

(1998) 08 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No's. 226 to 228 of 1998

Smt. Renuka and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-08-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 162

Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 — Section 15, 3

Citation : (1999) 2 KarLJ 318

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Sri Basavaprabhu S. Patil, for the Appellant; Smt. V. Vidya, High Court Government Pleader, for the Respondent

Judgement

1. Heard Mr. Basava Prabhu Patil, learned Counsel for the petitioners and Mrs. V. Vidya, learned High Court Government Pleader for respondents 1 to 5.

2. The petitioners are presently working as teachers in Saraswathi Higher Primary School, Bidar (in short, the "Institution").which is being run by the 6th respondent Saraswathi Shikshana Vikas Samithi, Bidar. They have filed the present writ petitions inter alia, questioning the validity of Conditions (i) to (ix) of the Government Order No. ED 196 PMC 94, dated 17-6-1995 (Annexure-C) by which the educational institution was admitted to grant-in-aid by the Government. The said conditions read as under:

"(1) Grant is given only from the date of this order. Under no circumstances arrears will be paid.

(2) Before admitting the school to grant, the Chief Executive Officer of the Zilla Panchayat should personally verify and should be satisfied with regard to the fulfilment of all the rules and conditions of the Grant-in-Aid Code.

(3) The District Taluk Treasury Officers before passing the salary bills should

obtain the Certificate duly signed by the Chief Executive Officer of the Zilla Panchyat to the effect that the management has followed all the rules as per the Grant-in-Aid code.

(4) The expenses pertaining to this should be used only from the budget of the said period and for the future, the amount has to be adjusted in the budget. Under any circumstances more grant will not be granted.

(5) Grant is paid only to those approved teachers whose names were found in this order.

(6) It has to be confirmed that the school is run by the SC/ST management and is recognised by the Government.

(7) In future also such Primary Schools should follow the rules of the Grant-in-Aid Code without fail.

(8) Recognition should be obtained every year during the said academic year itself without fail.

(9) Previous years service will be considered only for the purpose of leave and retirement benefit.

(10) xxx xxx xxx xxx".

3. The first two petitioners were appointed by the management of the institution on 30-6-1986. The third petitioner was appointed on 2-7-1990. Their appointments were approved by the Deputy Director of Public Instructions (respondent 4) on 13-1-1987 and 25-2-1993 respectively. By order dated 12-8-1991 (Annexure-A), the Chief Secretary, Zilla Parishad, Bidar, admitted the Institution to the grant-in-aid with certain conditions. Subsequently, the State Government, under its impugned order dated 17-6-1995 (Annexure-C), after clearly noticing in the preamble of the order that the Zilla Parishad had no authority to admit the Institution to Grant-in-Aid, passed the impugned order at Annexure-C.

4. Admittedly, from the date of admitting the Institution to the Grant-in-Aid, grant is being disbursed to the Institution as per the Government policy and no objection whatsoever has been raised by the management of the Institution regarding quantum of such grant. But, nonetheless, the petitioners, as teachers of the Institution, have filed the present writ petitions inter alia, contending that the impugned conditions, supra, of the grant order are violative of Rule 28 of the Grant-in-Aid Code and the respondents are bound to grant aid to the Institution to the extent of 100% salary to which the petitioners are entitled under the time pay scale as revised from time to time, right from the 1st day of their appointments with all increments.

5. Mrs. Vidya, learned High Court Government Pleader has contended that as per the Government policy, the grant has to be restricted by computing the salary of the petitioners at the minimum of the time scale of pay which was operative on

the date of admitting the Institution for grant-in-aid and if there be any short fall on the actual salary payable to the teachers, the same has to be borne by the management.

6. Keeping in view the nature of controversies raised in the present writ petitions, in my opinion, the following three pertinent questions of law arise for my consideration:

(i) Whether grant-in-aid can be claimed by the Institution/their employees, may be teaching or non-teaching, as a matter of right?

(ii) Whether the teachers of an aided institution are entitled to the same pay scale as is admissible to the teachers of a government school?

(iii) Under the present policy of the Government, what is the extent of grant which is admissible to the institutions in respect of salary payable to the teachers?

7. It is now well-settled that no educational institution can claim grant-in-aid as a matter of right. Giving of such grants are necessarily a part of the Government policy which again depends on the financial capacities and revenue resources of the Government. This aspect of the matter has recently been considered by the Supreme Court in the case of State of Orissa and Another Vs. Aswini Kumar Dash and Others, , wherein it has been held thus:-

"The State Government has framed a scheme for such grants-in-aid looking to its own financial resources and the number of educational institutions to which it will be required to give such grant. No educational institution can claim grant-in-aid as a matter of right. This is a matter of policy which the State Government will decide looking to its financial capacity and other relevant circumstances. There may be, as a result, differences in the pay scales of teachers of colleges affiliated prior to 1-4-1989 and colleges affiliated subsequently, although neither of the resolutions prevent the colleges from giving high pay scales if they so desire. In this context, the appellants have pointed out that even the extent of grant-in-aid varies from college to college, depending for example, upon the number of years for which the college has been functioning. Since the entire burden of providing grants-in-aid is now on the State, the State regulates by policy the extent of aid and the colleges to which it will be given".

8. It is also well-settled that once the Government decides to give grant to the educational institutions for the purpose of its functioning then it is incumbent for the Government to give the same by adopting uniform policy in respect of all the institutions similarly situated. Government being of a welfare state and bound by the mandates of the equality clause under Article 14 of the Constitution cannot resort to pick and choose methods.

