(2010) 07 SHI CK 0207

In the High Court Of Himachal Pradesh

Case No : LPA No. 16 of 2009

State of H.P. and Another — APPELLANT

Vs

Naresh Kumar and Others — RESPONDENT

Date of Decision : 24-07-2010

Acts Referred:

Citation : (2010) 07 SHI CK 0207

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The issue raised in this LPA is covered by judgment of this Court in titled State of H.P. and Anr. v. Kapil Vaid and Ors. LPA No. 114 of 2008 The text of the said judgment reads as follows:

The issue raised in these Letter Patent Appeals and writ petitions pertains to the dispute regarding grant-in-aid and fixation of pay as per the U.G.C. Scheme. The Colleges before us are governed by the H.P. Non-Government Affiliated Colleges Grant-in-Aid Rules, 1994. The Rules were made by the Governor, Himachal Pradesh and notified on 6th May 1994. While the rules were in operation, it appears the Secretary (Education) to the Government of Himachal Pradesh issued a letter dated 6th August 2002, and to the extent relevant it reads as follows:

I am directed to refer to your letter No. EDN-H(5)C(10)19/96-8, dated 5th April, 2002 on the subject cited above and to convey the sanction of the Government to the tune of Rs. 1.17 Crores (Rupees One Crore seventeen lacs) only to clear and liquidate the past liabilities from out of the sanctioned budget of Rs. 7.10 Crore provided in the current financial year, 2002-2003 as a first charge in respect of 95% Aided Colleges and Adhoc grantee Colleges. The GIA liability to these institutions for future shall be frozen at the level of Rs. 7.10 Crore and provisions will be made accordingly. Any incremental expenditure will have to be met by these institutions by raising resources at their own level.

2. The learned Senior Additional Advocate General inviting reference to Rule 11 of the Rules submits that it is for the government to decide as to what amount should be paid to each College under the Rules. Rule 11 of the Rules, to the extent it relevant reads as follows:

(a) Right to determine amount of Grant-in-aid:- The State Government shall after the examination of accounts fix the amount that may be payable to a college as Grant-in-Aid in a particular year.

3. That rule only gives liberty to the government to scrutinize the claim made by the management as to whether the claim is admissible under the Rules. The rule does not provide an arbitrary power to decide the admissibility of the claim outside the rules. Those matters are governed by the other provisions under the rules. Rule 4 on eligibility provides as follows:

Eligibility:- A non Government College having acquired the affiliation with the Himachal Pradesh University shall be entitled to be governed by the provisions of these Rules automatically but the State Govt. shall have such discretionary power to bring any college on the Grant-in-Aid list after careful consideration of merits of each case and position of the funds earmarked for the purpose of Grant-in-Aid.

4. Rule 5 provides for object of Grants, which reads as follows:

Object of Grants:- The object of Grant-in-Aid contemplated under these Rules is of encouraging and promoting Private enterprise in Education. Such Grant shall be given only for the purpose connected with secular institution without reference to any religious instruction.

5. Rule 6 relates to form of grant, which reads as follows:

Form of Grant:- Grant-in-Aid shall only be in the shape of maintenance grants for paying salary for the teaching and non-teaching posts approved by the Government and appointment of the incumbents against teaching posts approved by the University.

6. Rule 8 relates to quantum of Grant -in-Aid:- (a), which reads as follows:

The amount of Grant-in-Aid to be released to a College shall be limited to 95% of the deficit of the estimated income (as detailed under) and the expenditure likely to be incurred on payments of the salary of the approved staff (Teaching and non-teaching) during one financial year subject to adjustments of over and under payments, in accordance with the norms at which the salary is paid to the staff in Government Colleges. The requirements of Grant-in-Aid in respect of the Colleges for the ensuring year shall be submitted by each College in the form of budget of the Director of Education by 31st October (on a date notified by the Director) of each year, stating numbers of post of Principal, Lecturers (Subject-wise) superintendent, Assistants, Clerks and other and Financial implication alongwith similar Statistical data for at least two previous year with reason to justified each increase and decrease.

7. Rule 12 of the Rules provides for Managements shares, which reads as follows:

Management Share:- The amount payable by the College managements i.e. 5% of the deficit as share of the deficit shall have to be deposited on that account by the College management/ Principal within a specified time in the `PERSONAL LEDGER ACCOUNT'' as mentioned in Section 13 below.

