

(2011) 02 SHI CK 0043
In the High Court Of Himachal Pradesh
Case No : CWP No. 7985 of 2010

Ravinder Kumar and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 02 SHI CK 0043

Hon'ble Judges : Kurian Joseph, C.J.; Sanjay Karol, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The writ petition is filed with the following prayers:

- 1) For directing the Respondents to release the grants-in-aid every year in time to the Petitioners/employees of aided recognized private school, latest by 30th June of the school year going on.
- 2) For issuing a writ of Mandamus or any other appropriate writ to the Respondents for releasing the due and admissible grants-in-aid to the Petitioners for the period 2008-2010 within a time bound schedule.
- 3) For directing the Respondents to release the revised pay-scales to the Petitioners along with arrears as have been paid to their government counterparts within a fixed time schedule.

2. As far as all the three points are concerned, we find that these all are covered by the directions issued by this Court in the earlier judgments in CWP Nos. 413 and 414 of 1989, decided on 9.9.1992, wherein it has been held in the last two paragraphs as follows:

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 objects 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 managements 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. The matter was also considered in later decision of this Court in interlocutory orders in CWP No. 413 of 1989, wherein also, at paragraph 4, this Court has issued the direction that the payment of grant shall be annual under Rule 54 of the Education Code, but such annual payments shall be made to the concerned Managements within three months from the beginning of the school year following in which they are assessed, among other directions.

4. This judgment in principle has been upheld by the Supreme Court and there is no dispute that the Petitioners, similarly situated teachers, are covered by the list of schools. Learned Counsel for the Petitioners submits that despite such a clear direction issued by this Court, the grant-in-aid due to the teachers have been unduly delayed. Going through the reply filed in this case itself, it is fairly clear that there is delay. The grant-in-aid in respect of academic year 2008-09 has been released and the grant-in-aid for the academic year 2009-10 is only at the stage of finalization. The said academic year has come to a close. It is the salary due to the teacher. To delay the salary is nothing, but denial of justice to them. The justice delayed is certainly justice denied. Therefore, in order to avoid such avoidable delay in future, we are of the view that certain directions need to be issued. Hence, this writ petition is disposed of with the following directions:

I. The due and admissible grant-in-aid shall be disbursed before 30th June of the

academic year;

II. In the event of any delay beyond the said period, grant-in-aid shall carry interest @18% per annum and the Officers responsible for the delay shall be personally liable for the same;

III. The due and admissible grant-in-aid would take in pay scale revised from time to time, as well; and

IV. The Administrative Department, the Education Department and the Finance Department in coordination will provide for the required allocation in the annual budget.

5. A copy of this judgment will be furnished by the Petitioners before the Principal Secretary (Education) for appropriate guidance in future.