the conditions are identical and equal and same duties are being discharged by them. Though a number of cases were cited for our consideration but no useful purpose will be served as in Charanjit Singh (supra) all these cases have been reviewed by this Court. More so, when we have already held that the appellants are not the employees of BCCL, there is no question seeking any parity of the pay with that of the clerks of BCCL.?
16.Markandey Katju, J. in his concurring view takes note of various other decisions of the Supreme Court including the decision in State of Haryana v. Tilak Raj (2003) 6 SCC 123, State of Haryana and Ors. v. Charanjit Singh and Ors. (2006) 9 SCC 321, wherein it has been held that the principle of equal pay for equal work can be invoked only if there is a complete and wholesale identity between two groups and that even if the employees of the two groups are doing identical work, they cannot be granted equal pay, if there is no complete and wholesale identity. The two groups of employees may be doing the same work, yet they may be given different pay scales if the educational qualifications are different or if the nature of job, responsibilities, experience, method of recruitment etc. are different. His Lordship proceeded to hold that: -
13.............. fixing pay scales by Courts by applying the principle of equal pay for equal work upsets the high Constitutional principle of separation of powers between the three organs of the State. Realizing this, this Court has in recent years avoided applying the principle of equal pay for equal work, unless there is complete and wholesale identity between the two groups (and there too the matter should be sent for examination by an expert committee appointed by the Government instead of the Court itself granting higher pay).
14. It is well settled by the Supreme Court that only because the nature of work is the same, irrespective of educational qualification, mode of appointment, experience and other relevant factors, the principle of equal pay for equal work cannot apply vide Government of West Bengal v. Tarun K. Roy and others, (2004) 1 SCC347.

17.In fact, what the petitioner is seeking is the enhancement of the grant-in-aid provided by the Government. The Government is granting aid which, inter alia, covers upto 90% of the approved expenditure incurred by the voluntary organisations towards the basic salary paid to the staff. The voluntary organisations have to meet the remaining expenditure incurred, inter alia, towards the salary of the staff from out of its own resources. This policy of the government merely lays down a reasonable formula evolved by the Government to arrive at the figure of grant-in-aid that it would provide to an organisation under its scheme. It is open to the voluntary organisations to pay from its own resources to its staff not only the balance 10% basic salary, but also other components such as DA, HRA, CCA, Gratuity etc. There is no prohibition against the voluntary organisations making payment to its staff of the aforesaid components over and above the payment of the basic salary.

18.It is to be borne in mind that the Government has come out with various schemes from time to time to encourage voluntary organisations/NGOs to undertake social causes, such as providing educational and vocational support to the disabled. The funds allocated by the Government are distributed amongst the various organisations, which are being managed independently, in order to fulfill its obligation to provide support to the disabled. It is for the Government to evolve its policy with regard to the extent of assistance that it may render to voluntary organisations/NGOs. Such policies are devised keeping in view the availability of resources, the number of organisations deserving of assistance, and other relevant factors. It is for the Government to evolve the criteria on the basis of which the grants are to be disbursed. Of course, the criteria has to be reasonable and cannot be arbitrary or discriminatory. It cannot be said that the criteria fixed by the Government for disbursement of grant-in-aid, inter alia, being 90% of the basic salary of the staff of the voluntary organisations/NGO is discriminatory or arbitrary. It is not the petitioner's case that it has been discriminated against in the matter of disbursement of grant-in-aid when compared to any other similar organisation. The petitioner organisation cannot seek to compare itself with Government run schools and institutions such as the NIVH for the simple reason that Government run institutions and NIVH are wholly established, managed and run by the Government by following a transparent mechanism governed by a set of rules with regard to the number of sanctioned posts, the recruitment rules prescribing educational qualifications and experience criteria for such posts, the method of recruitment, discipline and conduct rules and the like, whereas the institutions

run by the voluntary organisations/NGOs such as the petitioner are entirely established, run and managed by the concerned organisation, which are not bound to follow any set of rules, as aforesaid. The criteria fixed by the Government for disbursement of grant-in-aid can also not be said to be arbitrary. The object of grant-in-aid is not to meet the entire expenditure of the organisation under any particular head, but to provide financial assistance to the extent the resources of the Government permit.

19.We are not dealing with the question, whether the disparity in the educational qualifications, which were prescribed by the Ministry of Welfare, is reasonable or not. That is not the challenge before us. The petitioner is not seeking parity in the prescription of educational qualifications/experience requirements or the recruitment rules in this petition.

