

Government of West Bengal  
Labour Department, I. R. Branch  
N.S. Building, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr/ 1133 / (LC-IR)/22015(16)/431/2019

Date : 29-11-2024

**ORDER**

WHEREAS under Labour Department's Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024. reference of the Industrial Dispute between M/s. Hariyana Vidya Mandir (A Unit of Hariyana Sewa Sadan), BA-193, Sector-I, Salt Lake City, Kolkata-700 064 and their workmen represented by Hariyana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata-700012 (Registration No.24686) regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Third Industrial Tribunal, Kolkata.


AND WHEREAS the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 03.10.2024 in case No. VIII - 21/2009 u/s 10(2A) of the I. D. Act, 1947 on the said Industrial Dispute vide E-mail dated 26.11.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

**ANNEXURE**

(Attached herewith)

By order of the Governor,

  
Assistant Secretary


to the Government of West Bengal

No. Labr/ 1133/1(5)/(LC-IR)/ 22015(16)/431/2019

Date : 29-11-2024

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. Hariyana Vidya Mandir (A Unit of Hariyana Sewa Sadan), BA-193, Sector-I, Salt Lake City, Kolkata-700 064.
2. Hariyana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata-700012 (Registration No.24686)
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


  
Assistant Secretary

No. Labr/ 1133 /1(3)/(LC-IR)/ 22015(16)/431/2019

Date : 29-11-2024

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his Memo No. Dte./3rd IT/099/2024 dated 22.08.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary

In The Third Industrial Tribunal,  
New Secretariat Buildings, Kolkata-700 001

**Case No.VIII-21/2009**

Present: Sri Mihir Kumar Mondal  
Judge, 3<sup>rd</sup> Industrial Tribunal  
Kolkata

**A W A R D**

**Dated : 03.10.2024**

The Labour Department, Government of West Bengal has referred an Industrial Dispute between Messrs Hariyana Vidya Mandir (A Unit of Hariyana Sewa Sadan), BA-193, Sector-I, Salt Lake City, Kolkata-700 064 and their workmen represented by Hariyana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata-700012 (Registration No.24686) to this Tribunal vide Order No. 494-I.R./IR/11L-05/09 dated 21.05.2009 (and subsequent Corrigendum Order No.1141-I.R./IR/11L-05/09 dated 10.12.2009) on the following issue(s) for adjudication:

**I S S U E S**

- 1) Whether demand of the Union for entitlement of pay scale and other benefits as mentioned in their Charter of Demands dated 14.03.2007 to the non-teaching staff of Hariyana Vidya Mandir is justified (copy of Charter of Demands dated 14.03.2007 is enclosed)?
- 2) What relief are the workmen entitled to?

On receiving the 'Order of Reference' of the appropriate Government containing 'Reference of Disputes', this Tribunal on 28.05.2009 by its Order No. 1 issued Notice upon both the parties. On receiving notice, both the parties on 01.07.2009 entered their appearance in this case complying the statutory provision. Subsequently, Hariyana Vidya Mandir Non-Teaching Employees Association on 03.12.2010 filed the written statement and filed list of documents on 21.01.2011. Messrs Hariyana Vidya Mandir filed written statement on 16.09.2011 and on 31.10.2011 filed list of documents.

The case of the workmen represented by Hariyana Vidya Mandir Non-Teaching Employees Association, in a nutshell, is that Hariyana Vidya Mandir is a famous co-ed English Medium 10+2 School and the same is affiliated to the Central Board of Secondary Education (CBSE), Delhi having affiliation No. 2430046 and School No. 04849. The Hariyana Vidya Mandir is a unit of Hariyana Sewa Sadan, a registered society under the West Bengal Societies Registration Act, 1961 having its Registration No.S/33768. It is mentioned that 'Affiliation' so granted is guided by affiliation Bye Laws of the Board, which came into force on and from 28.01.1988. It is mentioned in the W.S. that there is a specific clause in the said Bye Laws to the effect that affiliated Schools must pay salaries and admissible allowances to the staffs not less than the corresponding categories of the employees under State Government School or as per the

scales etc. prescribed by the Government of India. It is also mentioned that according to the affiliation certificate, which is being issued by the 'Board' from time to time for a certain stipulated period, there is a clear condition to the effect that pay and allowances to the staffs should be revised time to time to bring the same at par with the State Government. It is also mentioned that according to the 'Office Memo.' dated 23.11.1994 of the Education Department, Government of West Bengal, copy of which was supplied to the Principal of the Haryana Vidyamandir, the State Government has no objection in the matter of receiving affiliation from Central Board of Secondary Education, New Delhi subject to a most important condition, apart from other conditions, that the 'School' will grant scale of pay to the teachers and non-teaching staffs of the 'School' comparable (perhaps the most applicable term would be 'compatible') with the pay scales approved for the teachers and non-teaching employees of '*aided Non-Government Schools in West Bengal*'. It is mentioned that the 'Association' is a Registered Trade Union having its registration no.24686 under the Trade Union Act and the said 'Association' is affiliated to the All India Trade Union Congress (AITUC). The 'Association' by its letter dated 20.06.2007 intimated the School Authority about the formation of office bearers of such 'Association' of the School unit level and by such letter the names of the office bearer of the 'Association' were sent to the School Authority. It is mentioned that by the letter dated 14.03.2007 the 'Association' under Reference submitted one 'Charter of Demand' to the President of Executive Council of Haryana Sewa Sadan and such charter was signed by 31 numbers of employees of the School. It is mentioned that since the pay scale and other benefits allowed by the School Authority to the non-teaching staff of the School were not consistent with the recommendations of the 5<sup>th</sup> Central Pay Commission, the occasion had arisen to submit Charter of Demand dated 14.03.2007 through the Principal of the School and in the said Charter of Demand it was specifically mentioned what would be the basic pay scales of categorized employees and notional effect to be given from 01.01.1996. In spite of giving several reminders, the School authority did not find time to give response on the 'Charter of Demand' dated 14.03.2007 as well as no bipartite meeting was called as a measure of settlement of the issue. It is mentioned that when the Association realized the unfortunate apathy towards employees by the Management of the School, the 'Association' sought for intervention of the Labour Commissioner, Government of West Bengal by letter dated 03.10.2007. It is mentioned that after receiving the 'Charter of Demand' the School authority not only ignored the same but also adopted tactics to victimize the members of the Union and the Principal of the School was trying hard to crush the trade union activities by way of spreading propaganda amongst the students and the parents. It is mentioned that in the conciliation meeting held on 03.10.2007 in the office of the Joint Labour Commissioner, Government of West Bengal, the School authority has contended that the School is not a profit making organization and it does not derive any aid from the Government and for this reason the authority is unable to consider the 'Charter of Demand'. In reply, the Association by

letter dated 24.01.2008 informed the Conciliation Officer that the School authority has already proposed revision of tuition fees of the students and session fees for new admission w.e.f. April, 2008. It is mentioned that the plea taken by the School authority that the School is a private educational institution and it does not receive any grant from the Government in any manner cannot be an excuse for non-granting of Government approved scale to the staffs of the School in view of the condition imposed by the State Government as well as in view of the conditions of Affiliated Certificate issued by the CBSE. It is mentioned that there is a long standing practice that the D.A. is normally enhanced at the rate 6% once in every six months but the Management of the School arbitrarily and wrongfully withheld the enhanced amount of D.A. from July, 2008. Thus, the Association registered a protest in writing on 17.12.2008 and in reply the Principal of the School by letter dated 24.12.2008 admitted the fact of withholding such payment but denied the pay revision in accordance with Central Pay Commission. The 'Association' requested the School Authority to release the enhanced amount of D.A. at the rate of 6% from July, 2008 and the School Authority by letter dated 15.01.2009 assured that the payment would be made at an early date. It is mentioned that during the pendency of the conciliation proceeding the Management of the School circulated one unilaterally frame one set of Service Rule, which was strongly opposed by the 'Association' vide letters dated 07.05.2008 and 19.08.2008. Apart from that, concerned 39 numbers of non-teaching staffs by letter dated 28.07.2008 with their individual signatures intimated the Principal of the School that they can accept ad hoc allowance if the legitimate scales and allowances are given to all non-teaching employees of the School. It is mentioned that the Management of the School withheld the normal enhancement of D.A. at the rate of 6% from January, 2009 and the matter of such withholding was opposed by the Union in writing. The Management of the School enhanced salary w.e.f. April, 2009 as per their whims and not in accordance with the report of the 5<sup>th</sup> Central Pay Commission. Due to such enhancement of salary, 44 non-teaching staffs recorded their protest in writing on 06.05.2009 and the same was forwarded to the Labour Commissioner, Government of West Bengal. It is mentioned that the Management of the School by adopting unfair labour practice has been paying less amount of admissible amount of salary as per 5<sup>th</sup> Central Pay Commission in respect of all employees with a view not only to deprive the employees of the School from getting admissible amount of salary but also to earn more profit by exploiting them. It is stated that the unprecedented price of essential commodities took place during last so many years and thus the non-teaching employees of the School have been facing tremendous financial hardship. However, the demand raised by the Association is very much reasonable and the Management has sufficient financial capacity to meet up such demands comfortably. It is also mentioned that in the year 2009 the School Authority earned profit amounting to Rs.27 lakh according to the available records and thus each and every employee should receive their eligible salary. It is stated that the Association has demanded that scale of pay in accordance with the



recommendation of 5<sup>th</sup> National Pay Commission should be allowed with retrospective effect from 01.01.1996. The Association has prayed for passing an Award by granting relief to the non-teaching employees of the School w.e.f. 01.01.1996 after considering all aspects and materials on record and/or to pass any other relief as this Tribunal may deem fit and proper.

M/s. Haryana Vidya Mandir (A Unit of Haryana Sewa Sadan) has contested this case by filing Written Statement. M/s. Haryana Vidya Mandir (hereinafter referred to as the 'Vidya Mandir') by its Written Statement has denied various statements and/or material allegations and/or contentions as contained in the Written Statement by using the terms 'baseless', 'incorrect' and 'misleading'. The Written Statement of the Association is in Part-I and Part-II. In the Part-I of the Written Statement, the Association has claimed that the Reference is not maintainable in the eye of the law since the Association has no *locus standi* and representative character to transform the alleged dispute to be an industrial dispute. It has been claimed in the Written Statement that the instant Reference is not maintainable since no dispute proper has been raised so as to transform the alleged dispute to be an industrial dispute.

