

(2003) 11 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No 203 of 1997

Mrs. Krishna Nijhawan and Others

APPELLANT

Vs

Secretary (Edu) and Others

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Constitution of India, 1950 — Article 21, 41, 45, 46
Himachal Pradesh Financial Rules, 1971 — Rule 12, 16, 47, 54

Citation : (2003) 3 ShimLC 412

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : D.D. Sood and Dushyant Dadhwal, for the Appellant; A. Burathoki, A.A.G. for Respondents No. 1 and 2, Lovnesh Kanwar and K.D. Sood, for the Respondent

Judgement

R.L. Khurana, J.—The Petitioners are the members of the teaching and allied staff of S.D. Senior Secondary School, Shimla, being managed and run by Respondents No. 4 and 5. The Petitioners along with others had filed a Civil Writ Petition being CWP No. 414 of 1989 (H.P. State Government Recognised Aided Schools Teachers Association and Ors. v. State of H.P. and Ors.) inter alia seeking the following reliefs :

(i) to issue an appropriate writ, order or directions especially to the nature of Mandamus directing the Respondent State to pay 95% of the grant-in-aid towards approved expenditure in a school year to the privately managed recognized schools borne on the grant-in-aid list without imposing any arbitrary limit to enable the managements to fulfil their obligations under the grant-in-aid rules which require them to pay the teachers and allied staffs, the same pay scales as are paid to their counter-parts working in Government Schools in the State of Himachal Pradesh especially when Rule 16 of the grant-in-aid rules require the managements to meet 5% of the net approved expenditure in any school year and the balance of the expenditure is to be met from Government grant:

(ii) to declare that teachers and allied staff working in the privately managed recognized schools in the State of Himachal Pradesh are entitled to the same pay scales and allowances as are paid to their counter-parts in Government Schools under Rule 12(g) of the grant-in-aid-rules.

2. The above writ petition was heard along with a similar writ petition, being CWP No. 413 of 1989. Both the writ petition were allowed by a Division Bench of this Court on 9.9.1992 and it was directed as under :

From the aforesaid discussion, we are of the opinion that the State cannot pay grant-in-aid as it may choose. It has to do so in discharge of its constitutional obligation. It also flows out of the conjoint reading of the scheme of the Articles of the Education Code to the extent of 95%. In case the State is permitted to run away from this obligation, it would be utmost difficult for these institutions to survive. It cannot shirk its constitutional obligation by asserting that it would not be in a position to meet the huge financial burden. Constitutional obligation is supreme than the plea of financial constraint. The management is not in a position to pay the enhanced salary to the Petitioners since it is not in a position to do so beyond 5 per cent of the expenditure: the burden has obviously to fall on the State. The present system of payment is absolutely arbitrary and irrational. It not only militates against the intendment of the constitutional provisions but also defeats the main objections of the Education Code itself. The Petitioners are entitled to emoluments payable to their counter-parts in the Government schools and the expenditure has to be met in the ratio of 95 per cent (Government grants) and 5 per cent by the managements. By paying them less means depriving them of their adequate livelihood which is one of the essentials of right to life under Article 21 of the Constitution of India.

Now, the question arises, from which date it should be paid? Normally, the Petitioners are entitled to emoluments revised from time to time and received by their counter-parts, but noticing that it would create huge burden on the State Exchequer, learned Counsel for the Petitioners submitted that the Petitioners would be satisfied in case the State and the management are directed to pay the same from 13th February, 1988. We think that by this offer the burden on the State can be minimized to a great extent. Accordingly, we allow the writ petitions and direct the State Government and the managements to work out the emoluments of the Petitioners in the ratio stated above within a period of four months and pay the same to the Petitioners.

3. Aggrieved by the decision of the Division Bench of this Court, the State of Himachal Pradesh went up in appeal, being Civil Appeals No. 1233 and 1234 of 1993, before the Hon"ble Supreme Court. Both such appeals were dismissed on 10.5.1995. This judgment is reported as State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others,

4. While dismissing the appeals and reiterating. While dismissing the appeals and reiterating the Constitutional policy disclosed by Articles 41, 45 and 46 read with

Article 21 of the Constitution of India, the Hon"ble Supreme Court observed and directed as under :-

