
(2014) 09 SHI CK 0025
In the High Court Of Himachal Pradesh
Case No : CWP No. 10178 of 2012

Sushil Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 25-09-2014

Acts Referred:

Constitution of India, 1950 — Article 23

Citation : (2014) 09 SHI CK 0025

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Jyotsna Rewal Dua, Advocate for the Appellant; Virender Kumar Verma, Meenakshi Sharma, Addl. AG and Parul Negi, Dy. AG, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—Following substantive reliefs have been claimed in the present writ petition:

1. For directing the respondents to release the salaries (grant-in-aid) to the petitioners No. 1 to 14 for two years i.e. for 2010-2011 and for the year 2011-2012 and to the petitioners Nos. 15 and 16 for the year 2011-2012 within time bound schedule along with interest.

2. For directing the respondents to release the arrears on account of pay-scales revised w.e.f. 2006 to the petitioners along with interest within a fixed time schedule.

2. Insofar as relief No. 2 is concerned, the same already stands granted in favour of the petitioners. The short controversy involved in this case is as to whether the salaries (grant-in-aid) to the petitioners No. 1 to 14 for two years i.e. for 2010-2011 and for the year 2011-2012 and to the petitioners Nos. 15 and 16 for the year 2011-2012 can be denied only on the ground that minimum students had not been enrolled in the classes?. Indisputably, all the petitioners prior to its

taking over by the government were working in Public Senior Secondary School, Thora, Nurpur Tehsil Nurpur District Kangra and were receiving 95% grant-in-aid. The school started its Middle wing w.e.f. 1.4.1986 and thereafter upgraded to High Wing w.e.f. 1.4.1990 and yet again it upgraded to a Secondary wing w.e.f. 1.4.1991.

3. The school, for the first time, received 95% grant-in-aid w.e.f. 1.4.1993 in terms of the directions passed by this court. For the Secondary Wing, grant was released w.e.f. 1.5.1998. The State took over this school on 1.4.2012 and thereafter salaries of the petitioners are being paid by it. The dispute only pertains to the salaries of the petitioners for the period(s) mentioned above which have been denied to them only on account of the fact that the school at the relevant time did not have the minimum students as provided in the Grant-in-Aid (for short "GIA") Rules.

4. The respondents, in order to justify their stand, have stated that every aided institution is required to abide by the provisions and eligibility contained in the Grant-in-Aid Rules, 1997 to render itself eligible for release of GIA from the government. It is claimed that as per these Rules, there is a provision of minimum student's enrollment of 60 children in primary classes and not less than 150 combined with Primary and Middle classes in the age group of 6-14 years and 200 up to High unit and 350 up to senior secondary unit to make it a meaningful and recognizable unit. The student enrolment in Senior Secondary unit for the year 2010-2011 and 2011-2012 was as under:

Based upon the above student's strength, respondent department had sanctioned grant-in-aid to the aided institutions with nine teachers in Secondary wing along with two Clerk, one Library bearer and one Peon. While for the High Wing, sanction was made for six Trained Graduate Teacher (TGTs), Craft Teacher (CT), Language Teacher (LT), Laboratory Attendant (LA), Clerk & Chowkidar. On the aforesaid basis, it is claimed that the claim of the petitioners is neither legally sustainable nor maintainable.

5. Respondents in order to further justify their action have relied upon the following observations made by this court in COPC No. 351 of 2011 titled as Ravinder Kumar & others Vs. Shrikant Baldi on 23.11.2011, which are reproduced here as under:

"We find from the rules that there is a provision for surprise inspection with regard to the working strength of students in the Grant-in-Aid schools. In view of the apprehension expressed by the Principal Secretary (Finance) that there are managements who claim and receive grant-in-aid without having the permissible strength of students, we make it clear that it will certainly be open and it shall be the duty of the Education department or the Finance department as well to have an appropriate inspection, surprise or otherwise conducted, to ensure that no management makes a claim beyond what is permissible under GIA Rules."

I have heard the learned counsel for the parties and gone through the records of

the case.

6. I fail to understand as to how the petitioners were required to ensure or could have ensured that there was adequate strength of students in the school, were the teachers and other employees expected to canvass on behalf of the school to ensure this?. Can this responsibility of ensuring adequate students strength be fastened upon the teachers and staff?. To say least, the stand of the respondents is preposterous especially when it was the respondents themselves, who after taking into consideration all the relevant facts (presumably) had yet decided to take over the school. The fact that the students enrolled was less than the minimum prescribed strength as per the GIA Rules in the relevant years, cannot be a ground to deny the claim to the petitioners.

7. The matter can be looked at from a different angle. As observed earlier, it is not the case where the respondents have not at all granted aid to the school, but admittedly the grant has been given to nine teachers in Secondary wing along with two Clerk, one Library bearer and one Peon. While for the High Wing, sanction was made for six Trained Graduate Teacher (TGTs), Craft Teacher (CT), Language Teacher (LT), Laboratory Attendant (LA), Clerk & Chowkidar. How and on what basis, this exercise was undertaken is not forthcoming. The State being a modal employer cannot be permitted to indulge in "pick and choose" and, therefore, also the action of the respondents is not justifiable.

8. The respondents have not disputed that the petitioners have worked during the relevant period. Now, can the petitioners be deprived of their remuneration for no fault of theirs?. The answer clearly is in the negative or else, this would amount to "begar" which is specifically prohibited under Article 23 of the Constitution of India.

9. No advantage can be gained by the respondents by referring to Ravinder Kumar's case (supra) because therein this court was dealing with the case where the school had been receiving grant-in-aid without having the permissible strength of students and then this court made it clear that it was open to the Education department or the Finance department to undertake inspection, surprise visits etc and ensure that no management makes a claim beyond what is permissible under the GIA Rules. Even if these observations are applied to the facts of the present case, then at best, it could have entitled the Education department or the Finance department to have undertaken inspection, surprise visits etc. during the relevant period, but now at this stage it is too late for such exercise.

10. That apart, the petitioners have made specific allegation that 95% grant-in-aid has been given to the teachers/employees of B.R.M.P Senior Secondary School, Garan, PO Gurial, Tehsil Nurpur, District Kangra, HP in which school the total number of students is far less than the school where the petitioners are working. This allegation of the petitioners has gone un-rebutted and un-controverted is, therefore, yet another reason why this petition ought to be

allowed.

11. For all the reasons stated above, the petition is allowed and the respondents are directed to release the salaries (grant-in-aid) to the petitioners No. 1 to 14 for two years i.e. for 2010-2011 and for the year 2011-2012 and to the petitioners Nos. 15 and 16 for the year 2011-2012 within a period of three months from the date of production of the copy of the judgment, failing which respondent shall be liable to pay 9% p.a. interest.

In view of the above observations, petition is disposed of so also the pending application (s).