

Court No. - 18

Case :- WRIT - A No. - 4133 of 2022

Petitioner :- C/M Malti Devi Girls Junior High School Thru. Manager Sri Umesh Kumar And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education And 3 Others

Counsel for Petitioner :- Girish Chandra Verma, Abhishek Kumar Pandey, Sheshnath Bhardwaj Advoc

Counsel for Respondent :- C.S.C., Ajay Kumar, Ran Vijay Singh, Ran Vijay Singh

Hon'ble Manish Mathur, J.

1. Heard Girish Chandra Verma and Mr. Manvendra Singh, learned counsel appearing for petitioner and learned State Counsel for the opposite parties.

2. Petition has been filed challenging order dated 13.06.2022 whereby petitioner's Application for providing grant-in-aid has been rejected. Further prayer for a direction to opposite parties to provide grant-in-aid in terms of Government Order dated 07.09.2006 with effect from 01.12.2006 has been sought along with prayer for payment of salary to Teachers and employees of petitioner-institution being Malti Devi Girls Junior High School, Raghunathpur, District Deoria regularly every month along with arrears thereof with effect from 01.12.2006.

3. It has been submitted that petitioner which is conducting Classes from VI till VIII was granted temporary recognition on 31.03.1984 with permanent recognition being granted on 30.05.1986. It is submitted that vide order dated 07.09.2006 and consequential order dated 09.09.2006, State Government took a policy decision for providing grant-in-aid to Junior High Schools imparting education from Classes VI to VIII with the criterion being seniority to be determined from the date of permanent recognition. Applications were invited from

recognized institutions and in pursuance thereof, petitioner-institution also submitted its Application along with Manager's Return. It is submitted that recommendation by District Level Committee was thereafter made for bringing petitioner-institution under grant-in-aid. However, in the list issued by State Government on 02.12.2006, petitioner-institution was excluded therefrom although Junior High Schools which had been granted recognition up till 23.04.1999 were included therein.

4. It has been submitted that exclusion of various Junior High Schools was made in pursuance of Clause 2(13) of Government Order dated 07.09.2006 where Classes other than VI to VIII were also being conducted. It is submitted that aforesaid clause was thereafter agitated against in various Writ Petitions and was set aside by this Court in a bunch of petitions with leading writ petition being Writ Petition No.61343 of 2006. Special Appeal No.162 of 2007 filed there-against was also dismissed on 15.01.2008. The same was thereafter upheld by Hon'ble the Supreme Court in Special Leave Petition No.4630 of 2008.

5. In pursuance of judgment and order rendered by Hon'ble the Supreme Court, the entire issue was revisited and the Director of Education (Basic) by means of letter dated 20.04.2011 recommended petitioner-institution to be brought under grant-in-aid in terms of conditions indicated in Government order dated 07.09.2006. It is submitted that aforesaid recommendation also indicated the fact that petitioner-institution was inadvertently excluded from the list of institutions brought under grant-in-aid on a mistaken impression that it was conducting Classes in addition to Classes VI to VIII.

6. Subsequently, the Basic Education Officer concerned also by

means of letter dated 03.06.2016 recommended inclusion of petitioner-institution under grant-in-aid while indicating various factors pertaining to infrastructure of the institution to find it within the scope of conditions enumerated for inclusion under grant-in-aid. A similar report was thereafter submitted by the Director of Education on 03.03.2020 and 09.12.2020 by the Block Development Officer.

7. It is submitted that despite aforesaid consecutive reports by authorities concerned, petitioner-institution was not included in the list of grant-in-aid and by means of impugned order, the application has been rejected in view of new policy notified by Government Order dated 14.07.2020. It is submitted that Government Order dated 14.07.2020 cannot be made retrospective in operation since rights of petitioner-institution stood crystallized in terms of Government Order dated 07.09.2006.