The State of Himachal Pradesh is, therefore, under a constitutional obligation to provide free education to children till they complete the age of 14 years. The obligation does not end thereafter, but it is subject to the limits of its economic capacity and development. Before the High Court and also before this Court, the primary contention raised by the learned Counsel for the State of Himachal Pradesh is that the economic capacity specially the financial condition of the Government does not permit the disbursement of full grant to the aided schools as envisaged under the scheme of the Rules. We may examine this contention in the facts of the present case. The writ petition was filed by the Respondents before the High Court in the year 1992. A Directory of Educational Institutions in Himachal Pradesh was published by the Government of Himachal Pradesh, Department of Education. The district-wise list of schools Government and others has been given in the said directory. The list indicates that there were total of 2163 schools in the State of Himachal Pradesh as on 31.3.1992. Out of these 2019 were Government schools and 144 were non-Government schools. The details regarding Middle, High and Senior Secondary Schools as given in the said directory are as under :

Name of Middle High Sr. Sec.												
Total	District	State	Govt.	others	State	Govt.	others	State	Govt.	others	State	
Govt.	others											
										Total:	1007	54
862	82	150	8	2019	144							

We proceed on the assumption that all the 144 non-Government schools are the aided schools. This Court has authoritatively held that the State is under an obligation to provide free education to the children up to the age of fourteen. We take judicial notice of the fact that, ordinarily, a child in this country joins school at the age of five years. All the children studying in the Middle Schools would be less than fourteen. Therefore, the State Government is under an obligation to provide free education to the children studying in the 54 non-Government Middle Schools. In other words, the 54 Middle Schools are entitled to full grants-in-aid from the State Government. So far as the High and Senior Secondary Schools numbering 90 (82+8) are concerned, the State Government is again under an obligation to provide free education to the children studying in these schools who are fourteen years of age or less. The net result is that even in High and Senior Secondary Schools up to 8th/9th class the students being 14 or below the State Government is bound to provide free education and as such bound to meet the total expenditure of the schools to that extent. The large majority of students, in the 144 non-Government schools, being fourteen years of age or below the contention of the learned Counsel for the State based on financial constraints, is

wholly untenable.

The constitutional mandate to the State, as upheld by this Court in Unni Krishnan case to provide free education to the children up to the age of fourteen cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity.

It is high time that the State must accept its responsibility to extend free education to the children up to the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless the economic capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget allocation under the head Education. The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Cross National Product.

We, therefore, agree with the High Court that the imposition of the maximum limit for the disbursement of grants-in-aid to the Respondents was arbitrary and unjustified in the facts of the present case. As mentioned above, the Respondent-schools are recognized, aided and are under deep and pervasive control of the State Government. The Government is under an obligation to provide the grants-in-aid to the Respondent-schools as envisaged under the scheme of the Rules. The High Court has directed the State of Himachal Pradesh to pay 95 per cent grants-in-aid with effect from February 1988. The High Court judgment was delivered on 9.9.1992. We modify the High Court judgment to the extent that the enhanced grants-in-aid be paid to the aided schools with effect from 1.4.1993.

5. Since the State of Himachal Pradesh failed to implement the judgment dated 9.9.1992 of the Division Bench of this Court as affirmed in appeal by the Hon'ble Supreme Court on 10.5.1995, an application being CMP No. 3892 came to be made in CWP No. 413 of 1989 for issuance of directions to the State Respondent for implementation of the judgment of the Hon'ble Supreme Court and/or for initiation of contempt proceedings. In such petitions, a Division Bench of this Court on 17.5.1996 after extracting the relevant portions of the judgment passed in CWP Nos. 413 and 414 of 1989 and that of the judgment of the Hon'ble Supreme Court in State of H.P. v. H.P. State Recognised and Aided Schools Managing Committees and Ors. (supra), gave the following directions by way of an interim order :-

Therefore, we direct that current salary of all teachers and allied staff of all the 144 schools, as per judgment of the apex Court, shall be paid on the day in the month of June, 1996. This shall be done by the State Government by sending their representatives to the schools. The representatives shall go for the first time for such payment and subsequently, it is not necessary to go.

If any Managing Committee of any school refuses to accept grants-in-aid from the State Government, we direct that the said Managing Committee shall pay the salary to all the members of the teaching staff and allied staff the salary as per

the State Government. The Respondents shall inform this Court the names of the schools/Managing Committees refusing to accept such grants for issuing appropriate directions by this Court, if necessary by taking suo motu action.

The arrears shall be paid by 30th September, 1996.