8. Rule 22 prescribes power to stop/ reduce Grant-in-Aid, which provides as follows:

Power to stop/ reduce Grant-in-Aid. It shall be law full for the Government to stop reduced or suspend the Grant-in-Aid to any affiliated College for the violation of any of the provision of this Act/ Rules or the Directive issued by the State Government or the Director of Education from time to time. Provided that before taking any action under this Section the Government shall give reasonable opportunity to such management/ Principal of the authority concerned to show reasons against the action proposed to be taken.

9. Rule 23 relates to divert payment out of grant-in-aid, which reads as follows:

Power of the Government to Divert Payment out of Grant-in-Aid:- In case of non-compliance of an order of a competent authority or of any directive issued under this Act/ Rules, it shall be lawful for the Government to pay, out of the Grant-in-Aid payable to a College such sum of money as is found due to any employee of the College.

10. Rule 25 provides for the annual increment to the teaching and non-teaching staff, which reads as follows:

The annual increment to the teaching and non-teaching employees of the College on the Grant-in-Aid list shall be released by the Management/Principal as per the provision of efficiency bar / Assessment or an any other screening procedure provided in the prescribed pay scales. Matching Grant-in-Aid towards the annual increments will be released by the Government only on these submission of the report in writing from the Principal alongwith the audited papers that the work and conduct of the employee has been satisfactory in the preceding five years.

11. The provisions as extracted above would clearly show that as far as the Institutions covered by the Rules are concerned, the Government is bound to release 95% grant-in-aid in the shape of maintenance grant for paying salary to the teaching and non-teaching staff as approved by the University. There is no case for the government that grant-in-aid is sought for any member of teaching and non-teaching staff, whose appointment is not approved by the University. Rule 8 also shows that norms in the matter of payment of salary to be followed is at par with the salary paid to the staff of the government colleges. The Government having offered grant-in-aid to a college and the college having organized its affairs in accordance with the scheme, particularly in the matter of

payment of salary to the staff, the Government cannot unilaterally withdraw the scheme or interfere with the scheme to the prejudice of the college. Such action if taken would be unjust and unreasonable if not unfair. The only contingency where the government can interfere with the grant is as provided under Rules 22 and 23, in case there is violation of any provisions of the Act and rules or the directive issued by the government. That action shall also be only after affording an opportunity of hearing to the Management. In fact, under Rule 23, it is made clear that in case the management refuses to pay the eligible salary to an employee, it is open to the government to pay the same straight to the said employee after deducting it against the grant-in-aid otherwise due to the management. The procedure regarding the fixation of grant-in-aid is prescribed under Rule 25, as extracted above.

12. In the government letter dated 6.8.2002 extracted above, in fact the Secretary to the Education Department has only said that provision should be made so as to freeze the level of grant-in-aid to Rs. 7.10 crore for the year 2002 and that there should be apportionment of the liability to bear the incremental expenditure by the Management. That can only be at the best a suggestion from the said department. It cannot in any way be taken as amending the statutory rules. The rules can be amended only in accordance with the procedure established under the law, and in any case the same cannot be amended by executive orders. The learned Counsel for the private Respondents point out that government itself had withdrawn the letter dated 6.8.2002 as per letter dated 8.12.2002 produced Annexure R-2 in LPA No. 16 of 2009.

13. The learned Single Judge in the judgment under appeals, have only directed the implementation of the rules, as extracted and explained above. The learned Single Judge hs also made it clear that the teachers in the colleges covered by the scheme should be given a similar treatment as given to those in Government colleges in the matter of fixation and grades. We also find that learned Single Judge has referred to couple of instances where the government has in fact followed the rules in its true spirit in fixing the scales and granting the increments as per the UGC Scheme. Therefore, we do not find any merit in the Letters Patent Appeals. They are accordingly dismissed. Since the reliefs claimed in the writ petitions are in terms of reliefs granted by the learned Single Judge and explained above, those writ petitions are allowed with direction to the Respondents to release the grant-in-aid in terms of Himachal Pradesh Non-Government Affiliated Colleges Grant-in-Aid Rules, 1994, if not released, within a period of three months from today and the fixation of pay and grant of grades shall also be approved, as above, in the meanwhile.

Therefore, this appeal is disposed of in terms of the judgment referred above.