8. It has been further submitted that impugned order even otherwise is based on a report dated 02.05.2022 submitted by Director of Education (Basic) but neither any copy of aforesaid report was ever supplied to petitioner nor was any opportunity of hearing provided thereagainst. Learned counsel has also submitted that the report as quoted in impugned order is even otherwise contrary to the actual report which has been brought on record by petitioner.

9. It has also been submitted that once opposite parties themselves admitted their fault in not including petitioner-institution in list of grant-in-aid institutions on the basis of a misconception, it was incumbent upon them to have rectified their error with effect from the date when petitioner-institution was required to be included in the list of institutions under grant-in-aid. Learned counsel for petitioner has placed reliance

on Division Bench judgments of this Court in **State of U.P. and others v. C/M Hanuman Prasad Poddar Purva Madhyamik Vidyalaya and another**, Special Appeal No. 387 of 2020 decided on 15.05.2024{Neutral Citation No. - 2024:AHC:87336-DB} and **Smt. Anwari Begum v. State of U.P. and others**, reported in (2000) 3 UPLBEC 2673 to buttress his submissions.

10. Learned counsel for opposite parties on the basis of counter affidavit has refuted the submissions advanced by learned counsel for petitioner with the submission that petitioner's application for inclusion under the grant-in-aid would be required to be considered as on the date and in terms of the extant policy as on the date of consideration for inclusion in the list of institutions brought under grant-in-aid and since as on that date, the Government order dated 14.07.2020 was in vogue, the application could be considered only in terms of the extant policy itself.

11. It is also submitted that it is the inherent right of the State Government to revisit or amend any policy decision and in the present case, the same had been done in pursuance of directions issued by this Court in Writ Petition No. 38992 of 2017 (**Jai Ram Singh and others versus State of U.P. and others**) which was decided vide judgment and order dated 23.05.2019 whereafter a fresh policy decision was taken and Government order dated 14.07.2020 was issued. It has also been submitted that there is no fundamental right of petitioner institution to claim an inherent right for inclusion in the list of institutions being brought under grant-in-aid. He has placed reliance on judgment rendered by Hon'ble Supreme Court in **State of U.P. and others versus Principal, Abhay Nandan Inter College and others**, reported in AIR 2021 Supreme Court 4968.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident and admitted that initial policy for purposes of bringing institutions under grant-in-aid was issued by the State Government on 07.09.2006 which also required the various institutions to submit applications for inclusion therein. It is in pursuance thereof that petitioner institution gave its application for inclusion. It is also evident from a perusal of aforesaid Government order that institutions were required to be brought under grant-in-aid in terms of their seniority with effect from date of permanent recognition and subject to fulfillment of infrastructure conditions as indicated therein.

13. It appears that subsequently in terms of Clause 2 (13) of Government order dated 07.09.2006 restriction was provided with regard to such institutions which were conducting classes in addition to Classes VI to VIII. It also appears from the record that petitioner-institution was excluded from the list of institutions to be brought under grant-in-aid on account of a misconception that it was covered by Clause 2 (13) of Government order dated 07.09.2006.

14. The said fact is quite evident from the report dated 20.04.2011 submitted by the Director of Education (Basic) specifically indicating that petitioner-institution was inadvertently excluded from being brought under grant-in-aid due to such a misconception and thereafter made his recommendation for inclusion of petitioner-institution to be brought under grant-in-aid. The aforesaid recommendation has thereafter been reiterated vide reports dated 03.06.2016, 03.03.2020 and 19.12.2020 as well.

15. A perusal of aforesaid reports clearly indicates the admitted inadvertent error on the part of opposite parties in excluding

petitioner-institution from being brought under grant-in-aid. The reports also indicate the infrastructure available with petitioner-institution and reports that it is in consonance with the conditions enumerated in Government order dated 07.09.2006.

16. It is also evident that no cognizance of aforesaid reports was taken by the State Government due to which petitioner-institution was compelled to file Writ Petition No. 25648 (M/S) of 2019 which was disposed of vide order dated 18.11.2019 directing the concerned authority to take a final decision with regard to petitioner's representation.