6. The State Respondent on 23.5.1996 moved a miscellaneous petition, being CMP No. 1860 of 1996, for extension of time by three months for implementing the directions dated 17.5.1996 (quoted above). A Division Bench of this Court on 24.5.1996 passed an order on such petition, the relevant part of which reads as under :-

After hearing the learned Counsel for the parties, we modify the above order with the direction that the salary for the months of May, June and July, 1996, shall be paid positively by the 31st August, 1996 and thereafter regularly every month. The Commissioner-cum-Secretary (Education) shall file an affidavit by 2nd week of September, 1996 stating that all the teachers and members of the allied staff have been paid in 144 schools as per the decision of this Court and affirmed by the apex Court and thereafter office shall list this item on 16th September, 1996. No further time will be granted.

The other portion of the order shall remain. In other words, the arrears shall be paid positively by 30th September, 1996.

7. The State Respondent, who was aggrieved by the order dated 17.5.1996 passed by the Division Bench of this Court preferred a Special Leave Petition, being SLP No. 12670 of 1996 before the Hon"ble Supreme Court. Such SLP was granted on 23.8.1996. However, the Hon"ble Supreme Court declined to stay the operation of the order dated 17.5.1996.

8. On 26.9.1996, the State Government again approached this Court by way of a Civil Miscellaneous Petition, being CMP No. 3904 of 1996, inter-alia, praying for waiver of the condition imposed by the order dated 17.5.1996 for payment of salary every month and for permission instead to release the grant annually and also for extension of time for making the payment of arrears of grant by six months from 30.9.1996.

9. Both the Civil Miscellaneous petitions, that is, CMP No. 3892 of 1995 and 3904 of 1996 came to be disposed of together on 29.11.1996 by a Division Bench of this Court. Four questions were formulated by the Division Bench for consideration. One of the questions, that is, Question No. 2, which question is material for the determination of the issue involved in the present cases, was :-

What is the basis on which the orders of this Court and the Supreme Court could be implemented by the Respondents?

10. Answering the said question, the Division Bench of this Court in paras 33 to 36 of its order dated 29.11.1996 observed as under :

As regards the second question, we have already pointed out that the only basis

on which the grant can be made is in accordance with the Rules set out in the Education Code. The judgment of this Court has only held that the limits prescribed in Rule 47(2) are not valid and the Government is bound to pay on the footing that the teachers of the private recognized and aided Schools are entitled to the same salary as their counterparts in the Government Schools. But for that, the other Rules which relate to the grants-in-aid will certainly apply and neither the Government nor the Managements can ignore the same. Rule 54 provides that the grants are annual grants except when otherwise stated and take effect from the beginning of the School-year following in which they are assessed. It is contended by learned Senior Counsel for the Petitioners that the Himachal Pradesh Financial Rules will apply and there is a provision in Chapter VIII that grants-in-aid could be paid in installments. Reliance is placed on paragraph 3 at page 139 in Chapter VIII of the Himachal Pradesh Financial Rules. It is provided in that paragraph that in order to mitigate hardship to small institutions due to delay in payment of fresh grants-in-aid with effect from the financial year 1976-77 recurring grants-in-aid to such institutions may be paid during a financial year, if necessary, in three installments. The first instalment may be paid in the month of April, the second instalment may be paid in the month of May or June to cover the expenses for the five months, May to September and final instalment may be sanctioned in the month of October or later to cover the expenses for the rest of the financial year. We are afraid that the Rule has not been correctly interpreted by the Petitioners. Rules 8,15 clearly states that grants-in-aid or contributions to educational and other institutions, local bodies and co-operative societies are sanctioned either by the Government or the authorities subordinate to it (heads of departments etc.) and are requested by the orders contained in Rule 19. 9 of that volume and the detailed rules made by the Heads of Departments under the powers vested in them. Rule 19.9, relates to expenditure from discretionary grants-in-aid, contributions, donations etc. Sr. No. 3 relates to sanction of grants to local bodies etc. Item (iii) pertains to maintenance grants for aided Schools and item (iv) pertains to aided Schools for the purchase of equipment. Column No. 4 says that the extent of power delegated is in accordance with the Rules laid down in the Education Code. Thus, grant to aided schools will be governed by the Education Code. Moreover, the provisions in the Education Code are special Rules, whereas the provisions of the Himachal Pradesh Financial Rules are general Rules. The Special Rule will prevail over the General Rule and Rule 54 expressly provides that unless otherwise stated, grants are annual grants. When the grant was sanctioned by the Government, it should have been stated that it was payable periodically and not once in a year. If there is no other specific provision in the order sanctioning the grant, then it should be paid only annually.