In the Part-II of the Written Statement, the Vidya Mandir has denied and disputed the statements contained in paragraphs 1 to 19 of the Written Statement submitted by the Association. It is claimed that the conditions provided by the 'Board' are directory and not mandatory in nature because the payment to the staff would depend upon the principle of Region-cum-Industry basis co-related with the capacity of the School to pay. It is mentioned that the Association has projected the office memo. dated 23.11.1994 in a distorted way. It is mentioned that the service conditions of Central Government and State Government aided non-Government and private unaided non-Government employees are totally different and accordingly if the service conditions are different, the normal corollary would be that the salary and other benefits cannot be same. It is mentioned that the recommendations of the 5<sup>th</sup> Central Pay Commission cannot have any binding effect so far as private unaided Schools like the School under Reference are concerned. It is mentioned that the Association has failed to show as to how the demands contained in the 'charter of demands' have a rational basis co-related with the principle of Region-cum-School with the capacity of the School to pay. It is contended that the claim of the Association in the matter of making profit of Rs.49.32 lakh at the end of the Financial Year '06-'07 has no relevancy with the present case. It is mentioned that the demands dated 14.03.2007 raised by the Association were based on the CBSE bye laws, as stated in their letters dated 06.09.2007. It is claimed that the charter dated 14.03.2007 is full of ambiguity and thus the same should be rejected *in limine*. It is claimed that the revision of tuition fee was an imperative step as without the same there was no possibility of running the School from a financial stand point. It has specifically denied the allegation of the Association that certain teachers and office staff are being paid as per the recommendation of the Central Pay Commission. It is specifically claimed that the

conditions as imposed on the 'No Objection Certificate' and the 'Affiliation Certificate' do not articulate that inspite of financial incapacity of the School, the payment would required to be made against the demand. It is claimed that the Association was well aware about the paucity of fund and at the same time unless and until funds were available, there was no scope for effecting any payment. It is mentioned that concerned employees were found interested to get increased salary without performing duties efficiently and complying obligations and thus with a view to increase the proficiency of work the Vidya Mandir Authority entrusted the principle of the Vidya Mandir to judge the performances of the employees concerned periodically. It is mentioned that it is baseless to allege that 5<sup>th</sup> Pay Commission Scale will be applicable but in fact ROPA 2009 has been adopted by the School Authority. It is claimed that the circulars dated 20.03.2006, 19.03.2002 and 27.03.2009 are not available in the record of the School. It is claimed that as per the bye laws the employees, both teaching and non-teaching, shall be paid prescribed scale and D.A. as per State Government or Central Government rate except Group-D employees. It is stated that it was falsely alleged that in the minutes of the meeting dated 20.03.2009 decision was taken that the School will follow the Government Pay Scales since no such decision was taken in the said meeting. It is mentioned that there is no binding provision to grant salary of non-teaching employees as per Government scale. It is contended that the Management is of the view that there is no rationale to pay the salary as per Central Government or Sate Government Pay Scales. It is stated that the School had taken the coverage under ESI Act w.e.f. 01.10.2006 and thereafter the members of the Union, particularly the Secretary of the Union submitted several representations objecting the deduction of amount from salary against the contribution for ESI and in the result the 'Vidya Mandir' sustained loss of Rs.6,00,000/- since the Management of the 'Vidya Mandir' had to make arrangement for paying whole contribution, interest and damage from its own source. It is mentioned that save and except the demand for revision of scale and dearness allowance there is no basis for demanding washing allowance, transport allowance, overtime allowance, children education allowance, leave, ex gratia, medical allowance and tiffin allowance. It is mentioned that the Association has not specifically stated that on what basis all those demands have been made and further it is not stated as to how the principle of Region-cum-School basis is co-related with the capacity of the School to pay such demand. It is stated that a Scale has been framed in the Charter of Demand but it is not clarified on which basis such Scale has been framed as well as the rationale behind framing of such Scale has not been mentioned. It is stated that in the Charter of Demand 'dearness allowance' has been demanded but it is not clarified on what basis the same has been fixed and also its relation to the total wage packet. Moreover, it has not been shown as to how the same has been fixed inconsonance with the practice prevalent with the other School. The 'Vidya Mandir' in its W.S. has pointed out the lack of basis of demand by the Association in respect of washing allowance, transport allowance, overtime allowance, children education allowance, 'leave', ex-

gratia, medical allowance, tiffin allowance. It is mentioned that the School is run on 'no profit, no loss' basis and the claim of the Association that 'Vidya Mandir' earned profit is baseless. It is mentioned that the Charter of Demand on the basis of the 5<sup>th</sup> Pay Commission recommendation has no basis. The 'Vidya Mandir' by its W.S. has refuted and disputed the allegation of the Association that pay packets of some puppet 'yesman' have been considerably increased. It is claimed that the Association is not entitled to get any relief and more particularly any relief with retrospective effect from 01.01.1996. It is mentioned that industrial adjudication has laid down two principal factors, which weigh why fixing or revising wage structure viz. (i) what wage scale the Establishment in question can pay, without any undue strain on its financial resources, (ii) how the wages prevailing in the Establishment in question compare with those given to workmen in a similar pay by similar Establishment in same School having similar standing in all respect. Thus, formal factor is the financial capacity of the Employer and the later has come to be known as the principle of Region-cum-Schools of similar standing. It is stated that in view of such established 'norms', the demands made by the Association have no legal basis whatsoever.

The 'Vidya Mandir' has prayed for dismissal of the claim of the Association as mentioned in the Charter of Demands since the Association is not entitled to get any relief whatsoever.

After submission of Written Statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, one Susanta Kumar Paul, employee and the General Secretary of Hariyana Vidya Mandir Employees Association examined himself as PW-1. One Leena Chatterjee, President of Hariyana Vidya Mandir Employees Association filed her examination-in-chief on affidavit and she was examined-in-chief before this Tribunal in continuation of her examination-in-chief on affidavit and thereafter her cross-examination took place in full.

It is seen that the Hariyana Vidya Mandir adduced one Sri Asim Kumar Mondal as OPW 1.

In course of evidence, both the parties proved documents during examination of witnesses.

The PW-1 Sri Susanta Kumar Paul has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : Photo copy of Affiliation bye-laws of the Central Board of Secondary Education;
2. Exbt.-2 : Photo copy of Extension of Provisional Affiliation Certificate dated 19.10.2004 to Hariyana Vidya Mandir;

3. Exbt.-3 : Photo copy of 'No Objection Certificate' dated 23.11.1994 issued by School Education Department, Govt. of West Bengal.
4. Exbt.-4 : Photo copy of letter dated 20.06.2007 addressed to the Principal, Hariyana Vidya Mandir;
5. Exbt.-5 : Photo copy of letter dated 03.10.2007 addressed to the President, Executive Council, Hariyana Sewa Sadan.
6. Exbt.-6 : Photo copy of letter dated 14.03.2007 addressed to the President, Executive Council, Hariyana Sewa Sadan.
7. Exbt.-6/A : Photo copy of Statement regarding posting of letters under Certificate of Posting.
8. Exbt.-7 : Photo copy of letter dated 16.07.2007 addressed to the President, Executive Council, Hariyana Sewa Sadan.
9. Exbt.-7/A : Photo copy of Statement regarding posting of letters under Certificate of Posting.
10. Exbt.-8 : Photo copy of letter dated 06.09.2007 addressed to the President, Executive Council, Hariyana Sewa Sadan.
11. Exbt.-9 : Photo copy of letter dated 03.10.2007 addressed to the Labour Commissioner, Govt. of West Bengal.
12. Exbt.-10 : Photo copy of letter dated 26.12.2007 sent by the Hariyana Vidya Mandir addressed to Mr. Md. Zahiruddin, Joint Labour Commissioner, Govt. of West Bengal.
13. Exbt.-11 : Photo copy of rejoinder dated 24.01.2008 sent by the Association to Mr. Md. Zahiruddin, Joint Labour Commissioner, Govt. of West Bengal.
14. Exbt.-12 : Photo copy of Notice dated 31.03.2008 issued by the School Authority to the President of the Association.



15. Exbt.-13 : Photo copy letter dated 09.04.2008 along with minutes of the meeting dated 07.04.2008 sent by the Association to Mr. Saibal Biswas, Deputy Labour Commissioner, Govt. of West Bengal.
16. Exbt.-14 : Photo copy of letter dated 19.09.2008 sent by the Association to Mr. Saibal Biswas, Deputy Labour Commissioner, Govt. of West Bengal.
17. Exbt.-15 : Photo copy of letter dated 02.09.2008 given by the School authority to Mr. Saibal Biswas, Deputy Labour Commissioner, Govt. of West Bengal.
18. Exbt.-16 : Photo copy of letter dated 19.09.2008 sent by the Association to Mr. Saibal Biswas, Deputy Labour Commissioner, Govt. of West Bengal.
19. Exbt.-17 : Photo copy of the letter dated 31.10.2008 sent by the Association to the Principal of the School.
20. Exbt.-18 : Photo copy of letter dated 05.12.2008 sent by the School to the Association.
21. Exbt.-19 : Photo copy of letter dated 10.12.2008 sent by the Association to the Principal of the School.
22. Exbt.-20 : Photo copy of letter dated 17.12.2008 sent by the Association to the Principal of the School.
23. Exbt.-21 : Photo copy of letter dated 24.12.2008 sent by the Principal of the School to the Association.
24. Exbt.-22 : Photo copy of letter dated 05.01.2009 sent by the Association to the Principal of the School.
25. Exbt.-23 : Photo copy of letter dated 15.01.2009 sent by the Principal of the School to the Association.
26. Exbt.-24 : Photo copy of letter dated 07.05.2008 sent by the Association to the Principal of the School.

27. Exbt.-25 : Photo copy of letter dated 30.12.2008 sent by the Association to the Principal of the School.
28. Exbt.-26 : Photo copy of letter dated 19.08.2008 sent by the Association to the Principal of the School.
29. Exbt.-27 : Photo copy of letter dated 16.12.2008 sent by the Association to Saibal Biswas, Deputy Labour Commissioner, Govt. of West Bengal.
30. Exbt.-28 : Photo copy of letter dated 15.01.2009 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
31. Exbt.-28/A : Photo copy of letter dated 10.12.2008 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
32. Exbt.-29 : Photo copy of letter dated 28.07.2008 sent by the Association to the Principal of the School.
33. Exbt.-30 : Photo copy of letter dated 13.04.2009 sent by the Association to the Principal of the School.
34. Exbt.-31 : Photo copy of letter dated 06.05.2009 sent by the Association to the Principal of the School.
35. Exbt.-31/A : Photo copy of letter dated 07.05.2009 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
36. Exbt.-32 : Photo copy of letter dated 18.05.2009 sent by the Association to the Principal of the School.
37. Exbt.-33 : Photo copy of letter dated 18.05.2009 sent by the Association to the Principal of the School.
38. Exbt.-34 : Photo copy of letter dated 19.05.2009 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
39. Exbt.-34/A : Photo copy of letter dated 19.05.2009 sent by the Association to the Labour Commissioner, Govt. of West Bengal.