17. In pursuance of directions issued by this Court, the State Government vide order dated 20.01.2021 rejected petitioner's representation primarily on the ground that a new policy has now been notified vide Government order dated 14.07.2020 and in case new institutions are taken under grant-in-aid, excess financial liability would be imposed upon the State Government and therefore it would not be possible to take new private institutions under grant-in-aid.

18. Aforesaid order was challenged by petitioner in Writ - C No. - 31922 of 2021 which was disposed of vide order dated 31.01.2022 primarily on the ground that the order has been passed on an ex parte basis and petitioner-institution should have been accorded an opportunity of hearing. The order impugned in the petition was set aside.

19. It is in pursuance that impugned order has been passed again reiterating the aspect of new policy having been notified vide Government Order dated 14.07.2020 and that in case new private institutions are taken under grant-in-aid, it would unnecessarily burden the State Government financially. Impugned order has also placed reliance on a report dated

07.06.2022 submitted by the Director of Education (Basic) in which paragraphs 11 and 12 have been specifically relied upon to the effect that the permanent recognition order of petitioner-institution dated 29/30.05.1986 appears to be suspicious. The second ground taken is that during a spot inspection conducted of petitioner-institution, no relevant documents was supplied by the authorities.

20. It is quite evident that the impugned order has completely ignored the earlier various reports as discussed herein above with regard to admission of the opposite parties themselves that petitioner-institution was inadvertently excluded from the list of institutions brought under grant-in-aid in a mistaken impression that it was covered by Clause 2 (13) of Government order dated 07.09.2006. There is absolutely no discussion whatsoever with regard to other reports as well indicating the fact that petitioner-institution is covered by various provisions of Government order dated 07.09.2006.

21. The primary ground for rejection of petitioner's application is the report dated 07.06.2022 so far as it indicates suspicion upon petitioner's initial permanent recognition dated 29/30.05.1986 and of relevant documents not being provided to authorities concerned at the time of spot inspection.

22. Petitioner has brought on record a copy of letter/report dated 02.05.2022 as Annexure no. 18 to the writ petition.

23. There is grave discrepancy in the report quoted in impugned order and in the report brought on record as Annexure no. 18 inasmuch as the report dated 02.05.2022 brought on record as Annexure no. 18 does not include paragraphs 11 and 12 which forms the basis of impugned order.

24. It is also relevant that the report brought on record as Annexure no. 18 has not been denied by opposite parties in

their counter affidavit leading to an inescapable conclusion that the report dated 02.05.2022 as quoted in the impugned order is incorrect. On the contrary the report dated 02.05.2022 brought on record as Annexure no. 18 reiterates the earlier reports made in favour of petitioner-institution.

25. In view thereof, the very basis of the impugned order stands vitiated.

26. The second ground for rejection of petitioner's application being that a new policy has thereafter been introduced by the State Government vide order dated 14.07.2020 does not merit acceptance particularly in view of fact that petitioner-institution gave its application for inclusion under grant-in-aid in terms of Government order dated 07.09.2020 in 2006 itself. Various reports are on record to indicate that petitioner-institution was found eligible to be included under grant-in-aid list since it adhered and conformed to various conditions of Government order dated 07.09.2006 and was inadvertently excluded by the opposite parties on a mistaken impression.

27. In the considered opinion of this Court, in view of aforesaid admission by opposite parties themselves, it would be in the fitness of things that petitioner's application should have been considered as on the date of the application itself since the rights of petitioner stood crystallized as on the date of application particularly once the opposite parties themselves admitted that petitioner-institution conformed to various conditions indicated in Government order dated 07.09.2006.

28. In the considered opinion of this Court, the doctrine of relation back would also be applicable in the present facts and circumstances as enunciated by Hon'ble Supreme Court in **Delhi Jal Board v. Mahinder Singh**, reported in (2000) 7 SCC 210 as well as by the Delhi High Court in **Sweety Bhalla v.**

Industrial Financial Corporation of India Ltd., reported in 2019 SCC OnLine Del 6409.