It is a well settled principle of law that courts cannot direct the authorities to act in contravention of the Rules and Regulations. Vide *Union of India and Anr. v. Kirloskar Pneumatic Company Limited* JT 1996 (5) SC 26. Neither the order of this Court in the main CWP nor the orders dated 17.5.1996 and 24.5.1996

passed in the CMP can be construed as directing the Government to do something against the Rules, which were never under challenge.

There is no merit in the contention that the Respondents have not paid the grants fully to the Managements of the 64 schools inasmuch as they have deducted the amounts paid by the Managements to the teaching staff before release of the grants. It is rightly pointed out by the Respondents that the payment now made pursuant to the orders of this Court dated 17.5.1996 as modified by order dated 24.5.1996 is an ad hoc payment towards the amount payable as grant. The actual amount as grant to the Management can be worked out only when the total net approved expenditure is ascertained. In such circumstances, the Respondents have in order to obey the orders of this Court paid the salary i.e. due to the teachers on the basis that they are entitled to the same salary as the teachers working in the Government Schools. While doing so, the Respondents have withheld other part of the amount, which is already paid to the teachers by the Management towards their salary. If anybody is aggrieved by such withholding, it is only the Management and not the present Petitioners. It is open to the Managements to contest the said withholding of payment, if so advised. But the affidavits by the Respondents show that the Managements have accepted the same to be correct and they have not questioned the validity of the said procedure. Hence, we have no difficulty in answering the second question by holding that the method adopted by the Respondents to ascertain the amounts payable to the Managements is correct and they are not entitled to adopt any other procedure excepting that prescribed in the Education Code.

There is no substance in the contention of the Petitioners that the Respondents shall pay grant-in-aid to all the 144 schools mentioned in the judgment of the Supreme Court. The Supreme Court referred to the said number of schools by pointing out that in the Directory published by the State Government, the remaining schools were Government Schools and the non-Government Schools were only 144 in number. As pointed out already that aspect of the matter was considered by the Supreme Court only for the purpose of rejecting the contention of the Government that because of financial incapacity, it was not in a position to pay the grant-in-aid. There is no magic in the number 144, nor is it a manthra. The questions whether all the 144 schools were aided schools whether they were entitled to aid as per Rules and what will be the amount of aid payable under the Rules to the Schools did not at all arise for consideration before the Supreme Court. Even if there was any mistake in the Directory produced before the Supreme Court, the State Government is certainly entitled to correct the same. If any school was only a bogus Institution that can also be found out by the State and appropriate action has to be taken. Hence, it cannot be said that just because the judgment of the Supreme Court refers to 144 non-Government Schools and proceeded on the assumption that they were all recognized and aided Institutions, the State Government is bound to pay grant-in-aid to all the said 144 Schools.

The above quoted order dated 29.11.1996 of the Division Bench was never assailed by the parties thereto by way of appeal or review. The same has, thus, attained finality.

11. It may be pointed out that in view of the order dated 29.11.1996 disposing of finally CMP Nos. 3892 of 1995 and 3904 of 1996, the SLP preferred by the State-Respondent against the order dated 17.5.1996 of a Division Bench of this Court, came to be dismissed by the Hon"ble Supreme Court on 7.11.1997 as having become infructuous. The order passed by the Hon"ble Supreme Court reads:

In view of the fact that CMP No. 3892 of 1995 has been disposed of by order dated 29.11.1996 passed by the High Court, this appeal and the interlocutory order made therein have become infructuous.

Accordingly, the appeal is dismissed as infructuous.

12. It is significant to note that the interlocutory order dated 17.5.1996 of the Division Bench of this Court directing the State-Respondent to pay the amount of grant to all the 144 Schools in terms of the judgment of the Hon"ble Supreme Court in State of H.P. v. H.P. State Recognized and Aided Schools Managing Committees and Ors. (supra) stands superseded and modified by the final order dated 29.11.1996 passed in CMP No. 3892 of 1995 by the Division Bench of this Court.