40. Exbt.-35 : Photo copy of letter dated 04.08.2008 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
41. Exbt.-36 : Photo copy of letter dated 19.03.2009 sent by the Association to the Labour Commissioner, Govt. of West Bengal.
42. Exbt.-37 : Photo copy of representation dated 27.01.1999 issued by the Principal to the parents.
43. Exbt.-38 : Photo copy of representation dated 19.03.2002 issued by the Principal to the parents.
44. Exbt.-39 : Photo copy of representation dated 20.03.2006 issued by the Principal to the parents.
45. Exbt.-40 : Photo copy of Govt. memo dated 29.03.2006.
46. Exbt.-41 : Photo copy of Govt. memo dated 31.03.2008.
47. Exbt.-42 : Photo copy of letter dated 01.11.2000 sent by the Principal of the School to Govinda Aggarwal, Chairman of the Managing Committee of the School.
48. Exbt.-43 : Photo copy of letter dated 11.11.2002 sent by the Principal of the School to Govinda Aggarwal, Chairman of the Managing Committee of the School.
49. Exbt.-44 : Photo copy of letter dated 29.10.2004 sent by the Principal of the School to Govinda Aggarwal, Chairman of the Managing Committee of the School.
50. Exbt.-45 : Photo copy of letter dated 18.04.2005 sent by the Principal of the School to Govinda Aggarwal, Chairman of the Managing Committee of the School.
51. Exbt.-46 : Photo copy of letter dated 24.10.2005 sent by the Principal of the School to Govinda Aggarwal, Chairman of the Managing Committee of the School.

52. Exbt.-47 : Photo copy of the minutes of the meeting of the School Managing Committee dated 20.03.2009.

53. Exbt.-48 : Photo copy of acceptance orders 1997 of the 5<sup>th</sup> Pay Commission (175 pages)

In course of examination of witness on behalf of Hariyana Vidya Mandir, the following documents were identified and proved. The exhibited documents are as follows:-

1. Exbt.-A: Photocopy of Auditor's Report dated 01.10.2007 along with balance sheet as on 31.03.2007;
2. Exbt.-A/1: Photocopy of Auditor's Report dated 08.08.2008 along with balance sheet as on 31.03.2008;
3. Exbt.-A/2 :photocopy of Auditor's Report dated 31.08.2009 along with balance sheet as on 31.03.2009;
4. Exbt.-B : Sample copy of intimation regarding gross salary as per revision of pay w.e.f. 01.04.2009;
5. Exbt.-C : Photocopy of 'Affiliation Bye Laws' of Central Board of Secondary Education;
6. Exbt.-D: Photocopy of Notice dated 26.03.2008 informing the implementation of ESI scheme in respect of the employees of Hariyana Vidya Mandir whose monthly salary was upto Rs.10,000/-;
7. Exbt.-D/1: Photocopy of Notice dated 25.06.2008 informing the implementation of ESI scheme in respect of the employees of Hariyana Vidya Mandir whose monthly salary at the rate of Rs.10,000/- or below Rs.10,000/- per month;
8. Exbt.-E/1 : Photocopy of month-wise statement of gross salary paid to the non-teaching staff for the year 2006-2007;
9. Exbt.-E/2: Photocopy of month-wise statement of gross salary paid to the non-teaching staff for the year 2007-2008;
10. Exbt.-E/3 :Photocopy of month-wise statement of gross salary paid to the non-teaching staff for the year 2008-2009;

11. Exbt.-E/4 :Photocopy of month-wise statement of gross salary paid to the non-teaching staff for the year 2009-2010;

12. Exbt.-F : Photocopy of letter dated 19.12.2008 issued by Mrs. Nandini Sen, Principal, Hariyana Vidya Mandir to the President of Hariyana Vidya Mandir Non-Teaching Employees Association.

### **Evidence on Record**

In this case, one Sri Susanta Kumar Pal, Laboratory Assistant and the General Secretary of the 'Association' examined himself as PW-1. The witness Sri Susanta Kumar Pal (PW-1) was examined-in-chief before this Tribunal and he was cross-examined by the Ld. Advocate for M/s. Hariyana Vidya Mandir.

PW-1 in his examination-in-chief (started on 15.12.2011) has disclosed that he is an employee (Laboratory Assistant) of Hariyana Vidya Mandir and at the same time he is the General Secretary of Hariyana Vidya Mandir Non-Teaching Employees Association. He has disclosed that he, on behalf of the 'Association' submitted written statement in this case. He has disclosed that Hariyana Vidya Mandir, affiliated to the Central Board of Secondary Education and their (Non-Teaching Employees) Union, is a registered one and all the 46 non-teaching employees of the School are attached to the Association. (*In course of his examination-in-chief he identified several documents and all those documents were admitted in evidence and accordingly marked as exhibited documents*). He has stated that he is well conversant about the facts and circumstances of this case. He has divulged that according to the terms and conditions of the affiliation, the School Authority is under obligation to pay remuneration to both the teaching and non-teaching employees of the School either according to the Central Government pay structure or according to the West Bengal Government pay structure. He has disclosed that the 'Association' placed the Charter of Demands before the School Authority and the said Charter of Demand contains signatures of 31 employees. He has disclosed that the School Authority did not meet the demands as mentioned in the Charter of Demands assigning the reason of scarcity of fund. He has disclosed that the 'Association' requested in writing the President, Executive Council for implementation of the Charter of Demands but no meeting was convened by the Management for discussion over the Charter of Demands and thus they informed the Labour Commissioner about their Charter of Demands and accordingly Joint Labour Commissioner conveyed a meeting, where the School Authority expressed its inability to meet up the Charter of Demands on account of paucity of fund. He has stated that subsequently the School Authority conveyed a meeting with the Union and in the meeting they expressed their inability to meet up the Charter of Demands due to paucity of fund. He has disclosed that they placed their Charter of Demands asking for granting facilities as mentioned in the 5<sup>th</sup> Pay

Commission, in which the salary and other benefits for non-teaching staff for non-aided institutions were mentioned, and they prayed for granting of benefits according to the Central 5<sup>th</sup> Pay Commission w.e.f. 01.01.1996. He has admitted that at that time they were enjoying D.A. and Transport Allowance. He has divulged that the Management in the bipartite discussion with Union pointed out the paucity of fund as the sole obstruction to implement the recommendation of the 5<sup>th</sup> Central Pay Commission. He has disclosed that the School Authority used to enhance the amount of D.A. at the rate of 6% at the interval of six months but after submission of Charter of Demands, the School Authority stopped the payment of enhanced rate of D.A. He has divulged that the School Authority on 27.01.1999, 19.03.2002 and 20.03.2006 issued three circulars asking the parents of the students for enhancement of tuition fees of the students on the ground of increasing the salary of employees under 5<sup>th</sup> Pay Commission. He has divulged that before submission of the Charter of Demands by the Association, the School Management used to increase the salary at the rate of 3% per annum according to the normal procedure. He has divulged that after the submission of Charter of Demands, the School Authority has introduced ESI Scheme for non-teaching staffs and for that reason the Association is withdrawing the demand for medical benefits from the School Management. He has admitted that although they do not get conveyance allowance, they usually get some bus fare.

During cross-examination he has admitted that although at the time of submission of Charter of Demands on behalf of the Union, there were 46 members of the Union but he did not file the register of the membership of the Union. He has admitted that he did not file any receipt book showing the payment of subscription by the Union members. He has admitted (on 13.05.2014 in course of further cross-examination) that he has been dismissed from his service on and from 17.05.2013 by the authority of 'Vidya Mandir'. He has disclosed that the constitution of their Union was not filed in this case and he has admitted that he cannot say whether the dismissed employee can be a member or office bearer of the Union. He has admitted that the source of income of the School is tuition fee and donation since the School is an un-aided School. He has admitted that educational qualification of all the non-teaching staffs and teaching staffs are not same and thus their salaries are also not same. He has expressed his lack of knowledge about the amount of total wage bill of non-teaching staffs of the School in a year. He has disclosed that after submission of their Charter of Demands, the School Authority revised the fee structure of the students and after 01.04.2009 the Management has increased the salary of the employee who completed 12 years of service. He has admitted that he did not submit the report of 5<sup>th</sup> Pay Commission to show that there is provision in the said report that the employees of un-aided School are entitled to get the benefit of 5<sup>th</sup> Pay Commission. He has admitted that no document has been filed by them to show that any one of the non-teaching staffs refused to accept enhanced salary. He has again admitted that no letter or document was filed before this Tribunal to show or claim that after enhancement of pay



on 01.04.2009, any one of the employees is getting less salary as demanded by them as per 5<sup>th</sup> Pay Commission. He has disclosed that their written reply against Exbt.-10 was marked as Exbt.-11 and he has admitted that such Exbt.-11 does not contain any statement to the effect that after making calculation of the School's income and expenditure, the contents of the Exbt.-10 regarding paucity of fund was ascribed as wrong. He has admitted that he has no knowledge about 'region-cum-industry' basis. (*Upon referring chapter-2 clause-3 and sub-clause-(v) in page no. 6 of Exbt.-1 to the witness*) He has admitted that the referred 'clause' does not show that the School is entitled to get Central Government Pay Scheme or State Government Pay Scheme. During cross-examination he has admitted that the Association did not file any paper showing the corresponding pay scale of non-teaching staff either before the School Authority or before this Tribunal on the basis of which they prayed for hike of pay scale. He has admitted (*when page no. 28 of Exbt.-48 was shown to him*) that page no. 28 does not contain anything about D.A., transport allowance, washing allowance, overtime, children education assistance, leave, maternity benefit, ex-gratia, medical allowance and tiffin allowance. He has reiterated that Management increased the salary of the employees. He has stated (after going through the Exbt.-31 and Exbt.-33) that the Union wanted to know in writing from the Management whether the increased salary is less than the salary recommended in 5<sup>th</sup> Pay Commission. [The P.O. who recorded the evidence has mentioned unambiguously that – *practically it is found (from Exbt.-33) that nothing is mentioned to this extent in the said page.*]. He has admitted that the Association has not filed any document in this case to show that any similar School having same status like Hariyana Vidya Mandir in respect of strength of employees, number of students, fee structure and financial burden are getting similar benefits as the Association has demanded by virtue of Charter of Demands. He has divulged that in view of increase of salary by the School Authority and keeping in mind the 'Leave Rules' of the School Authority and in view of ESI benefits upon all the employees of the School, the Association has opted to 'not press' the claim for medical benefits and he has also admitted that actual 'conveyance allowance' are being paid to the employees by the School. He has divulged his lack of knowledge about amount of actual salary as on January, 2015 and quantum of salary as on 31.03.2009 in respect of 29 numbers of employees, who are the signatories of Charter of Demands. (During cross-examination attention of PW-1 was drawn to the clause-(v) in page no. 6 of the Exbt.-1) The PW-1 has admitted that the said clause-(v) speaks about 'staff category. He has admitted that there is no specific claim in respect of 'darwan' and 'electrician' in the Charter of Demands. He has divulged that there was no post of 'electrician' in the School. He has admitted that there is no mention in the Charter of Demands about who are included in the Group-D employees. He has admitted that by Exbt.-10, Exbt.-13 and Exbt.-21 the Management of the School informed about the paucity of fund. He has admitted that at present employees of the School are getting more salary in comparison with the figure that they were getting

at the time of placing Charter of Demands. He has admitted that the Association did not submit any application to the Management informing that the increase of salary would have been more than that which has already been implemented by the School Management on 5<sup>th</sup> Pay Commission. He has admitted that the Association did not write any letter to the Management informing their logic behind the claim of washing allowance, ex-gratia and tiffin allowance. He has admitted that the Association never complained to the Management expressing grievance that employees are not getting overtime allowance as per the statutory rate and further although the eligible workers are entitled to get maternity benefits, they are deprived to get such benefit. He has admitted that the School Authority has introduced the maternity benefit scheme after 2009. He has admitted that he did not file any circular or guideline in this case to show that there is provision in the 5<sup>th</sup> Pay Commission for payment of children education assistance. He has admitted that Exbt.-1 (affiliation bye-laws) does not contain the definition of the word 'staff' and further there is no description for the posts of Sweeper, Darwan, Masi, Ayas, Peon, Clerk, Electrician, etc. as well as under which category they are falling. He has admitted that 'Group-D category' is not mentioned in the bye-laws. He has admitted that 'affiliation bye-laws' does not contain the post of 'Laboratory Assistant'. (Attention of the witness was drawn on the Page no.33 of Exbt.-48) He has admitted that in page no.3 there is mention of 'Laboratory Staff' but there is no mention of the post of 'Laboratory Assistant'. He has admitted that Exbt.-48 does not speak about the post of 'Peon'. He has denied the suggestion of the School Authority that they are not entitled to get enhanced pay as per 5<sup>th</sup> Pay Commission since none of the posts are available in Exbt.-48. He has admitted that the Association did not file any document in this case to show that any of the on-teaching staffs had ever complained regarding their enhancement and quantum of salary.

