
(2016) 09 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19821 of 2014 (O&M)

Parent's Welfare Association

APPELLANT

Vs

Central Board of Secondary Education

RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Haryana School Education Rules, 2003 — Rule 158

Citation : (2017) 1 SCT 707

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : J.S. Bedi, Addl. AG, Haryana, for the Respondent; Sanjiv Gupta, Advocate, for the petitioner in CWP No. 19821 of 2014.; Mr. Surinder Kumar Goel, Advocate, for the Petitioner-in person in CWP No. 11265 of 2015.; Ms. Sheena Khanna for Naveen Chopra, Advocat

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia, J. (Oral) - The present order shall dispose of two writ petitions i.e. CWP Nos.19821 of 2014 and 11265 of 2015, as common questions of law and fact are involved. The facts are being taken from CWP No.19821 of 2014 "Parent's Welfare Association v. Central Board of Secondary Education and others".

2. The challenge is to the excessive fee hike for different classes charged by respondents No.7 to 9 and for inquiry into the matter of violation of the provisions of Haryana Education Code and of the Central Board of School Education. Further prayer has also been made that the construction raised has been done without sanctioning the site plan etc and for staying the recovery of enhanced fee by ignoring the orders dated 11.04.2014 and 12.05.2014 passed by the District Education Officer (Annexures P-6 and P-7).

3. On 15.01.2015, in view of the fact that the matter was pending before the Committee constituted under Section 158 A of the Haryana School Education

Rules, the following order was passed:-

"Reply filed on behalf of respondent Nos. 7, 10, 11 and 12 filed in Court is taken on record.

Counsel for the petitioner pleads for stay of operation of the hike of the fee.

It is brought out in the reply filed by the school that the matter is pending for consideration before the Committee constituted under Section 158 A of the Haryana School Education Rules. The said provision only contemplates the refund of excess fee collected, if the hike is not justified and does not provide for operation of stay is such increase.

No interim order is possible.

Adjourned to 18.03.2015.

Reply of the State be file within eight weeks. The state shall endeavour to dispose of the matter said to be pending before the committee constituted under Section 158 A and inform the Court of the order that is passed in this regard, on the adjourned date. Issue copy of this order to the State counsel under signatures of the Bench Secretary."

4. Thereafter, on 03.03.2016, the Advocate General, Haryana had submitted that the Committee before whom the matter was pending would take a final decision on the complaint filed by the petitioner within a period of 3 months.

5. The Committee on 02.04.2016 (Annexure R-7/10) has come to the conclusion that there is no evidence placed on record regarding charging of capitation fee or the fee in excess of the fee as notified by the school. The relevant part of the order reads as under:-

"The case was again adjourned to 1/6/2016 as the final decision could not be taken by the Fee and Fund Regulatory Committee. The complainant thereafter close their arguments praying that fee is unjustified.

The management submitted that no capitation fee or excess fee has been charged and same fee has been levied during the session 2014-15 and 2015-16 as specified by the Manager and Form No.VI has been submitted by the school as prescribed under Rule 158 of Haryana School Education Rules 2003 as amended from time to time. Form No.VI is annexed as Annexure 3 & 4 and fee structure as Annexure-5.

The committee has examined the arguments and documents submitted by both the parties and Rule 158 of the Haryana School Education Rules, 2003. In the opinion of the Committee no evidence has been placed regarding charging of capitation fee or the fee in excess of the fee as notified by the school. The mandate of this Committee is limited to the above mentioned violations. Hence there is no violation by the Management. However, if the complainant has any other grievances it may approach the department for the same.

We, order accordingly."

6. Counsel for the petitioner has submitted that vide communication dated 30.05.2016 (Annexure P-18), the Director Secondary Education had asked the Regulatory Committee to review the order and, therefore, the appeal would not lie against the same.

7. Admittedly, a period of more than 5 months has passed, since the order was passed. In case the petitioners are aggrieved against the same in any manner, the remedy would not be of review.

8. Admittedly, the appeal has already been filed by the petitioner in CWP No.19821 of 2014, which contradicts the arguments raised by the counsel for the petitioner that the order is to be reviewed.

9. It is settled principle that once there is an alternative and efficacious remedy available, it is not for this Court to entertain the writ petition under Article 226 of the Constitution of India.

10. Accordingly, keeping in view the fact that there is an alternative and efficacious remedy available to the petitioners to approach the Administrative Secretary and which has already been done, this Court is of the opinion that if the petitioners have any grouse, the same can be raised in appeal.

11. Accordingly, the present writ petitions are disposed of with liberty to the petitioner in CWP No.11265 of 2015 to file an appeal, in case so desired. The appeal be filed before the Appellate Authority within a period of one month from the receipt of the certified copy of this order. The said Appellate Authority will, thereafter, proceed to decide the same expeditiously.

With the above said observations, the present writ petitions are disposed of.