

Court No. - 1

Case :- SPECIAL APPEAL No. - 316 of 2020

Appellant :- State Of U.P.Thru.Prin.Secy.Minorities Welfare Andwaqf And Ors.

Respondent :- C/M Madarsa Faizul Uloom Thru. Manager Mohammad Ali Akhtar

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Syed Husain

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Brij Raj Singh,J.

1. Heard Sri Amitab Rai, learned counsel for the State appellants and Sri Syed Husain learned counsel who has put in for the respondent.

2. This Intra-Court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court, Rules, 1952, is directed against the judgment/order dated 5.2.2020 rendered in Misc. Single No.5313 of 2015 (C/M Madarsa Faizatul Uloom through its Manager Shri Mohammad Ali. Vs. State of U.P. & others.) whereby, the State has been directed to include the name of the petitioner Institution in the list of Grant-in-Aid Institution from the due date i.e., with effect from 23.7.2015.

3. In paragraph-6 of the personal affidavit filed by the Principal Secretary, the following stand was adopted:-

(i) The Management Committee was disputed at the time of making appointments.

(ii) Appointments have been made during the period in which the dispute of committee of management was under consideration in the Hon'ble High Court, which is not legal.

(iii) The complete land is not registered in the name of said madarsa.

(iv) The appointment of two teachers was found to be ineligible.

In view of the above state govt. has taken a decision on 16.09.2017 that the petitioner institute is not eligible for grant - in - aid as per rules and hence cannot be taken on the grant list."

4. We have examined the documents in the light of observations and relief granted by the Writ Court as is evident from paragraph-45 to 48 of the judgment impugned and the same for ready reference are extracted hereunder:-

"44. This Court having considered the submissions made on affidavits by the petitioner and the State respondents and also the private respondent no.97 and having heard the learned counsel for the parties

at length on several occasions, is of the considered opinion that initially when the petitioner had filed its application on 28.6.2013, the shortcoming pointed out to it was with regard to vacancy of the post of Principal and three teachers in the institution. On relaxation of criteria by later Government Orders and opportunity to file a fresh application, the petitioner issued advertisement, conducted selection and appointed one Principal and three teachers on 8.11.2014 and submitted a fresh application on 12.11.2014. The application submitted on 12.11.2014 was verified by respondent nos.4 and 3 and thereafter submitted to the office of respondent no.2. The office of respondent no.2 wrote a letter on 5.8.2015 to the respondent no.4 saying that requisite documents were not filed along with the application and the same be filed latest by 20.8.2015. The petitioner institution again submitted all documents along with the application and it was forwarded in time by respondent nos.4 and 3, but by the time it reached the Government, the decision was already taken and a list of 17 Madarsas was again issued on 13.8.2015. The petitioner was not included. Thereafter also out of 194 files sent by the Directorate, the remaining Madarsas were considered in the meeting held by the State Level Committee on 11.2.2016, 7.4.2016 and 15.9.2016. On such dates also, the reports submitted by respondent no.2 prevailed, which erroneously recorded that appointments of teaching staff made on 8.11.2014 were made during the period when the Management of the institution was disputed and, therefore, such appointments were illegal and the posts be deemed to be vacant.

45. From a perusal of the judgments rendered by this Court in adjudication undertaken by the rival Committees of Management at Allahabad, it is evident that the petitioner Committee of Management with its Manager Mohd. Ali Akhtar had remained in control of the institution on the basis of elections held in 2007, and in 2010 and then again in 2013. There was no dispute pending after dismissal of writ petition on 29.10.2014 by this Court at Allahabad. The Reference was filed by the rival Committee of Management before the Prescribed Authority only in December, 2014.

46. With regard to the contention that one of the Sale Deeds relating to the land of the petitioner institution being recorded in the name of Faizanul Uloom Junior High School, it has come on record that the Junior High School is situated in a different locality in the city of Jaunpur and has no concern with the Madarsa, which is running independently at Machhlishahar, Jaunpur. Thus, the three objections taken for rejection of the petitioner's case were completely erroneous. The case of the petitioner has been rejected arbitrarily.

47. This writ petition is allowed to the extent of exclusion of the name of the petitioner institution from the list of institutions taken under grant in aid on 23.7.2015 and 13.8.2015.

48. The decisions taken subsequently by the State Level Committee on 11.2.2016, 7.4.2016 and 15.9.2016 are also erroneous in so far as they reject the petitioner's case and are set aside. The petitioner being wrongly excluded from the list issued in July, 2015 shall be taken under grant in aid w.e.f. 23.7.2015, the date when several other Madarsas, which were recognized later than that of petitioner's Madarsa were taken under grant in aid."

5. We find that all the four objections raised by the State regarding non-fulfilment of the requisite criteria, on being probed deeply have been found to be baseless. At the cost of repetition, it may be pointed out that there was no dispute in the Committee of Management at the relevant point of time when the teachers were appointed. The land belonging to the Institution was duly purchased on the basis of registered sale-deeds mentioned in the report itself and 5th Sale-deed executed in the year 1989 was not claimed to be the land belonging to the Institution rather it was for a different school. The strength of teachers was also satisfied by the Institution on the date when the report by various committees was drawn. All these aspects are well explained in the documents placed on record. It is in the light of the documentary proof that we have gone through the judgment impugned here in this special appeal. We notice that the requisite conditions provided for bringing the Institution under the Grant-in-Aid, have duly been gone into by the Writ Court.

6. Learned counsel for the State at this stage hammered on the point that even if all the requisite conditions were satisfied, the Writ Court ought to have granted the actual benefit from the date of judgment. To verify the specific conditions as were prescribed under the Government order issued on 27.2.2015, it has certainly taken some time to fulfil the requisite conditions which on being satisfied, the reports were duly forwarded to the competent Authority. Two teachers who were not eligible have certainly to be excluded from the benefit.

7. In the facts and circumstances of the case, though all the requisite conditions have been found to be fulfilled, yet the actual benefit allowed with effect from 23.7.2015 would cause undue hardship prior to the date of judgment. Therefore, all the pecuniary benefits as have been granted as a consequence of allowing the Writ Petition, shall be deemed to have been granted from the date of the judgment/order i.e., 5.2.2020. This, however, shall not affect the petitioner Institution as to its eligibility based on registration of recognition for being empanelled to receive grant-in-aid and the eligibility for seniority so determined shall remain intact.

8. The special appeal is accordingly disposed of.

(Brij Raj Singh,J.)

(Attau Rahman Masoodi,J.)

Order Date :- 5.2.2024
Rajneesh JR-PS)