One Leena Chatterjee, President of the Union, examined herself as PW-2. She filed examination-in-chief on affidavit and she was cross-examined by the Ld. Advocate for the 'Vidya Mandir'. She has stated that non-teaching staffs of the employer are entitled to salaries, emoluments, terms of employment and conditions of service at least as per the affiliation bye-laws of the CBSE. She has stated that the employer did not pay salaries, emoluments, etc. as per the affiliation bye-laws of the CBSE and thus the Union was forced to submit Charter of Demands. She has stated that the Union has claimed scales of pay for the staffs designated as Group-D staff by School which was corresponding to the jobs of 'Bearer' in terms of recommendation of the Central 5<sup>th</sup> Pay Commission as applicable to the School. *(In the light of the evidence of PW-1, it is realized that the PW-2 has made such statement, particularly using the term 'Bearer', with a view to fill up the lacuna of the evidence of PW-1.)* She during her examination-in-chief before the Tribunal has disclosed that her 'examination-in-chief on affidavit' was prepared by their lawyer Sri Rananeesh Guha Thakurta. During cross-examination she has admitted that she did not file any document to show that she is the President of the

Union and further she has admitted that she did not file any 'Letter of Authorization' duly authorized by the Union to depose in this case. She has admitted that she did not put her signature on the Written Statement filed in this case. She has admitted that the Association did not file any document showing comparative chart of the benefits available to the non-teaching employees of other School of the same region affiliated to the CBSE. She has admitted that there is no whisper in the Written Statement of the Association regarding her statement made in para. no. 3 of her examination-in-chief on affidavit. She has admitted that in para. no. 10 of her examination-in-chief on affidavit she has stated that inspite of enhancement of tuition fees of the students w.e.f. April, 2006, the School Authority did not give the benefits of 5<sup>th</sup> Pay Commission to the non-teaching staffs of the School but there is no mention of such matter in the Written Statement filed by the Association. She has admitted that her statement in para. No. 9 of her examination-in-chief on affidavit in the matter of non-compliance by the School Authority regarding payment of D.A. to the non-teaching staffs of the School as per the direction/prescription of the Government of India has not been mentioned in the Written Statement. She has admitted that Exbt.-42 does not have any provision specifying 'teaching' or 'non-teaching' staffs but there is mention of only staff. She has admitted that during pendency of this case the School Authority has increased the quantum of salary in respect of the non-teaching staff of the School. She has admitted that her statements contained in para. no. 15 of her examination-in-chief on affidavit are not mentioned in the Written Statement filed by the Union. She has admitted that Hariyana Vidya Mandir is an 'unaided School'. (Attention of the witness was drawn on para. (v) in page 6 of Exbt.-1) She has admitted that categories of staffs such as Senior Clerk, Lab. Assistant, Clerk and Peon have not corresponding scale in page nos. 31 and 33 of the Exbt.-48. She has further disclosed that Sweeper, Masi, Aya and Electrician are mentioned as Group-D employees in the Charter of Demands but actually there is no corresponding scale in Exbt.-48 in respect of all those employees. She has admitted that although Charter of Demands was submitted relating to non-teaching staffs but in the page nos. 30 to 33 of Exbt.-8 there is no mention of pay and grade regarding non-teaching staff of a School. She has admitted that page no. 31 of Exbt.-48 contains the salary scale of 'Bearer', which is implemented in respect of Group-D staff of Central School located in Salt Lake area. She has admitted that she has deposed in respect of Hariyana Vidya Mandir, which is a School and certainly the said School cannot be termed as canteen. She has admitted that the term 'Bearer' refers in page no. 31 of the Exbt.-48 is in respect of 'canteen', instead of the School. She has admitted that Part-B of the Exbt.-48 contains the 'Preface' and the same does not mean that the pay scale of canteen staff is also applicable to the non-teaching staff of the School. She has again admitted that Hariyana Vidya Mandir does not fall within the category of Central School and the Hariyana Vidya Mandir does not get any grant from the Central Government. She has disclosed that Part-B of Exbt.-48 does not specify which category of staff falls within

‘Group-D’. She has divulged that affiliation of bye-laws (Exbt.-1) does not deal with Rules regarding leave. She has expressed her lack of knowledge whether the salary was enhanced in between 124% to 358%. She has divulged her identity as a teacher of St. Thomas Day School. She has admitted that the Association has not filed any document containing grievance by non-teaching staffs either to the Management or to the Union after enhancement of salary.

M/s. Hariyana Vidya Mandir examined Sri Ashim Kr. Mondal as OPW-1.

The OPW-1 Ashim Kr. Mondal filed his examination-in-chief on affidavit and in his examination-in-chief on affidavit he disclosed that he was in service of Hariyana Vidya Mandir and retired from his service on 31.03.2012. He has disclosed that after retirement he joined in the School as Administrative Manager (Retainer) and his such assignment came to an end w.e.f. 31.03.2018. He has disclosed that he appeared before this Tribunal to depose on receiving witness summons. He has disclosed that he is appointed with the facts and circumstances of this case since at the material point of time he was associated with School Authority. He has divulged that Hariyana Vidya Mandir is affiliated to Central Board of Secondary Education and the ‘Vidya Mandir’ is totally an unaided private School. He has divulged that ‘Vidya Mandir’ has got no source of income other than the student fees and donations. He has divulged that PW-1 Susanta Kr. Pal is a dismissed employee of the School and he was dismissed from his service of the School w.e.f. 17.05.2012. He has stated that the Management of the School by filing Written Statement challenged the Order of Reference on the ground that the ‘Union’ in question has got no *locus standi* and representative character. He has mentioned the ‘Designation of work’ against the names of 30 numbers of employees who put their signatures on the Charter of Demands dated 14.03.2007. He has divulged that there is no Charter of Demands for Darwan and Electrician. He has stated that Hariyana Vidya Mandir is a School and the same is not a ‘canteen’. He has disclosed that the term ‘Bearer’ as it is found in page no.31 of Exbt.-48 is in respect of ‘canteen’ instead of a ‘School’. He has divulged that Hariyana Vidya Mandir does not fall within the category of Central School and the ‘Vidya Mandir’ does not get any grant from the Central Government. He has stated that Part-B of Exbt.-48 does not specify which category of staff falls within Group-D. He has pointed out that there is no mention about Laboratory Assistant, Upper Division Clerk and Junior Division Clerk either in the Exbt.-1 or in the Exbt.-48. He has divulged that during the pendency of this case there was an increase in the pay package of non-teaching staffs of the School who are covered under the Charter of Demands. He has confirmed that the version of the PW-1 during his evidence on 20.02.2015 regarding the quantum of salary of the non-teaching staffs as on 31.03.2009 and January, 2015 is correct. He has stated that the School is covered under the Employees’ State Insurance Act, 1948. He has divulged that the non-teaching staffs are getting Conveyance Allowance on actual basis and they also get the Dearness Allowance from time to time as per the Government Circulars. He has submitted some documents

and those documents have been marked as Exbt.-A, Exbt.-A/1, Exbt.-A/2, Exbt.-B, Exbt.-C, Exbt.-D and Exbt.-D/1. He has divulged that in terms of Bye-Laws (Exbt.-C) the teaching staffs and non-teaching staffs are required to pay prescribed scale and D.A. as per the rate of State Government or Central Government except Group-D employees. He has divulged that in respect of non-teaching staffs there is no corresponding scale available in 5<sup>th</sup> Pay Commission's recommendations.

During cross-examination he has disclosed that although he is a retired staff, still he visits M/s. Hariyana Vidya Mandir on call for the purpose of consultancy service. He has divulged that there is no agreement in between him and Hariyana Sewa Sadan or Hariyana Vidya Mandir for consultancy service. He has divulged that the School has got no source of income other than students' fees and donations. He has admitted that the School has not submitted the balance sheets for the years 2009-2010 and onwards. He has disclosed that it is not the mandate of CBSE that all the affiliated Schools are to abide by the recommendations of the 5<sup>th</sup> Central Pay Commission. He has divulged that non-teaching staffs of the School have acknowledged in writing that for the sake of paucity of fund, recommendation of 5<sup>th</sup> Central Pay Commission could not be implemented in its letter and spirit. He has further divulged that it is true that for the sake of implementation of 5<sup>th</sup> Central Pay Commission, the School is required to enhance the students' fees but such enhancement of fees happened sometime 15 years back. He replied 'no' to a question of the Association to the effect – Did the School extend the benefit of 5<sup>th</sup> Central Pay Commission to its non-teaching employees? He replied that the 5<sup>th</sup> Central Pay Commission is silent to the question of the Association whether is there anything in the 5<sup>th</sup> Central Pay Commission to prohibit the extension of its benefit to the non-teaching staff of private non-aided School. He has denied the suggestion of the Association that the School is financially well capable to allow the Charter of Demands made by the non-teaching staffs. He has divulged that it is impossible to bring all the bills, vouchers and other documents in support of the balance-sheet of the School filed in this case.

The OPW-1 was recalled for his examination on the prayer of the Hariyana Vidya Mandir and accordingly OPW-1 Sri Ashim Kr. Mondal was examined-in-chief on recall on 04.05.2023 and he was cross-examined on recall. The OPW-1 in his examination-in-chief on recall as stated that in the years 2006, 2007, 2008, 2009 and 2010 Mrs. Nandini Sen was the Principal of Hariyana Vidya Mandir and he worked with her and thus he knows her signature. He has filed photocopies of 4 separate documents, such as 'Monthwise statements of gross salaries paid to the non-teaching staffs for the year 2006-07, for the year 2007-08, for the year 2008-09 and for the year 2009-10'. All those documents were marked as Exbt.-E series. He has identified the copy of letter dated 19.12.2008 issued by Mrs. Nandini Sen to the President, Hariyana Vidya Mandir Non-Teaching Association and the same was marked as Exbt.-F. During cross-examination he has divulged that Exbt.-E series were prepared by the Accounts Department of Hariyana Vidya Mandir under his supervision and all those documents were prepared on the basis

of the salary sheets of the employees. He has admitted that Exbt.-E series do not contain his endorsement. He has denied the suggestion of the Association that Exbt.-E series are manufactured documents.