20.Reliance placed on Clause 12.3 of the ?Scheme of Integrated Education for the Disabled Children 1992?, which states that the same scales of pay as available to the teachers of the corresponding category in the State/UT will be given to special teachers, appears to be misplaced. Clause 4 of the same scheme shows that the scheme makes a conscious distinction between State Government/UT Administration/Autonomous Organisations of stature on the one hand, and voluntary organisations on the other hand. While the scheme is to be implemented though the State Governments/UT Administration/Autonomous Organisations, the assistance of voluntary organisations may also be taken to implement the scheme. The petitioner is a voluntary organisation. The said scheme is primarily to be implemented by the Governments and by Autonomous Organisations, and the prescription about salaries pertains to such organisations/institutions, and not to voluntary organisations.

21.Mr. P.N. Lekhi, learned senior counsel appearing for the petitioner has placed strong reliance on ?State of H.P. v. H.P. State Recognised and Aided Schools Managing Committees and Ors.? (1995) 4 SCC 507 in support of his submission. The question raised before the Supreme Court in this decision was whether recognised and aided private schools were entitled to received grants-in-aid to meet 95% of the net expenditure to enable them to pay to the teachers employed by them salary equal to that being paid to the counterparts of such teachers in Government schools. The Supreme Court answered this question in the affirmative i.e. in favour of the teachers seeking parity. The Court struck down the maximum limit of grant-in-aid fixed by the Government in pursuance of the powers under Rule 47(2) of the Himachal Pradesh (Grant-in-Aid) Rules, which prescribed a maximum limit on the amount of admissible grant-in-aid. On the

face of it this decision appears to support the submission of Mr. Lekhi. However, on a deeper scrutiny one finds material differences in the facts and circumstances of that case that the facts of the present case. The Supreme Court while arriving at its decision took note of the fact that the Central Government had appointed Kothari Commission to examine the service conditions of the teachers with the object of improving the standard of education in the country. Kothari Commission had, inter alia, recommended that the scales pf pay of school teachers working under different managements such as government, local bodies or private management should be the same. Almost all the States in the country including the State of Himachal Pradesh had agreed to implement the recommendations of the Kothari Commission. The State of Haryana had also followed the same policy. The State of Himachal Pradesh had framed the Himachal Pradesh (Grant-in-Aid) Rules in conformity with the recommendations of the Kothari Commission and Rules 45-Q and 45-J of the said Rules read as follows:

45-Q. Management shall introduce such scales of pay and allowances for teachers and to other staff members as are prescribed by the Government for corresponding staff in government schools.

45-J. That the income from subscription, endowments and other sources (excluding fees) suffices to ensure that the management can contribute at least 5 per cent of the net expenditure from their own funds after the school is aided.

22. Because of the aforesaid Rules, the Supreme Court held that the State of Himachal Pradesh was committed to implement the Kothari Commission recommendations regarding parity in the pay scales of the teachers working in Government schools and the aided schools. The Government order passed under Rule 47(2) of the Himachal Pradesh (Grant-in-Aid) Rules, which fixed the maximum limit of the grant-in-aid to be provided to the aided schools, however, came in the way of compliance of Rules 45-Q and 45-J, as aforesaid. The Court enforced the obligation of the State under Rules 45-Q and 45-J and as also the constitutional obligation of the State to provide free education to children till they complete the age of 14 years and quashed the imposition of maximum limit for the disbursement of grants-in-aid to the aided schools as being arbitrary and unjustified. In the course of its judgment in paragraphs 8 and 9 the Supreme Court noted as follows:

?8. The aided schools teach the same syllabus and curriculum, prescribe the books and courses as per Government directions and prepare the students for

same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the State Government and the appointments are made with the approval of the State Government. The fees levied and concessions allowed are strictly in accordance with the instructions issued by the Education Department of the State Government from time to time. The Managing Committees of aided schools are approved by the State Government and two members of the Committee are appointed by the Education Department. The service conditions of the teachers including disciplinary proceedings and award of punishment etc. are governed by the Rules framed by the State Government.

9. It is, thus, obvious that the State Government has a deep and pervasive control on the aided schools. The government schools and the aided schools specially after the Kothari Commission Report ? have always been treated on a par(emphasis added)

23. The aforesaid extract highlights the difference in factual background in the said case from the facts of the present case. Unlike in the said case, the qualifications of the teachers prescribed for voluntary organisations and those prescribed for Government Organisations/Autonomous Institutions are remarkably different. The appointments made by voluntary organisations do not require the approval of the State Government. The fees levied or concessions allowed by the voluntary organisations are not fixed under the instructions of the Government. The Government apparently has no role to play in the management of the voluntary organisations. The service conditions of the teachers including disciplinary proceedings and award of punishment to the employees of voluntary organisations are not governed by the rules framed by the State Government. It cannot be said that there is governmental control, much less a deep and pervasive control, on the institutions run by voluntary organisations such as the petitioner. Therefore, this decision is of no avail to the petitioners. The decision of the Supreme Court in State of Punjab and Ors. v. Om Parkash Kaushal and Ors (1996) 5 SCC 325 relied upon by the petitioners is of no avail. In fact this decision supports the view that we are taking. With effect from 1.12.1967, on the basis of the Kothari Commissions recommendation the pay scales of the