13. The Division Bench in its order dated 29.11.1996, after considering the impact of the judgment of the Hon"ble Supreme Court in State of H.P. v. H.P. State Recognized and Aided Schools Managing Committees and Ors. (supra), has interpreted and clarified the same as under :-

(a) There is no substance in the contention that the Respondents shall pay grant-in-aid to all the 144 Schools mentioned in the judgment of the Hon"ble Supreme Court;

(b) The number of schools being 144 was referred to by the Hon"ble Supreme Court on the basis of the Directory Published by the State Government and this aspect of the matter was considered only for the purpose of rejecting the contention of the State Government that because of its financial incapacity, it was not in a position to pay the grant-in-aid;

(c) There is no magic in the number 144 nor it is a mantra;

(d) The question whether all the 144 Schools were aided schools, whether they were entitled to the aid as per, the Rules and what will be the amount of aid payable under the Rules did not at all arise for consideration before the Hon"ble Supreme Court;

(e) If there was any mistake in the Directory produced before the Hon"ble Supreme Court, the State Government is entitled to correct the same and in case there was any bogus institution, appropriate action has to be taken;

(f) Just because the judgment of the Hon"ble Supreme Court refers to 144 non-Government and proceeded on the assumption that they were all recognized and aided institutions, the State Government is not bound to pay grant-in-aid to all the said 144 schools;

(g) The Court cannot direct the authorities to act in contravention of the Rules and Regulations. Neither the order of this Court passed in CWP No. 413 of 1989 nor the interlocutory order dated 17.5.1996 passed in CMP No. 3892 of 1995 can be construed as directing the State Government to do something against the Rules, which were never under challenge.

14. In short, the ratio laid down in the order dated 29.11.1996 by the Division Bench of this Court is that the State Government can examine the eligibility of a school for its entitlement to the grant-in-aid in accordance with the provisions contained in Chapter-II of the H.P Education Code, 1985.

15. It appears that still the amount of grant-in-aid was not paid by Respondents No. 1 and 2 to Respondents No. 4 and 5, as a result of which, the Petitioners have again approached this Court seeking directions to Respondents No. 1 and 2 for releasing and paying the amount of grant-in-aid to Respondents No. 4 and 5 and for further directions for payment of salaries and other allowances to them at par with their counter parts working in the Government Schools.

16. Admittedly, S.D. Senior Secondary School, Shimla managed and run by Respondents No. 4 and 5 is one of the 144 privately managed, recognized aided schools to whom 95% grant-in-aid has been ordered by the Hon"ble Supreme Court in State of H.P. v. H.P. State Recognized and Aided Schools Managing Committees and Ors. (supra).

17. Respondents No. 1 and 2 in their short reply affidavit dated 24.11.1997 have pleaded that in obedience to the orders of the Hon"ble Supreme Court, a committee headed by Additional Secretary (Education) was constituted by the State Government to scrutinize the cases of all the 144 schools and the concerned managements of these schools were asked to submit their claims with regard to the grant-in-aid through the respective District Education Officers. The management of the school of Respondents No. 4 and 5 vide resolution dated 10.9.1993 had resolved not to receive the grant-in-aid from the State Government from the academic year 1993. In view of such resolution, the case for grant-in-aid in respect of the school of Respondents No. 4 and 5 was not pursued. It was further averred that since the abovesaid resolution dated 10.9.1993 has since been withdrawn, necessary action would be taken by the State Government as and when Respondents No. 4 and 5 would submit their claim.

18. In their supplementary affidavit dated 18.5.2002 filed in pursuant to the order dated 1.4.2002, Respondents No. 1 and 2 stated that grant-in-aid for the year 1997-98 to 2000-01 stood paid to Respondents No. 4 and 5, and that the process for the release of grant in aid for the year 2001-02 was on.

19. The stand taken by Respondent No. 3, the H.P. Board of Education simply is that it is not liable to pay the amount of grant-in-aid and that such grant-in-aid may be claimed from the concerned agencies.

20. Though two separate reply affidavits have been filed by Respondents No. 4 and 5, respectively, a common stand has been taken by them. They have admitted that they have been receiving the requisite grant-in-aid from the Respondents No. 1 and 2 till 31.3.1993. They also admitted that a resolution dated 10.9.1993 was passed resolving not to claim and receive the grant-in-aid from the Respondents No. 1 and 2 after 1993. It was pleaded that the payment of grant-in-aid was discontinued by the Respondents No. 1 and 2 in view of the resolution dated 10.9.1993. Since there was a great pressure from the members of the staff to accept the grant-in-aid from the State Government, the Managing Committee in the meeting held on 10.9.1997 rescinded the earlier resolution dated 10.9.1993 with retrospective effect and resolved to claim and receive the grant-in-aid from the State Government. It was specifically averred that once the amount of grant-in-aid is released and received, they would have no hesitation in paying the Petitioners the salaries at par with their counter-parts in Government Schools.