9. In the case of Ramana Dayaram Shetty v International Airport Authority of India and Others, the Apex Court, after reviewing the entire law on the subject, it has been held that:-

"The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on The New Property¹ in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular religious faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual".

10. Keeping in view the aforesaid parameters, now, I proceed to examine the provisions of the Grant-in-Aid Code (in short, the "Code") which was nothing but a compilation of Government policy orders taken under its executive power under Article 162 of the Constitution of India from time to time. But the said Code, after coming into force of the Karnataka Education Act, 1983 (in short, the "Act") by statutory fiction contained u/s 146(3) of the Act, has acquired statutory status. As found in the Chapter-I of the Code, the Government had followed the policy of giving grant-in-aid to Primary Schools, under private managements and local bodies in order to achieve the well professed object of extending and improving secular instructions in the State and for the said objectives, certain sum of money was annually earmarked by the Government and was to be disbursed as per the conditions specified in the Code.

11. Now, Chapter-DC in the Act has been incorporated keeping in view the aforesaid very object under the heading "Grants-in-aid". Section 49 whereof reads as under:

49. Government to set apart sum for giving grant-in-aid to certain recognised institution.-(1) The State Government shall within the limits of its economic capacity, set apart a sum of money annually for being given as Grant-in-aid (hereinafter in this Act referred to as grant) to local authority institutions and private institutions in the State recognised for this purpose in accordance with rules made in this behalf.

(2) The rules made under sub-section (1) may also require the institution receiving the grant to comply with any provision for the reservation of appointments or posts in favour of Scheduled Castes, Scheduled Tribes and any backward class subject to such modification, if any, which the State Government may make in the application of such provision to any class or classes of such institutions.

12. By virtue of Section 146(3) of the Act, now Grant-in-Aid Code becomes the Rules for the purpose of Chapter DC of the Act. Therefore, it is clear that grant cannot be claimed by any Institution as a matter of right, except under and in accordance with the provisions of the Act and the rules framed or deemed to have been framed thereunder.

13. So far as the rights of the teachers employed in aided institutions are concerned, sub-rule (iii) of Rule 26 of the Code is relevant for the present purpose. It reads thus.-

26. The payment of grant shall however be subject to the following conditions.-

(i) xxx xxx xxx xxx. (ii) xxx xxx xxx xxx. (iii) The scales of pay and allowances prescribed by the Department are adopted for the staff of the school.

14. Apart from the above provisions contained in Code, Rule 5 of the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 framed u/s 3 read with Section 15 of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, (in short, the "Educational Institutions Act") also provides that the Real of pay of an employee of an institution shall not be lower than the scale of pay of an employee of a corresponding post in the Government Educational Institution.

15. Moreover, the Supreme Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, , after taking note of the Kothari Commission report, has held thus.-

"In our opinion, the teachers of aided schools must be paid the same pay scale and Dearness Allowance as teachers in Government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the Management in the same proportion in which they share the burden of the existing emoluments of the teachers. The State Government meets the Dearness Allowance liability to the extent of seventy five per cent of the amount. Ten instalments representing the State Government's liability shall be paid by the State Government in two equal parts, the first part being payable within three months from today and the remaining part being payable by 31st March, 1989. The State Government shall also pay the remaining twenty-five instalments, the entire amount being payable in five equal parts, each part being paid every six months, the first such part being payable by 30th September, 1989. The State Government shall not be liable to pay for the period covered by these 35 instalments any amount on account of House Rent Allowance, City Compensatory Allowance and the other allowances claimed by the petitioners".

16. In the case of State of Haryana and others Vs. Rajpal Sharma and others, , the Supreme Court, with approval has followed the aforesaid judgment.

17. Therefore, the spectrum of the statutory provisions and the law laid down by the Supreme Court abundantly make it clear that the managements of the private institutions are bound to pay salary to their teachers on the same pay scale which is admissible to the Government teachers right from the first day of their appointment. If the management fails to discharge this statutory obligation then the Government under the Grant-in-Aid Code as well as under the provisions of the Education Act, has been amply empowered to take appropriate

course of penal measures against the institution for enforcing their obligations.

18. In the above view of the matter, it cannot be seriously disputed that the petitioners being the appointees and employees of private management institution in question, are entitled to recover their salary as per the time scale of pay for their entire length of service including all the increments. Apart from this, in my opinion, neither under the provisions of the Code nor under any other provision, they have any legal right to insist that the Government, at their insistence, should reimburse to the management of the entire salary which is admissible to them. Their right to get the full salary as per the law extends only against the management and not towards the Government. Therefore the present writ petitions at the instance of the teachers of an institution questioning the conditions incorporated in the Grant-in-Aid Code is not maintainable. The question as to whether the management of a institution will be entitled for cent per cent grant of the teachers' salary or not, can be more appropriately decided only when such management approaches the appropriate authorities or the Court for the said purpose.

19. Keeping in view the facts and circumstances of the case, in my opinion, the petitioners are not entitled to the reliefs as claimed in the present writ petitions. If so advised, for enforcement of their rights against the management of the institution they may approach the Government in terms of Sections 132 and 133 of the Act or seek their remedies before any other appropriate forum.

20. Subject to the aforesaid observations and for the reasons assigned hereinbefore the writ petitions are dismissed. No costs.