teachers of the privately managed aided schools were revised and brought at par with the teachers of the same status in the government service. The Punjab legislature enacted the Punjab Privately Managed Recognised Schools, Employees (Security of Service) Act, 1979. Section 7 of the said Act granted parity to the private teachers in the matter of scales of pay and Dearness Allowance with the Government teachers. This act came into force on 23.01.1981. Prior to that under executive instructions the teachers employed in privately managed aided schools in the State of Punjab were given parity with Government teachers only in respect of pay scales and Dearness Allowances. The other conditions of service relating to the Government teachers were not extended to such teachers of privately managed government aided schools. In the year 1960, the Government issued instructions where under teachers with masters degree working in government schools, who had acquired qualifications of M.A./M.Sc./M.D. (third division) became entitled to one increment, and those who acquired the said qualification with first division and second division, became entitled to three increments. Subsequently in the year 1979, the Government withdrew the 1960 instructions. The existing recipients of such benefits were, however, spared. The teachers of privately managed aided schools in the State of Punjab sought parity regarding pay scales and Dearness Allowances between private school teachers and Government teachers since 01.12.1967, on the ground that they had acquired the higher qualification prior to 1979, in terms of 1960 instructions. The Supreme Court rejected this contention on the ground that Section 7 of the aforesaid Act, which granted parity to private school teachers and teachers of Government aided schools in the matter of scales of pay and Dearness Allowances with Government school teachers came into force only on 23.01.1981. Prior to that, under executive instructions the teachers of privately run aided schools were given parity with Government teachers only in respect of pay scales and Dearness Allowances, and other conditions of service relating to the Government teachers were not extended to the respondents. In the present case, the petitioners have not been able to show any provision of law which mandates that it is the obligation of the State to pay the same salary to the teachers of voluntary organisations, working to educate the disabled and handicapped with the teachers working in Government schools and Autonomous Institutions.

24. The decision of the Supreme Court in State of U.P. and Anr. Vs. U.P. Polytechnic Diploma Shikshak Sangh and Anr. (2001) 10 SCC 643 also relied upon

by the petitioner also does not advance the case of the petitioners. The said decision is a short order, which merely applies its earlier decision in State of H.P. (supra) to grant relief to the Assistant Lecturer in Government aided polytechnics, by holding that they would be entitled to the same scales as granted to the Assistant Lecturers in Government polytechnics. Since we have distinguished the aforesaid decision in State of H.P. (supra), even this decision is of no avail to the petitioners.

25. The decision of the Supreme Court in State of Haryana and Ors. vs Champa Devi and Ors. (2002) 10 SCC 78 relied upon by the petitioners also is of no avail. This decision also goes contrary to the submission of the petitioners. While noticing that teachers of privately managed aided schools are entitled to the same scale of pay and Dearness Allowances as teachers of Government schools, when it came to dealing with the other claims of the teachers of privately managed aided schools which had been extended to Government employees under various circulars, the Supreme Court held that the High Court had committed an error in granting those benefits to the employees of private aided schools. The Supreme Court relied on its decision in Om Parkash Kaushal (supra), wherein the Court had examined the question as to what is the meaning of ?parity in employment? and came to the conclusion that all the incentives granted to employees of Government cannot be claimed as a matter of right by the employee under private management, as that would not be within the expression ?parity in employment?. The Court held that the scale of pay and Dearness Allowance granted to a Government servant or to a teacher of a Government school can be claimed as a matter of right by the teachers of a private aided school, but not the other incentives which the government might confer on its employees. Applying the same principle, it cannot be said that the petitioners are entitled to claim parity with Government teachers or teachers in Autonomous Institutions.
26.In Haryana State Adhyapak Sangh and Ors. Etc. v. State of Haryana and Ors., AIR 1988 SC 1663, the Supreme Court, while declining to go into the claim of other benefits like HRA, CCA etc., directed the respondents to evolve a scheme to bring about parity between the teachers of aided schools and teachers of Government schools having regard to various allowances. However, the Court refused to grant such allowances to the teachers of aided schools, till such a scheme was in place. But with regard to the scale of pay and DA the court unequivocally indicated that the teachers of aided schools must be put on the

same pedestal as their counterparts in the Government schools.