21. Annexure R5/3 is the copy of resolution dated 10.9.1997 rescinding the earlier resolution dated 10.9.1993. It reads:

It is unanimously resolved that resolution No. 3 taken in the meeting No. 276 held on 10.9.1993 be rescinded in the interest of school and grant may be taken from the Government w.e.f. 1.4.1993. This resolution No. 3 is rescinded from the date of its passing.

As stated above, Respondents No. 4 and 5, admittedly, have received the grant-in-aid till 31.3.1993, that is, till the year 1992-93. During the course of hearing it was also conceded that the grant in aid for the period 1997-98 onwards, as stated in the supplementary affidavit dated 18.5.2002 of the Respondents No. 1 and 2, stands paid to and received by Respondents No. 1 and 2.

22. The dispute thus which remains is for the period 1993-94 to 1996-97. Admittedly, the grant in aid for this period has not been paid to Respondents No. 4 and 5 by Respondents No. 1 and 2 in view of the resolution dated 10.9.1993 of Respondents No. 4 and 5 resolving not to claim and receive the grant in aid from 1993-94 onwards.

23. The record shows that not only had the Respondents No. 4 and 5 resolved on 10.9.1993 not to claim and receive the grant in aid from the Respondents No. 1 and 2, they have been writing to the concerned authorities not to release the amount of grant-in-aid in their favour till the resolution dated 10.9.1993 was rescinded/withdrawn.

24. Respondents No. 4 and 5 in para 2 of preliminary submissions of their respective reply-affidavits have admitted and pleaded in the following terms

(quoted from the reply affidavit dated 22.11.1998 of the Respondent

No. 4) :-

That the S.D. Senior Secondary School, Anaj Mandi, Shimla, was getting the grant-in-aid till 31.3.1993 and the same had to be discontinued because of the resolution dated 10.9.1993. Even while informing the Respondent department about the resolution dated 10.9.1993, the Managing Committee requested the District Education Officer not to release the money towards the grant-in-aid until the resolution dated 10.9.1993 was withdrawn/rescinded. Communication was sent to the District Education Officer on 8.8.1996 placed on record as Annexure R5/1 by the Respondent No. 5 which was followed by another letter dated 9.8.1996 by Respondent No. 5 which has been placed on record as Annexure R5/2 by the Respondent No. 5. The Manager of the school once again requested the District Education Officer to defer the decision of grant-in-aid to the School till another resolution amending the earlier resolution was passed by the Sabha.

25. Once it is shown and admitted that the Respondents No. 4 and 5 of their own volition voluntarily had given up their claim for the grant-in- aid with effect from 1.4.1993, that is, the year 1993-94, Respondents No. 1 and 2 cannot be held to have failed/refused to pay the amount of grant- in-aid. As stated above, consequent upon the rescission of the earlier resolution dated 10.9.1993 by the subsequent resolution dated 10.9.1997 the grant- in-aid for the period 1997-98 onward has and is being released and paid by Respondents No. 1 and 2 to Respondents No. 4 and 5. It was the Respondents No. 4 and 5 themselves who had voluntarily of their own volition refused to receive the grant-in-aid for the years 1993-94 to 1996-97. Since there has been no fault on the part of the Respondents No. 1 and 2, no writ, order or direction can be possibly issued to them to pay the grant-in-aid to Respondents No. 4 and 5 for the abovesaid period of 1993-94 to 1996-97.

26. It may be noted that till date, no grievance has been made by the Respondents No. 4 and 5 regarding the non-payment of grant-in-aid to them for the period 1993-94 to 1996-97.

27. Respondents No. 4 and 5 have not denied that the Petitioners are entitled to pay and allowances at par with their counter-parts working in the Government School. They have pleaded in para 3 of their preliminary submission of their reply affidavits as under :

...It may further be submitted that once grant-in-aid is released and accepted by the Management as per the budget proposals of the school, the answering Respondent will have no hesitation in paying the Petitioners at par with their counter-parts in Government Schools.

28. Since the Petitioners are entitled to salary and allowances at par with their counter-parts in Government Schools and in view of the fact that Respondents No. 4 and 5 had themselves of their own volition refused to accept the grant-in-

aid for the period 1993-94 to 1996-97, they can not refuse to pay to the Petitioners the salaries and allowances at par with their counter-parts working in the Government Schools on the ground that the grant-in-aid has not been paid to and received by them. It would be the liability and responsibility of the Respondents No. 4 and 5 to pay to the Petitioners the salary and allowances at par with their counter-parts working in Government School out of their own funds.

29. The present writ petition stands disposed of in the abovesaid terms leaving the parties to bear their own costs.