After completion of the evidence in this case, on the prayer of the Ld. Advocates for the both sides the matter was fixed for argument hearing.

In this case, Ld. Advocates of both the parties made arguments in support of their respective case. Apart from making oral argument, Ld. Advocates for the parties to this case submitted their respective written arguments.

Ld. Advocate for M/s. Hariyana Vidya Mandir relied upon various rulings and the Ld. Advocate supplied all those rulings along with the written argument. The Ld. Advocate who has submitted written notes of argument on behalf of the 'Association' submitted that the case of the 'Association' is standing on the 'fact' and exhibited documents and thus he did not rely upon any ruling.

It is seen that the PW-2 in course of her examination-in-chief before this Tribunal disclosed that her examination-in-chief on affidavit was prepared by 'their' Lawyer Sri Rananeesh Guha Thakurta. It is seen from the examination-in-chief on affidavit of PW-2 that the Ld. Advocate R. Guha Thakurta identified the whiteness before the Notary Public.

On thorough scrutiny of the record any written instrument like 'Authority' or 'Vakalatnama' duly executed by the competent authority of the 'Association' and accepted by Ld. Advocate Rananeesh Guha Thakurta could not be traced out since no such written instrument is lying with the record.

It is noted here that after joining in this Tribunal this P.O. started to hear this matter on and from 13.12.2022 and since then it has been observed that the Ld. Advocate Saibal Mukherjee has been representing the 'Association' being a legal professional. Moreover, he has submitted the written notes of argument on behalf of the 'Association' on 04.03.2024. But, unfortunately, inspite of thorough scrutiny of the record any written instrument like 'Authority' or 'Vakalatnama' duly executed by the competent authority of the 'Association' and accepted by Ld. Advocate Saibal Mukherjee could not be again traced out since no such written instrument is lying with the record. The matter of lack of 'Authorisation' or 'Vakalatnama' duly executed by the competent authority of the 'Association' and accepted by Ld. Advocate Saibal Mukherjee has been brought to his notice but he evaded the matter assigning the reason of 'mere technicalities'.

In course of oral argument in support of the written notes of argument submitted by Ld. Advocates for the both sides, Ld. Advocate Ranjay De on behalf of M/s. Hariyana Vidya Mandir took this Tribunal to the 'Charter of Demands' dated 14.03.2007 (Exbt.-6) and he has drawn the attention of this Tribunal to the heading 'Hariyana Vidya Mandir Employees Association' of the letter pad and thereafter he has drawn the attention of this



Tribunal on the letter dated 16.07.2007 issued to the President, Executive Council, Hariyana Sewa Sadan (Exbt.-7) typed on the letter pad with the heading 'Hariyana Vidya Mandir Non-Teaching Employees Association'. Similarly, he has drawn the attention of this Tribunal on Exbt.-8, Exbt.-9, Exbt.-11, Exbt.-13 etc. to show the heading 'Hariyana Vidya Mandir Non-Teaching Employees Association' of the letter pads on which several letters were typed. Ld. Advocate Ranjay De has submitted that the term 'employees' of a School includes both 'teaching' and 'non-teaching' staffs of such School. He submits that Exbt.-6 i.e. the Charter of Demands was prepared and typed in the paper of the letter pad with the heading 'Hariyana Vidya Mandir **Employees** Association' and thus it can be supposed that such Hariyana Vidya Mandir Employees Association is an Association for both teaching and non-teaching staff of Hariyana Vidya Mandir. He submits that Exbt.-7, Exbt.-8, Exbt.-9, Exbt.-11, Exbt.-13 etc. go to show that those were prepared on the papers of letter pad under heading 'Hariyana Vidya Mandir **Non-Teaching** Employees Association' but the said 'Association' subsequently did not submit any clarification or correction in respect of the glaring difference of the character of the 'Association' due to mismatching of 'name' of the 'Association'. He has submitted that due to such clear anomaly as pointed out, the 'Association'/'Union' under reference has lost its representative character in connection with this referred industrial dispute. He has submitted that in view of such glaring 'anomaly' the 'Association' /'Union' under reference has no *locus standi* or representative character.

This Tribunal sought clarification of the statement 'proposed revision of tuition fees of the students and session fees for new admission w.e.f. April, 2008' in para. 6 of the written notes of argument from the Ld. Advocate for the 'Association'. In reply, Ld. Advocate has stated that the main and important document in support of the case of the 'Association' is Exbt.-39. He has submitted that Hariyana Vidya Mandir on 20.03.2006 issued a circular to the parents/guardians of all students studying in Hariyana Vidya Mandir and he has taken this Tribunal to 5 lines of para. 2 of the said circular and has submitted that the Managing Committee of Hariyana Vidya Mandir issued circular to the parents and guardians of the students inviting their attention regarding hike of the tuition fees per month for the sole purpose of implementation of Government of India's 5<sup>th</sup> Pay Commission's scale of pay and allowances in respect of the employees of the School. He has submitted that Management of Hariyana Vidya Mandir intended to fetch more money from the students studying there avowing to implement the recommendation of the 5<sup>th</sup> Central Pay Commission in respect of its employees but in reality the Management of Hariyana Vidya Mandir declined to hike the pay scale, allowance and other benefits of the non-teaching staffs of the School.

In connection with such contention, Ld. Advocate for Hariyana Vidya Mandir has submitted that the Exbt.-6 i.e. Charter of Demands was prepared and placed on 14.03.2007 whereas the Exbt.-39 i.e. the circular of Hariyana Vidya Mandir was issued on 20.03.2006. So, the said circular (Exbt.-39) was certainly within the knowledge of the

office bearers of the 'Association' on 14.03.2007 or any previous date of 14.03.2007. In spite of that the 'Association' did not mention the subject matter of the circular dated 20.3.2006 (Exbt.-39) in the Charter of Demands (Exbt.-6) with a view to making stronger and more reasonable the claims embodied in the charter but the 'Association' did not take into account Exbt.-39 while preparing the Exbt.-6.

On query by this Tribunal, the Ld. Advocate for the 'Association' has failed to justify his contention made in para. 7 in his written notes of argument by showing any documentary evidence. Actually he has failed to establish his statements to the effect that the School under Reference has already implemented certain provisions of 5<sup>th</sup> Pay Commission as well as senior teachers and certain office staffs have been offered 5<sup>th</sup> Pay Commission.

In the matter of the statements in para. no. 9 of the written notes of argument, this Tribunal has made a query to which particular employees, the School Management started to make ad hoc payment but in reply the Ld. Advocate has pointed out the Exbt.-15 to justify such statement without mentioning the names of employees, who received ad hoc payment.

This Tribunal has sought the clarification of some specific claims made by the Union under Reference in para. nos. 21, 22 and 25 of the written notes of argument. But the Ld. Advocate for the 'Association' has contended that the 'Association' did not submit any document in support of their claims to the effect that the 'Management has enough financial capacity to meet such demands comfortably' and 'in the year 2009 the School Authority earned profit amounting to Rs.27 lakh as per available records' as well as 'paucity of fund was not a sustainable issue since that it is noted that there had been an excess of Rs.19 lakh only in 2008-2009 and as such there was no paucity of fund to deny the benefits of the workmen'.

### **Decisions with reasons**

#### **Issue Number – 1**

I would like to note down the Issue No. 1 which was framed by the appropriate Government in the referral order.

*“Whether demand of the Union for entitlement of pay scale and other benefits as mentioned in their Charter of Demands dated 14.03.2007 to the non-teaching staff of Hariyana Vidya Mandir is **justified** (copy of Charter of Demands dated 14.03.2007 is enclosed).”*

According to the established procedure, for convenience, discussion is made Issue-wise to come to the conclusion and also for making decision on such issues, so framed.

So, it is understood that by way of referring the industrial dispute to this Tribunal, the State Government intended that this Industrial Tribunal would make decision on Issue No.1, by answering whether the demands/claims made by the Union ('Association') according to its Charter of Demands dated 14.03.2007 (in the matter of entitlement of pay scale and other benefits of the non-teaching staffs of Hariyana Vidya Mandir) is justified.

In this initial stage, I like to note here the settled principles in respect of referred industrial dispute. The Hon'ble Supreme Court of India in the matter of Oshiar Prasad vs. Sudamdih Coal Washery, reported in (2015) 4 Supreme Court Cases 71, has been pleased to observe – *"From the above it therefore appears that while it is open to the Appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to those points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge its scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."*

*'Something incidental to a dispute' must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct [to it].*

*It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when 'industrial dispute exists' or 'is apprehended between the parties'. Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference."*

This is a referred industrial dispute by the appropriate Government u/s. 10 read with section 2A of the Industrial Disputes Act, 1947. The instant industrial dispute has been referred to this Industrial Tribunal for proper adjudication of the 'Issues', which have already been framed by the appropriate Government in the 'Order of Reference'.

After careful scrutiny of the Charter of Demands annexed with the Order of Reference, Written Statements submitted by the parties to this case and the evidence on record, it is surfaced that the instant industrial dispute under Reference is related to demands in consonance with the recommendations of the 5<sup>th</sup> Central Pay Commission regarding pay scales, dearness pay (@50% of basic salary per month to be included in the basic pay), dearness allowance, other allowances and benefits towards the non-teaching staffs of Hariyana Vidya Mandir under the umbrella of Hariyana Vidya Mandir Employees Association.

In this case, in course of hearing on merit i.e. during evidence stage of this case witnesses of both the parties to this case identified various documents, which were filed along with list of documents or afterwards, and those documents were marked as exhibited documents.

From the trend of evidence of PW-1 and PW-2 it is realized that both the witnesses in their respective examination-in-chief tried to establish that non-teaching staffs, more particularly the staffs who are the signatories of the Charter of Demands dated 14.03.2007, are eligible to get pay scale, allowances and benefits in terms with the recommendations of 5<sup>th</sup> Central Pay Commission on the backdrop of the fact that Hariyana Vidya Mandir is a School affiliated to the Central Board of Secondary Education (CBSE) and according to the CBSE's affiliation bye-laws (Exbt.-1) *the Schools in India must pay salaries and admissible allowances to the staff not less than the corresponding categories of employees in the State Government Schools or as per scales etc. prescribed by the Government of India*. The 'Association' has pleaded that to get affiliation from Central Board of Secondary Education, an educational institution is required to receive No Objection Certificate from Education Department (School Education), Secondary Branch, Government of West Bengal and Hariyana Vidya Mandir got such No Objection Certificate (Exbt.-3). More particularly, the 'Association' has pleaded that the authority of the School, which is affiliated to the CBSE, is under obligation to pay remuneration to both the teaching and non-teaching employees of the School either as per Central Government pay structure or as per West Bengal Government pay structure.