27. It seems that when it comes to the question of parity in pay scales and all other benefits like DA, HRA, CCA etc. the deciding factor is whether such scales of pay and allowances have been expressly provided for by the rules and regulations. In case they have been provided for, then, the Courts have ruled in favour of parity to the extent of such pay scales and allowances being provided for. However, when such scales of pay and allowances have not been provided for, like in the cases of Haryana State Adhyapak Sangh (supra) and Om Prakash Kaushal (supra), the Court has either asked the concerned parties to come up with a scheme solely for the purpose of bringing about parity in pay, or have simply refused to allow parity between the allowances which have been provided for and the ones which have not been provided for. However, in the present case, since the posts are not at par in view of the difference in qualification for appointment etc. this question may not even arise for determination.

28. The decision of this Court in Bimla Rani and Ors. v. Appellate Authority Equal Remuneration Act, 1976 and Ors. 113 (2004) DLT 441 relied upon by the petitioners also does not serve the cause of the petitioners. That was a case dealing with employment under the same employer. A lady employee who had earlier been enlisted amongst the male employees and was being given a higher salary, was subjected to reduction of her pay when it was realised that she was a lady. The said action was challenged by the petitioner Bimla Rani by placing reliance on Section 7(1)(b) of the Equal Remuneration Act, 1976. The facts of that case are not similar to the facts of the present case and even the principle of law invoked in that case has no application to the present case. Lastly, Mr. Lekhi invoked the principle of legitimate expectation. He submitted that the petitioner and its employees have legitimate expectation that they would be disbursed grants-in-aid by the Government so that the employees of the petitioner could be paid salary and allowances at the same rate at which their counterparts in the Government and autonomous bodies are being paid, since they are discharging the same nature of duties. He relies on U.P. Avas Evam Vikas Parishad v. Gyan Devi (dead) by LRs and Ors. (1995) 2 SCC 326, wherein the issue before the Supreme Court was whether a local authority/company, for whose purpose land is being acquired, has a right to appear and adduce evidence in proceedings before Collector and the reference Court for determination of compensation. In paragraph 41 of the said decision (in the judgment R.M. Sahai, J.) the Supreme Court observed: -

In situations where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority the courts have evolved the principle of legitimate expectations. The expression which is said to have originated from the judgment of Lord Denning in Schmidt v. Secy. of State for Home Affairs (1969) 2 Ch. 149 is now well established in public law. In Attorney-General of Hong Kong v. Ng Yuen Shiu (1983) 2 A.C. 629 Privy Council applied this principle where expectations were, based upon some statement or undertaking by or on behalf of, the public authority?, and observed:

Accordingly 'legitimate expectations' in this context are capable of including expectations which go beyond enforceable legal rights, provided they have come reasonable basis'. 'A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment? Halsbury's Laws of England, 4th Edn., Vol. 1 (1), re-issue para 81.

29. We are afraid, we cannot agree with this submission of the petitioner. The principle of legitimate expectation has no application in the facts of this case. The respondents, while granting aid to the petitioners had in no uncertain terms made it clear that the grant-in-aid would, inter alia, include 90% of the expenditure incurred by the voluntary organisations towards salaries of the staff employed by such organisations and as approved by the Government. There was no ambiguity in the representation made by the Government that 90% of the approved expenditure is the maximum aid that the Government would provide and under the schemes it was also made clear that the voluntary organisations should be in a position to meet the remaining expenditure from out of its own accruals and collections. It cannot, therefore, be said that the petitioners entertained a legitimate expectation towards receiving higher grants from the Government to be able to pay to its employees, higher salaries or other allowances at par with those admissible to Government employees/teachers and employees of autonomous institutions such as the NIVH.

30. Under the Scheme of Assistance to Voluntary Organisations for Special Schools for Handicapped Children?, the teachers and the staff of the special school were paid a consolidated salary and it was expressly clarified that no scale of pay and other allowances would be admissible. Under the Scheme to

Promote Voluntary Action for Persons with Disabilities, the consolidated salary was replaced by a fixed honourarium. Nowhere in the above schemes has other allowances like DA, HRA, CCA etc. found express mention. On the other hand, we find that at the time of filing of the petition, the pay scales were not only comparable but in some cases, the teachers employed by the voluntary organisations received a higher pay scale than their counterparts employed by the Government. Whatever be the case, since emoluments such as DA, HRA, CCA etc. have not been provided for in the present case, we rely on the judgments that we have cited during our deliberations and, therefore, we do not find any merit in the case of the petitioners

31.Therefore, we are of the view that the teachers/employees of the petitioner cannot enjoy parity in pay-scales if the educational qualifications required are different, regardless of whether the duties and the responsibilities are identical.

32. For the aforesaid reasons, we see no merit in this petition and dismiss the same leaving the parties to bear their own respective costs.

VIPINSANGHI
JUDGE

A.K.SIKRI JUDGE, Dated July 04, 2008