

(2022) 11 CHH CK 0055
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1473 Of 2014

Karnaud Shikshan Prasar Samiti

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 18-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 21A
Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules,
1979 — Rule 28, 28(b), 28(c)

Citation : (2022) 11 CHH CK 0055

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Kishore Bhaduri, Pankaj Singh, Akanksha Jain

Final Decision : Disposed Of

Judgement

1. Challenge in the instant petition is to the order dated 5.6.2014 passed by Respondent 1, whereby Respondent 1 rejected the representation of the Petitioners for regular grant in aid (Annexure P1).

2. The subject matter in brief is that Petitioner 1 is a registered society under the provisions of M.P./C.G. Societies Registrikaran Adhiniyam, 1973 (henceforth 'the Adhiniyam'). Petitioner 1 is running a Higher Secondary School since 1990 in the name as Swami Vivekanand Higher Secondary School, Karnaud/Petitioner 2 and the same has been granted recognition to run the school upto 12th class. The State Government with a view to provide assistance to the non-governmental educational institutions made rules regulating grants in aid, namely, Revised Grant-in-Aid Rules for Non-Government Educational Institutions in M.P./C.G., 1979 (for short 'the Rules'). After having run the school for more than 10 years, Petitioner 1 due to extension in the activities of its school, submitted an application along with proposal for grant in aid in due procedure and format. The State Government vide its letter dated 16.3.2005 granted ad hoc maintenance grant of Rs.5 Lakhs in favour of Petitioner 1/Society. From the year 2008-09 the

State Government stopped the disbursal of maintenance grant to the Petitioner/ Society without giving any reason or show cause notice. The Petitioner/Society vide letter dated 5.6.2008 requested the Directorate of Public Instructions for continuous issuance of the grant in aid. The State Government vide letter dated 5.8.2008 replied that since the Petitioners have been granted Rs.10,92,000 as ad hoc grant, therefore, no payment is possible. The Petitioners filed a petition, being Writ Petition (S) No.4931 of 2008 before this Court, which was dismissed vide order dated 21.4.2011. Thereafter, the Petitioners filed an appeal, being Writ Appeal No.231 of 2011 before a Division Bench of this Court. The Division Bench finally disposed of the writ appeal vide judgment dated 29.10.2012 granting liberty to the Petitioners to file a representation and in turn a sympathetic consideration by the State. The representation made by the Petitioners has been dismissed. Hence, the instant petition.

3. Learned Senior Counsel appearing for the Petitioners submitted that issuance of grant in aid to the Petitioners is not a policy decision, but, is a statutory function under the Adhiniyam and the Rules made in this behalf. Any rejection, refusal or denial to such statutory grant can be permitted only when the reason for such rejection, refusal or denial is based on considerations permissible under the Adhiniyam and the Rules. In the present case, the relevant rules and provisions have not been considered at all. Without applying mind, a non-speaking order has been passed in spite of the direction issued by a Division Bench of this Court in Writ Appeal No.231 of 2011. The impugned order passed by Respondent 1 is violative of Article 21A of the Constitution of India which makes elementary education a fundamental right. The impugned order directly violates the fundamental rights of the students being taught in the school of the Petitioners. It was further submitted that no show cause notice or appropriate opportunity of hearing has been afforded to the Petitioners before issuance of grant in aid which was once issued to the Petitioners. Therefore, it is prayed that the State Government be directed to consider the case of the Petitioners and sanction regular maintenance grant under the relevant rules.

4. Learned Counsel appearing for the Respondents/State opposed the arguments raised on behalf of the Petitioners and submitted that the order passed by this Court in Writ Petition (S) No.4931 of 2008 has already been affirmed by a Division Bench of this Court in Writ Appeal No.231 of 2011 vide judgment dated 29.10.2012. In paragraphs 4 and 5 of the judgment, the Division Bench observed thus:

"4. The respondents have filed a counter affidavit in the writ petition along with the documents and have also filed their reply in the writ appeal showing therein that the Appellant was granted ad-hoc maintenance grant and not the permanent maintenance grant. There is nothing to belie the return filed by the respondents. In view of the same, it cannot be held that the Appellant was granted permanent grant.