29. Hon'ble the Supreme Court in **Delhi Jal Board**(supra) has explained the doctrine of relation back in the following terms:-

"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry.....".

30. The Delhi High Court in **Sweety Bhalla**(supra) has also considered the said aspect of the doctrine in the following manner:-

'15. Learned counsel further submits that the principle of 'relation-back' was mention in order of the chief Commissioner for Disabilities dated 12.04.2006. The Black's Law Dictionary defines 'relation back' as : - "The doctrine that an act done at a later time is, under certain circumstances, treated as though it occurred at an earlier time". This doctrine has international relevance and application and has been highlighted in the 2010 judgment of the US Supreme Court in the case of "Krupski v. Costa Crociere S.P.A.", wherein the American Supreme Court allowed Krupski's amendment to add a new defendant, after the period of limitation was over, to relate back to the time of the original filing, thereby satisfying the applicable statute of limitations. In India, this doctrine or rule has been incorporated in a number of legislations and service jurisprudence including number of Judgments of the Hon'ble Supreme Court of India. In the case of Delhi Jal Board v. Mahinder Singh, (2000) 7 SCC 210, the Supreme Court applied the Doctrine of Relation Back in service Jurisprudence by holding that the findings of a disciplinary enquiry exonerating an Officer would have to be given effect to as they relate back to the date on which the charges are framed."

31. It is also relevant that Government order dated 14.07.2020 would be applicable only to future applications since it is not retrospective in nature.

32. The last ground taken in the impugned order for rejection of petitioner's application is based on judgment rendered in the case of **Jai Ram Singh** (supra). However, the aforesaid judgment as quoted in the impugned order clearly indicates that it is not applicable in the facts of the case since it does not pertain to the question of institutions conducting classes between VI to VIII in terms of Government order dated 07.09.2006. Therefore reliance placed on aforesaid judgment by impugned order is clearly misplaced.

33. It is also relevant that new policy notified on 14.07.2020 has been formulated in pursuance of directions issued in the case of **Jai Ram Singh** (supra) and as has been noticed herein above, the aforesaid would not be retrospective in nature.

34. It is relevant that in similar circumstances, a coordinate Bench of this Court in **Committee of Management Shri Dravi Nath – Purva Madhyamik Vidyalaya & another** versus **State of U.P. and others** Writ - C No. - 9722 of 2012 decided on 24.08.2018 has adjudicated upon a similar controversy and has granted the relief of the institution being brought under grant-in-aid. Aforesaid judgment was thereafter challenged in Special Appeal Defective No. 932 of 2018 filed by the State Government which was dismissed on 24.02.2020 whereafter Special Leave to Appeal (C) No. 4539 of 2021 filed thereagainst has also been dismissed vide judgment and order dated 30.07.2021.

35. Following aforesaid judgments, a coordinate Bench of this Court in **Committee of Management Hanuman Prasad Poddar Purva Madhyamik Vidyalaya and another v. State of U.P. and others**, Writ - C No. - 41768 of 2018 decided on 22.11.2019 has also granted such relief and challenge to aforesaid judgment in Special Appeal No. 387 of 2020 has also been rejected by means of judgment and order dated 15.05.2024.

36. This Court has no hesitation in following the aforesaid dictum of this Court.

37. In view thereof, the impugned order dated 13.06.2022 is hereby quashed by issuance of a writ in the nature of certiorari. A further writ in the nature mandamus is issued commanding the opposite parties to include petitioner-institution under grant-in-aid with effect from the date of receipt of its application in terms of the Government order dated 07.09.2006. Appropriate

orders shall be passed by the competent authority within a period of two months from the date a certified copy of this order is produced before authority concerned.

38. Consequently, the petition succeeds and is **allowed**. Parties to bear their own cost.

Order Date :- 24.7.2024

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