It is seen that in course of evidence of PW-1 Susanta Kr. Pal, the 'Charter of Demands' dated 14.03.2007 was marked as Exbt.-6. The PW-1 in his evidence-in-chief has disclosed that they prayed to give effect to their demands from 01.01.1996 and in the same breath he divulged that at that time they were enjoying D.A. and Transport Allowance. The PW-1 in his evidence has made a general statement to the effect that *'some teaching and non-teaching staffs were benefited as per recommendation of the Central Pay Commission by the sweet will of the Management. But, most of the employees were deprived'*. The fact remains that the PW-2, Smt. Leena Chatterjee, President of the Union under Reference, in her cross-examination has admitted that – *'During the pendency of this case, the School Authority has increased the quantum of salary in respect of non-teaching staff of the School.'* So, it is evident that PW-2 being the President of the 'Association' has contradicted the version of the PW-1 Susanta Kr. Pal, the Secretary of the 'Association'. Further, the PW-1 has made a statement to the effect *'most of the non-teaching staffs were not provided with the benefits of 5<sup>th</sup> or 6<sup>th</sup> Central Pay Commission'*. It is clear that the PW-1 Susanta Kr. Pal deposed in this case under the capacity of General Secretary of Hariyana Vidya Mandir Non-Teaching Employees Association and thus it can be supposed that he had every information about the fact of the case as well as the incidents happened relating to the non-teaching employees of the

School. In spite of that the PW-1 evaded to mention the names of all particular non-teaching staffs to whom the Management of the School extended the benefits of 5<sup>th</sup> Central Pay Commission. It is amazing to note that the PW-1 Susanta Kr. Pal going beyond the fact of the case stated about non-payment of benefits according to the recommendation of the 6<sup>th</sup> Central Pay Commission to the non-teaching staffs by the Management of the School. It is to note here that in para. nos. 7 and 9 of the written notes of argument, Ld. Advocate for the 'Association' has mentioned that the School Management has already implemented certain provisions of 5<sup>th</sup> Pay Commission in respect of some senior teachers and certain office staff as well as the School Management started to make ad hoc payment to 'some' as per its whims and fancies, intending to create a split in the Trade Union movement. But unfortunately, at the time of the argument the Ld. Advocate for the 'Association' evaded to explain the matter (the allegation of extending the benefits of 5<sup>th</sup> Pay Commission to certain office staff as well as making ad hoc payments to some employees) in detail referring the exhibited document(s) as a measure to bring in the light the names of 'certain staff' and 'some employees' but he only pointed out Exbt.-15 in support of his contention. So, in view of such failure to disclose the names of particular staffs, to whom the benefits of 5<sup>th</sup> Pay Commission were extended by the Management of the School, may be taken as omnibus statements/allegations.

It is noted here that Exbt.-6 i.e. Charter of Demands was submitted on 14.03.2007 and the appropriate Government made the Referral Order on 21.05.2009.

The instant industrial dispute was raised on the basis of Charter of Demands dated 14.03.2007 submitted by 'Hariyana Vidya Mandir Employees Association' for the cause of enhancement of pay scale, allowances and benefits in consonance with the recommendation of 5<sup>th</sup> Central Pay Commission in respect of 31 employees, who are the signatories of the said Charter of Demands. I would like to point out here that in the contents of the letter with reference no. HVNEA/01/07 dated 14.03.2007 nowhere it is mentioned in so many words that the 'Charter of Demands' was exclusively in respect of 'non-teaching employees' barring serial nos. 8 and 9 under the heads 'leave' and 'ex-gratia'. Under serial no.1 four categories of staffs are mentioned, who are not the teaching staffs. The PW-1 in his cross-examination has divulged that they did not file the membership register of the Union, receipt book showing payment of subscription by the Union members as well as the constitution of their Union.

The Ld. Advocate for Hariyana Vidya Mandir in written argument as well as oral argument raised question over the representative character of the 'Union' under whose letter-pad the Charter of Demands (Exbt.-6) was filed. Apart from that Ld. Advocate for Hariyana Vidya Mandir raised question over the *locus standi* of the 'Union' under Reference in the instant industrial dispute. Ld. Advocate for the 'Vidya Mandir', to justify his contention had taken this Tribunal to the heading of letter pad of Exbt.-6 and

the heading of letter pads of Exbt.-7, Exbt.-8, Exbt.-9, Exbt.-11, Exbt.-13 etc. He pointed out that Exbt.-7 was prepared in the letter pad with the heading 'Hariyana Vidya Mandir Employees Association' and Exbt.-7, Exbt.-8, Exbt.-9, Exbt.-11, Exbt.-13 etc. were prepared in the letter pads with the heading 'Hariyana Vidya Mandir Non-Teaching Employees Association'. He contended that the nature and purpose of 'Hariyana Vidya Mandir Employees Association' and 'Hariyana Vidya Mandir Non-Teaching Employees Association' cannot be identical and similar because the term 'employees' includes both teaching and non-teaching employees whereas from the name of 'Hariyana Vidya Mandir Non-Teaching Employees Association' it can be safely said that it is for the cause of only non-teaching employees.

In view of the material facts as discussed in above two paragraphs, I am of the opinion that the points, such as lack of representative character and lack of *locus standi*, raised by the Ld. Advocate for 'Vidya Mandir' has substance. After having a glance upon the Referral Order under Memo. No.494-I.R./IR/11L-05/09 dated 21.05.2009 of the Labour Department, Government of West Bengal, Writers' Buildings, Kolkata-700001, it is found that it contains reference of industrial dispute in between M/s. Hariyana Vidya Mandir (A Unit of Hariyana Sewa Sadan) and their workmen, represented by Hariyana Vidya Mandir Non-Teaching Employees Association. The fact remains that although the Charter of Demands dated 14.03.2007 was prepared in the letter pad of 'Hariyana Vidya Mandir Employees Association' but the appropriate Government has mentioned the name of the union as 'Hariyana Vidya Mandir Non-Teaching Employees Association'. Thus, there is no occasion appearing before this Tribunal to travel beyond the Reference made by the appropriate Government.

The PW-1 in his cross-examination has divulged that Hariyana Vidya Mandir is an unaided School and the source of income of the School is tuition fee and donation. The PW-1 has admitted that the provision of sub-clause (5) of clause (3) in Chapter-II in page no.6 of Exbt.-1 does not speak that the School is entitled to get Central Government Pay Scheme and State Government Pay Scheme. Such admission of PW-1 came when the Ld. Advocate for 'Vidya Mandir' during cross-examination **asked him to show** any document on the basis of which the service conditions of Central Government or State Government aided Institutions or private unaided non-Government Institutions are decided.

PW-1 Susanta Kr. Pal deposed in this case in the capacity of General Secretary of Hariyana Vidya Mandir Non-Teaching Employees Association. The said General Secretary Susanta Kr. Pal submitted written statement on behalf of the workmen, represented by Hariyana Vidya Mandir Non-Teaching Employees Association. Thus, it is beyond doubt that the General Secretary, Susanta Kr. Pal (PW-1) deposed truthfully for the cause of the workmen (non-teaching staffs) having clear and full knowledge about the



genuineness of the claims of the workmen and the relevant bye-laws, pay commission recommendation and other documents.

A question in the fashion '*The item Nos.2 to 11 of the charter of demands annexed to the order of reference are coming under which corresponding pay scales of 5<sup>th</sup> Pay Commission*' was put to the PW-1 Susanta Kr. Pal in course of his cross-examination by the Ld. Advocate for 'Vidya Mandir' but in the reply the PW-1 divulged that the claims of the Charter of Demands are coming under the page no. 28 of Exbt.-48 (5<sup>th</sup> Pay Commission Acceptance Orders 1997).

Upon receiving such answer from PW-1, **his attention was drawn** to the page no. 28 of Exbt.-48. After reading the contents of page no. 28 of Exbt.-48, the PW-1 admitted that page no. 28 does not contain anything about D.A., Transport Allowance, Washing Allowance, Overtime, Children Education Assistance, Leave, Maternity Benefit, Ex-gratia, Medical Allowance and Tiffin Allowance. He has further divulged that he on 13.05.2014 already stated that the Management increased the salary of employees. He has stated (after going through the Exbt.-31 and Exbt.-33) that the Union wanted to know in writing from the Management whether the increased salary is less than the salary recommended in 5<sup>th</sup> Pay Commission. [The P.O. who recorded the evidence has mentioned unambiguously that – *practically it is found (from Exbt.-33) that **nothing** is mentioned to this extent in the said page.*] So, it is surfaced that PW-1 has made outrightly false statement before the Tribunal in course of his deposition. With a view to the claims falsely made by the witness, suffice it to say that the credibility of the witness has substantially diminished before this Tribunal.

Moreover, he has admitted that in view of increase of salary by the School Authority and keeping in mind the 'Leave Rules' of the School Authority and in view of ESI benefits upon all the employees of the School, the Association has opted to '**not press**' the claim for medical benefits and he has also admitted that actual 'conveyance allowance' are being paid to the employees by the School.

In course of evidence, the Charter of Demands dated 14.03.2007 has been marked as Exbt.-6. It is revealed from the Exbt.-6 that 'Hariyana Vidya Mandir Employees Association' requested the President, Executive Council, Hariyana Sewa Sadan for reformulating the scales in conformity with the recommendation of the 5<sup>th</sup> Central Pay Commission in respect of (i) Upper Division Clerk, (ii) Laboratory Assistant, (iii) Junior Clerk and (iv) Group-D.

The Ld. Advocate for 'Vidya Mandir' during cross-examination of PW-1 had drawn his attention on clause-(v) in page-6 of Exbt.-1 and the PW-1 admitted that the said matter is relating to '**staffs**'. The PW-1 has **admitted** that affiliation bye-laws (Exbt.-1) does not contain the definition of the word 'staff' and there is no description for the posts of Sweeper, Darwan, Masi, Ayas, Peon, Clerk, Electrician, etc. as well as there is no clarification in which category all those posts are included. The PW-1 in his cross-

examination disclosed the designation and post held by the persons named in serial nos.1 to 30. He has divulged that the person namely Vibekananda Chowdhury in serial no.22 is the Electrician. Thereafter, he has admitted that – ‘*There is no charter of demands for Darwan and Electrician.*’ (PW-1 made such statement in an unguarded moment because he subsequently stated – ‘*There is no post of Electrician and there is Charter of Demand for Group-D*’). He has admitted that there is no mention in the Charter of Demand about who are included in Group-D employees. The PW-2 in her cross-examination has admitted that Part-B of Exbt.-48 does not specify about which category of staff will come within Group-D. She has further admitted that in the Charter of Demands (Exbt.-6) ‘*Group-D has not been specified with categories of staffs*’. [From such statement, it seems to me that the PW-2 actually intended to divulge – although ‘Group-D’ is mentioned in the Charter of Demands (Exbt.-6) but the corresponding categories of staffs as provided in Exbt.-48 equivalent to Group-D staff is not mentioned in the body of the Exbt.-6.]

