

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.26445 of 2015

Date of decision: December 19, 2015.

Parveen Lata

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Shri Madhav Pokhrel, Advocate, for the petitioner.

Hemant Gupta, J. (oral)

The petitioner has sought quashing of Clause 67(i) of the Grant-in-Aid Rules, Chapter III, Education Code, the same being stated to be contrary to Section 7 of the Punjab Privately Managed Recognized School Employees (Security of Service) Act, 1979 (in short the 1979 Act).

The offending Clause reads as under:-

“(i) If the number of students in a subject or a section falls below 10 and 30 respectively, no grant-in-aid will be admissible for staff teaching that section/group/subject. The deduction in this connection will be made on proportionate basis.”

The argument of learned Counsel for the petitioner is that Section 7 of the 1979 Act contemplates that the scale of pay and dearness allowance of the employees shall not be less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government. Therefore, the salary payable to the petitioner cannot be

reduced on the ground that the number of students is less than 30 in a section, as is contemplated in the grant-in-aid rules.

We have heard learned Counsel for the petitioner and find no merit in the writ petition.

The petitioner is working as Hindi Mistress with respondent No.6 School, managed by respondent No.5 Committee since 22nd August, 1995. It was on 7.8.2010 that the State Government issued a circular that if number of students in a section is less than 30, then grant-in-aid would be deducted proportionately. It is in pursuance of such condition that the grant-in-aid in respect of the post against which the petitioner has been working, has been reduced. The challenge is to the reduction of grant-in-aid by the State Government for the reason that number of students in a section is less than 30, is not legally tenable.

The petitioner is employed by a privately managed school. The responsibility of disbursement of salary to its employees which is not less than the salary of a corresponding post of the State Government in terms of Section 7 of the 1979 Act is that of the employer. The grant-in-aid is the reimbursement of the expenses incurred by a privately managed school against the post against which grant-in-aid is contemplated under the Rules. Therefore, the payment of salary is the responsibility of the private institute.

Grant-in-aid shall be admissible in terms of the policy decision of the State Government which includes the situation when the number of students in a section is less than 30, then, the grant shall be reduced proportionately. The payment of grant falls exclusively in the executive domain. It is the policy of the State Government relating to its finances. Such policy

has limited scope of judicial review. Unless the policy is wholly arbitrary and beyond its competence, the same cannot be permitted to be disputed.

Reference may be made to *Brij Mohan Lal v. Union of India*, (2012) 6 SCC 502, where the Court held as follows:

96. It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. It is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the courts would decline to exercise the power of judicial review in relation to such matters. But this general rule is not free from exceptions. The courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or mala fide.

97. In bringing out the distinction between policy matters amenable to judicial review and those where the courts would decline to exercise their jurisdiction, this Court in *Bennett Coleman & Co. v. Union of India*, (1972)2 SCC 788 held as under: (SCC p. 834, para 125)

“125. ... The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietors to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the uncharted ocean of governmental policy.”

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99. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be

its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions.”

Apart from the fact that it is a policy matter leading to finances of the State Government, we find that the condition to reduce grant-in-aid for the reason that there are less than 30 students in a section cannot be said to be wholly unjust and arbitrary. Grant-in-aid is given to the private management to facilitate the cause of education, but if there are not enough number of students in a section, the public funds cannot be ordered to be paid to a privately managed institution.

Consequently, we do not find any merit in the writ petition.

Dismissed.

However, it shall be open to the petitioner to avail such other remedy as may be available to the petitioner under the Act or otherwise.

[Hemant Gupta]
Judge

[Raj Rahul Garg]
Judge

December 19, 2015.
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