5. The Single Judge has dismissed the writ petition on the ground that there is

no right to receive maintenance grant. Nothing has been pointed out that the conclusion of the Single Judge is incorrect. In view of the same, no direction to give maintenance grant can be issued.”

Therefore, entertaining the issue again by this Single Bench would be against judicial discipline and propriety. Reliance was placed by Learned Counsel for the Respondents/State on 2016 SCC OnLine Del 4285 (M/s RSPL Limited v. Mukesh Sharma). Learned Counsel also relied on AIR 1962 Gujarat 128 (State of Gujarat v. Gordhandas Keshavji Gandhi). It was further submitted by the Learned Counsel that grant in aid is not claimed as of right. It is a discretion of the State Government. Referring to the judgment of the Supreme Court in 2021 SCC OnLine SC 807 (State of Uttar Pradesh v. Principal Abhay Nandan Inter College), it was submitted by Learned Counsel that since other seven schools are being run by the government in the same area where the school of the Petitioners is running, the government is not bound to grant aid to the Petitioners. Further referring to Rule 28 of the Rules, it was submitted by Learned Counsel that grant in aid is sanctioned on yearly basis and that is enforceable for two financial years only. As the Petitioners have not applied for maintenance grant in the subsequent year of 2014, it was submitted by Learned Counsel that the instant writ petition may be disposed of by directing the Petitioners to move a fresh application for maintenance grant which should be decided by the Respondents/authorities in accordance with the relevant rules.

5. I have heard Learned Counsel appearing for the parties and perused the impugned order and the other material available with due care.

6. As held by the Division Bench of this Court in Writ Appeal No.231 of 2011, it is not in dispute that the Petitioners were granted ad hoc maintenance grant and not the permanent maintenance grant. It is also not in dispute that the order passed by the Co-ordinate Bench of this Court in Writ Petition (S) No.4931 of 2008 has also been affirmed by the Division Bench of this Court in the aforesaid writ appeal. In the said writ appeal, liberty was granted to the Petitioners to file a representation for grant of maintenance grant before Respondent 1 and it was further observed by the Division Bench that in case such a representation is filed that may be decided by Respondent 1 sympathetically by a speaking order. From perusal of the order dated 28.2.2013 (Annexure P15), it appears that the representation submitted by the Petitioners has been rejected on the ground that the government has not granted any permanent maintenance grant to the Petitioners. Providing the maintenance grant to the Petitioners is a policy matter of the State which can be decided by the State on the basis of availability of financial resources. It is further observed in the order that from the year 2000, none of the new educational institutions has been granted permanent maintenance grant. Therefore, it is not possible for the government to sanction permanent maintenance grant to the Petitioners. Therefore, I do not find any substance in the argument raised by Learned Counsel for the Petitioners that non-speaking order has been passed by the Respondents/authorities.

7. As submitted by the Learned Counsel appearing for the Respondents/State, which is also admitted by Learned Counsel for the Petitioners that after the year 2014, the Petitioners have not applied for any ad hoc maintenance grant before the Respondents/ State, as contained in Rule 28(b)(c) of the Rules. The said rule provides that the maintenance grant shall be made available on yearly basis and that shall be enforceable for two financial years only. As the Petitioners have not made any application for maintenance grant after the year 2014-15, therefore, the instant writ petition is disposed of by directing the Petitioners to make a fresh representation before Respondent 1 through its Secretary, Department of School Education for sanction of maintenance grant, which shall be decided by Respondent 1 by a speaking order and sympathetically as observed by the Division Bench of this Court in Writ Appeal No.231 of 2011 at an early date preferably within a period of two months from the receipt of the representation of the Petitioners.

Resultantly, the instant writ petition is disposed of in the aforesaid terms.