Again, the PW-2 in her cross-examination, after going through para. (v) in page-6 of Exbt.-1 has admitted that categories of Senior Clerk, Lab. Assistant, clerk and Peon have no corresponding scales in page nos.31 and 33 of Exbt.-48. Further, she has admitted that the categories of staffs like Sweeper, Masi, Aya and Electricians were included in Group-D category in the Charter of Demand but in fact there is no mention of corresponding scales of those categories of staffs in Exbt.-48.

From such statements and admissions of PW-1 and PW-2, it is no more unclear that the office bearers of the ‘Association’ perhaps had no idea and/or knowledge about nitty-gritty of Exbt.-48 and Exbt.-1. In spite of that they felt happy to submit Charter of Demands roping/involving Group-D staffs of Hariyana Vidya Mandir and other categories of staffs of Hariyana Vidya Mandir although there was no recognition of such categories of staffs, as mentioned in the Exbt.-6, either in Exbt.-48 or in Exbt.-1.

After going through Exbts.-10, 13 and 21, the PW-1 admitted that those documents go to show that the Management informed about the fact of paucity of fund. He has admitted that **at present the employees of the School are getting more salary in comparison with the figure that they were getting at the time of placing Charter of Demand**. Similarly, the PW-2 in her cross-examination has admitted that the ‘Association’ neither before the Conciliation Officer nor before the Tribunal submitted income-expenditure calculation sheet to contradict the claim of paucity of fund by Hariyana Vidya Mandir.

The Ld. Advocate for ‘Vidya Mandir’ has become successful in extracting from the PW-1 that – ‘*we did not write the management informing that the increase of salary would have been more than that of which has already been implemented by the school management on 5<sup>th</sup> Pay Commission. We did not also write any letter to the management intimating our logic behind the claim of washing allowance, ex-gratia and tiffin*

allowance.' The PW-1 has made voluntary disclosure to the effect that the School Authority has introduced the maternity benefit after 2009. Moreover, he has divulged that he did not file any circular or guideline to show that there is provision in the 5<sup>th</sup> Pay Commission for payment of children educational assistance.

Susanta Kumar Pal, General Secretary of the 'Association' examined himself as PW-1. The PW-1 during his cross-examination divulged that he was working as 'Laboratory Assistant' but he after going through the Exbt.-48 has **admitted** that affiliation bye-laws (Exbt.-1) does not contain any post of 'Laboratory Assistant'. Again, after going through the page no.33 of Exbt.-48 (5<sup>th</sup> Pay Commission Acceptance Orders 1997) does not contain the post of 'Laboratory Assistant'. Moreover, he has reiterated that there is no recognition of the designations 'Upper Division Clerk' and 'Junior Clerk' in the Affiliation Bye-laws (Exbt.-1). In the cross-examination, he divulged voluntarily that the post of 'Peon' is coming under the category of Group-D and thereafter consulting the Exbt.-48 he has admitted that nothing is contained there for recognizing the post of 'Peon'. The 'Association' examined Leena Chatterjee, the President of the 'Association' as PW-2. It is observed from the examination-in-chief on affidavit of PW-2 that she perhaps with the intention to fill up the lacuna of the evidence of PW-1 has stated that - *the Union has claimed scales of pay for the staffs designated as Group-D staffs by School which correspond to the jobs of 'Bearer'*. The PW-2 in her cross-examination in unequivocal language has admitted that – **'I am deposing in respect of Hariyana Vidya Mandir School not a canteen. Bearer refers in Ext.48 page 31 in respect of canteen instead of the School.'** Moreover, she has admitted that there is no statement in the written statement of the 'Association' alike her statement in para. 15 of her examination-in-chief on affidavit (in which she stated that the function of Group-D staff of the School correspond to the job of 'Bearer'). In view of such statements of PW-2, it is clear that she tried to fill up the lacuna of the evidence of PW-1 and/or the lacuna of Exbt.-6, as it is detected, by way of making a futile attempt with the intention to equate 'Bearer' engaged in the 'Canteen' with the 'Group-D' employed in the Hariyana Vidya Mandir. In my view, the Ld. Advocate for 'Vidya Mandir' has been successful to discredit the testimony of PW-2 by cross-examining her.

The Ld. Advocate for 'Vidya Mandir' cross-examined PW-2 on that point. During cross-examination the Ld. Advocate for 'Vidya Mandir' has become successful to extract from PW-2 that – *In between pages 30 to 33 of Exbt.-48 there is no mention of pay and grade as regards to the non-teaching staffs of a School*. Such disclosure certainly appears as adverse to the case of the 'Association'. Moreover, the PW-2 has made a useless statement to the effect that page no.31 contains salary scale of the Bearer which is implemented in respect of Group-'D' staffs of Central Schools located in the selfsame area like Salt Lake. Perhaps she was unmindful to the fact that Hariyana Vidya Mandir is an unaided private School, and such fact is admitted by the Association. Even she in her cross-examination has admitted that Hariyana Vidya Mandir is an unaided School.

Moreover, she has also admitted that Hariyana Vidya Mandir does not fall within Central School category and it does not get any grant from Central Government.

The PW-2 during her cross-examination has admitted that she made several statements in her examination-in-chief on affidavit going beyond the written statement filed by the 'Association'. So, making statements by PW-2 going beyond the written statement of the 'Association' may be termed as exaggeration and making such exaggeration by a witness about subject matter of the case certainly cause diminishing the credibility of a witness in the eye of the Tribunal.

The PW-2 in her cross-examination has **corroborated** the version of PW-1 by stating – 'During the pendency of this case, the school authority has increased the quantum of salary in respect of the non-teaching staff of the school.' After going through the Exbt.-42 she (PW-2) has admitted that such document does not contain any provision by specifically mentioning the teaching or non-teaching staffs.

Most important to note that the **PW-1** in his cross-examination has admitted that they did not file any paper before the Tribunal to show that any of the non-teaching staff had ever complained in the matter of their enhancement and quantum of salary. Similarly, the **PW-2** in her cross-examination has admitted that they did not file any document to show that any non-teaching staff ever raised any grievance in writing after enhancement of salary either before the Management or before the Union. Moreover, the PW-2 has admitted that she has no idea about the quantum of salary drawn by the signatories of the Charter of Demand. She has further **admitted** that during pendency of this case there is enhancement in respect of the salary of non-teaching employees but the percentage as regards to such enhancement has not been adhered to. Again, during cross-examination she has admitted that **she is not aware** that there is enhancement of salary in between 124% to 358%.

So, from such statements of PW-1 and PW-2 it is crystal clear that during pendency of this case enhancement of the salary of the non-teaching staffs of the 'Vidya Mandir' has taken place and further the non-teaching employees did not raise any protest or grievance in writing after enhancement of their salary either to the Managing Committee of the School or to the Union. The PW-2 being President of the Association under Reference does not keep up to date information about the quantum of salary drawn by the signatories of Exbt.-6 and further she did not deny that the quantum of salary of non-teaching employees has been enhanced in between 124% to 358%.

So, in view of such evidence of PW-1 and PW-2, it can be safely said that non-teaching employees of 'Vidya Mandir' had no grievance in respect of the quantum of their salary which was enhanced time to time by the Management of the School. In spite of that, the Charter of Demand dated 14.03.2007 (Exbt.-6) was submitted, the reason was perhaps best known to PW-1 and PW-2 (who is not an employee of Hariyana Vidya Mandir but she is a teacher of St. Thomas Day School).

In the written notes of argument the Ld. Advocate for the 'Association' has used terms like – 'proposed', 'offered' etc. This Tribunal at the time of oral argument requested the Ld. Advocate for the 'Association' to clarify the words 'proposed' and 'offered' used in para.6 and para. 7 of the written notes of argument. This Tribunal asked the Ld. Advocate for the 'Association' – (i) is the revision of tuition fees of the students and the sessions fees for new admission w.e.f. April, 2008 still under 'proposal' ? (ii) did the senior teachers and certain office staff accept the 'offer' of the School to extend the benefit of 5<sup>th</sup> Pay Commission to them? In reply, the Ld. Advocate for the 'Association' has stated that the case of the 'Association' is completely based on the Exbt.-39 i.e. the Letter with Reference No.HVM/Parents-2006-2007/Circular(3) dated 20.03.2006 issued by the then Principal in the letter pad of Hariyana Vidya Mandir. Ld. Advocate for the 'Association' took this Tribunal to para. 2 of the said Circular issued by the Principal of Hariyana Vidya Mandir and has explained that Hariyana Vidya Mandir issued the said Circular to the Parents/Guardians of all the students studying in Hariyana Vidya Mandir informing them about the increase of tuition fees w.e.f. April, 2006 for the purpose of implementation of Govt. of India's 5<sup>th</sup> Pay Commission's scale of pay and allowances, in respect of the employees of 'Vidya Mandir' and also to meet other allied expenses. He has also pointed out that in the said 'Circular' the Principal of Hariyana Vidya Mandir admitted that the Management approached the Ministry of Education, Govt. of West Bengal for extending approval to increase the tuition fee. He has submitted that the Management of Hariyana Vidya Mandir in writing admitted that it was duty bound to implement the recommendation of Govt. of India's 5<sup>th</sup> Pay Commission's scale of pay and allowances to its employees but intentionally refused to implement the recommendation of 5<sup>th</sup> Central Pay Commission to its non-teaching employees. He has reiterated that Exbt.-39 is the main document in favour of the 'Association' to get success in this case. In view of such contention of the Ld. Advocate for the 'Association', Ld. Advocate for 'Vidya Mandir' has replied that the Charter of Demands (Exbt.-6) was placed on 14.03.2007 i.e. the date 14.03.2007 may be termed as 'reckoning' date of this instant case. (At this stage Ld. Advocate for the 'Association' has simplified the matter to suppose the date 14.03.2007 as the date of arising 'cause of action' according to the Code of Civil Procedure). He has contended that the Charter of Demands (Exbt.-6) was submitted on 14.03.2007 but Exbt.-39 bears the date 20.03.2006. He submits that in view of such factual circumstances, it is supposed that the office bearers of the 'Association' were aware about Exbt.-39 while preparing the Charter of Demands (Exbt.-6). He submits that if the 'Association' wholly relies on Exbt.-39 to establish its case, then why the 'Association' did not mention the subject matter of Exbt.-39 in the Charter of Demands dated 14.03.2007 (Exbt.-6). He submits that Exbt.-39 is a document prepared long days ago before preparation of Exbt.-6. He has pointed out that since **14.03.2007** is the reckoning date (*or the date of arising cause of action according to the version of Ld. Advocate for 'Association'*), the Exbt.-39 should be kept beyond the consideration of the

present case. Apart from that he has contended that other documents (which have been exhibited in this case) bearing the dates subsequent to 21.05.2009 (i.e. the date of Referral Order) should be kept beyond the consideration in respect of this instant case.

In my considered opinion, the contention of Ld. Advocate for 'Vidya Mandir' at the time of the argument, in the matter of admissibility and relevancy of Exbt.-39, has substance and thus, unhesitatingly it is held that Exbt.-39 is not a relevant and/or main supportive document of the case of the 'Association' since the Exbt.-6 does not have any mention about the subject matter of Exbt.-39 as well as the said document was born prior to preparation and submission of Exbt.-6. It may be mentioned that if Exbt.-39 is considered as admissible and relevant document for the adjudication of the instant industrial dispute, started/initiated on the basis of Charter of Demands dated 14.03.2007 (Exbt.-6), such act will reasonably be prevented in view of the observation of the Hon'ble Supreme Court of India in the matter of Oshiar Prasad vs. Sudamdih Coal Washery, reported in (2015) 4 Supreme Court Cases 71 – *"Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference."*

This instant industrial dispute has originated from the Charter of Demands dated 14.03.2007 (Exbt.-6) submitted with signatures of 31 persons in the letter pad under the heading 'Hariyana Vidya Mandir Employees Association'. Thereafter, the appropriate Government referred the industrial dispute to this Tribunal for adjudication by Order No.494-I.R./IR/11L-05/09 dated 21.05.2009 (and subsequent Corrigendum Order No.1141-I.R./IR/11L-05/09 dated 10.12.2009). So, the burden of proving the case was certainly on the shoulder of the 'Association'. Accordingly, the 'Association' has the legal duty to prove its case by adducing evidence, both oral and documentary.

The Hon'ble Supreme Court of India in the matter of the State Of Madhya Pradesh vs Nomi Singh & Anr. reported in 2015 (14) SCC 450 has been pleased to observe that – *"It is settled principle of law that in respect of relief claimed by a plaintiff, he has to stand on his own legs by proving his case."*

The Hon'ble High Court, Delhi in the matter of Harish Mansukhani vs Ashok Jain (RFA 4/2008, D.O.J. 19.11.2008) has been pleased to observe that – *"A plaintiff has to prove his case and stand on his own legs. No doubt, the defendant did not produce his books of account but that does not mean that the plaintiff must succeed on said account."*

The Hon'ble High Court, Jharkhand at Ranchi in the matter of Manawar Ali versus S.M. Hamidullah [W.P.(C) No.2685 of 2017] reported in 2017 SCC OnLine Jhar. 3020 has been pleased to observe that – *"It is well settled that the plaintiff must stand on*



*its own legs and any lacuna in the defendant's case cannot be a ground for granting relief to the plaintiff.”*

This Tribunal is not unmindful to the fact that this Tribunal is not a competent Civil Court. But, the Industrial Disputes Act, 1947 has adopted certain procedures of the Code of Civil Procedure 1908 in it.

The relevant provisions are cited below :-

**Section 11(3)** : *Every Board, Court, 3 [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:— (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed; and every inquiry or investigation by a Board, Court, 4 [Labour Court, Tribunal or National Tribunal], shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).*

**Section 11(10)** : *The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.*

*[Vide West Bengal Act 57 of 1980]*

**West Bengal** – *After Section 11A, insert the following section, namely :-*

*“11B. Power of a Labour Court or Tribunal to execute its Award by decree, etc. – A Labour Court or a Tribunal shall have the powers of a Civil Court to executes its own Award as a decree of a Civil Code and also to execute any settlement as defined in clause (p) of Section 2 as a decree.”*

In view of adoption of all those provisions of ‘procedure’ of the Code of Civil Procedure, 1908, it may be said that certain principles enunciated in various decisions of Hon’ble Upper Forums in the matter of civil suits are applicable in the case under the Industrial Disputes Act, 1947.

Accordingly, considering the above cited settled principles, it can be said that in this case the ‘Association’ was required to adduce best evidence in support of its claim/case with a view to stand on its own legs and any lacuna in the case of the ‘Vidya Mandir’ cannot be ground for granting relief to the ‘Association’. It is so stated because we have found that the witnesses on behalf of the ‘Association’ have made several statements causing damage to the case of the ‘Association’. It has been observed very clearly that PW-2 in her evidence has made some statements, on which there were no whisper in the written statement submitted by the ‘Association’. In other words, PW-2 has made some statements in her evidence going beyond the written statement submitted

by the 'Association'. Moreover, it is observed that PW-1 and PW-2 in their respective cross-examination has made some statements which clearly contradict the version of the Charter of Demands dated 14.03.2007 (Exbt.-6). Further, the PW-1 and PW-2 in their respective statements have made contradictory statements on vital points of this case. During cross-examination, both PW-1 and PW-2 have made some admissions which go in favour of the case of the 'Vidya Mandir'. The 'Association' by means of Exbt.-6 has placed claims/demands for fixing the basic pay scales in respect of four different categories of non-teaching employees (although the term 'non-teaching' was not used in the Exbt.-6) and for granting various allowances and benefits in consonance with the recommendation of the 5<sup>th</sup> Central Pay Commission. In view of such claims/demands it is supposed that the 'Association' would have to establish its case by adducing documentary evidence in support of the oral evidence. The fact remains that on behalf of the 'Association', its General Secretary and President adduced their evidence being PW-1 and PW-2 apart from the various documentary evidences that were also adduced on behalf of the 'Association'. According to the basic rules of the evidence, the parity between the oral version and documentary evidence was required to establish the case of the 'Association'. But, in fact we have found that there was lack of synchronization and parity in between oral evidence and documentary evidence.

In the matter of such lack of parity in between oral evidence and documentary evidence, the following observation of the Hon'ble High Court, Calcutta is found as most relevant.

The Hon'ble High Court, Calcutta in the matter of Furkan Sk. Vs. State of West Bengal (CRA No.463 of 2014, D.O.J. : 06.10.2015) has been pleased to observe – “*More so, it has already been held by us in the judgment dated September 1, 2015 in the matter of Alauddin Khan v. The State of West Bengal (in CRA 299 of 2014) that a man may lie but a document will never lie. The above principle of law was followed on the basis of a decision of this Court in the matter of Afzauddin Ansari v. the State of West Bengal, reported in 1997 (2) Crimes 53 Cal., and the relevant portion of the above decision is quoted below :-*

20. A well-known dicta has been laid down not only by the apex Court of our country but also by the Privy Council that a man may lie but a document would never lie.....”

Naturally, in view of the above observation of the Hon'ble High Court, Calcutta, the disparity in between oral evidence and documentary evidence cause damage to the case of the 'Association'.

In fact, it has been observed from the admissions and disclosures of PW-1 and PW-2 that the matter of submission of the Charter of Demand dated 14.03.2007 (Exbt.-6) was an act of fancy because the 'Association' has failed to establish any valid ground to

claim pay scales, allowances and other benefits in consonance with the recommendation of the 5<sup>th</sup> Central Pay Commission.

The Ld. Advocate for 'Vidya Mandir' has relied upon the following decisions :-

The Hon'ble Supreme Court of India in the matter of Punjab State Cooperative Milk Producers Federation Limited and Anr. versus Balbir Kumar Walia, reported in (2021) 8 Supreme Court Cases 784 has been pleased to observe that – *“This Court in A.K. Bindal also considered two earlier judgments that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees, therefore, it must be confined to the facts of the aforesaid case. It was held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves.”*

The Hon'ble Supreme Court of India in the matter of A.K. Bindal and Anr. versus Union of India and Ors. Reported in (2003) 5 Supreme Court Cases 163 has been pleased to observe that – *“But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the Industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that his wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms. It will depend upon nature of duty and responsibility of the post, the requisite qualification and experience, working condition and a host of other factors. The salary structure of similarly placed persons working in other Public Sector Undertakings may also be relevant. The petitioners have not placed any material on record to show that the salary which is currently being paid to them is so low that they are not able to maintain their living having regard to the post which they are holding.”*

*“While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay.”*

Keeping in mind the facts and circumstances of this case, evidence on record – both oral and documentary and discussion made in above, I am of the humble opinion

that the case of the 'Vidya Mandir' gets immense support from the above cited observations of the Hon'ble Supreme Court of India and obviously all those valuable observations go against the case of the 'Association'.

Now, considering all the matters discussed above, I find that the demand of the Union for entitlement of pay scale and other benefits as mentioned in their Charter of Demands dated 14.03.2007 to the non-teaching staff of Hariyana Vidya Mandir is not at all justified. Thus, the Issue No.1 is decided in negative.

### **Issue No. - 2**

The appropriate Government has entrusted this Tribunal to adjudicate and decide 'What relief are the workmen entitled to?'

The Charter of Demands dated 14.03.2007 placed by the 'Association' has been marked as Exbt.-6. The 'Association' has claimed 'ex-gratia' for non-teaching staffs in the Serial No.9 of Exbt.-6. It is fact that Hariyana Vidya Mandir in this case has never disowned the signatories of the Charter of Demands dated 14.03.2007 as its non-teaching staff. The School name and style Hariyana Vidya Mandir is successfully running for imparting education to the students of our society. It is needless to mention that excluding the non-teaching staff, the Managing Committee of Hariyana Vidya Mandir will be unable to run the School smoothly, better to say the Managing Committee will not be able to run the School at all. So, this Tribunal thinks that the Managing Committee of the School does not deny the contribution of the non-teaching staff in the matter of successful running of the School. From the materials on record coupled with the evidence on record it is surfaced that the Management of the School has enhanced the salary of the non-teaching staffs and extended other allowances and benefits to them time to time but there is nothing satisfactory to count that 'Vidya Mandir' is paying 'Ex-gratia' to the non-teaching staffs. In view of the facts and circumstances coupled with the evidence on record, this Tribunal is of the opinion that Hariyana Vidya Mandir is required to make payment of Ex-gratia to its present strength of non-teaching staffs henceforth at the starting of the 4<sup>th</sup> quarter of each and every calendar year.

Accordingly, the Management of Hariyana Vidya Mandir should disburse Ex-gratia @ Rs.10,000/- per clerical staff as well as staff in equivalent category such as Laboratory Assistant etc. and @ Rs.8000/- per Group-D staff from this year (2024).

Thus, the Issue No.2 is disposed of accordingly with the direction to make payment of Ex-gratia to the non-teaching staffs.

Thus, the Issues so framed by the State Government in the Reference are disposed of accordingly.

Hence,

it is

ORDERED

that the instant case of industrial dispute arising out of 'Reference' by the appropriate Government is disposed of in terms of decisions made in respect of Issue No.1 and Issue No.2.

The Management/Managing Committee of Hariyana Vidya Mandir is directed to disburse Ex-gratia @ Rs.10,000/- per clerical staff as well as staff in equivalent category such as Laboratory Assistant etc. and @ Rs.8000/- per Group-D staff from this year (2024) and the Management/Managing Committee of Hariyana Vidya Mandir shall make payment of Ex-gratia to its present strength of non-teaching staffs henceforth at the starting of the 4<sup>th</sup> quarter of each and every calendar year.

This is the award of this Industrial Tribunal in this case.

In view of letter No.Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12<sup>th</sup> Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated and corrected

Judge

(Mihir Kumar Mondal)  
Judge  
Third Industrial Tribunal  
Kolkata  
03.10.2024