IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15878 of 2015
Date of Decision: 13.07.2016

Mohinder Pal and others ... Petitioners

Versus

The State of Haryana and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Namit Kumar, Advocate, for the petitioners.

Ms. Shruti Jain Goel, AAG, Haryana.

Ms. Riya Bansal, Advocate, for respondents No.4 and 5.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Mr. Namit Kumar, learned counsel admits that 75% of the burden of salaries by way of meeting the deficit has been discharged by the Government of Haryana towards the respondent school up to March 2016. This includes arrears of pay revision, dearness allowance and all the outstanding dues have been received by the petitioners till March 15, 2016. The dispute which remains relates to the balance 25% share of the deficit relatable to the party-aided school including certain other benefits which are mentioned at page 9 of the petition, which according to Mr. Namit Kumar, still remain outstanding.

2. However, learned counsel is not in a position to dispute that the jurisdiction for the entire relief claimed in the petition vested in the

Educational Tribunal, Haryana and, therefore, in the first instance, the writ is not maintainable. However, since directions have been issued and Government has paid its share, no further determination is required by this court when the petition is found not maintainable to the extent of 25% balance share to lay claim on which the petitioners are at liberty to approach the appropriate forum for redressal of their remaining grievances. The liberty to approach the learned Tribunal is granted. Accordingly, the petitioners are relegated to the remedy before the Educational Tribunal, Haryana exercising territorial jurisdiction over the subject matter or whatever remains of it.

3. Faced with this situation, Mr. Namit Kumar, prays that since the Court intervened in this petition and partial relief has been obtained by the petitioners a perpetual injunction deserves to be issued to the State of Haryana in the Education Department to continue paying 75% share and its 25% share of deficit to defray salaries etc. to the petitioners who are teachers in the HMT Employees Education Society Senior Secondary School, Pinjore – respondent No.4. There is considerable substance in this prayer since the petitioners should not be left to approach the appropriate forum time and again for recovery of their salaries for the present and in the future. Therefore, till the present arrangement continues and the school remains a privately managed aided institution receiving grant-in-aid from the Government of Haryana, a direction is issued *ex debito justitiae* to the respondent State that it would continue to honour and discharge its financial responsibilities and shoulder the burden every month to defray the salaries of the petitioners to the extent of share of the State under the grant-in-aid

scheme.

4. At this stage, Ms. Shruti Goel appearing for the State submits that the grant-in-aid scheme does not run on monthly basis but payments are released quarterly with the Government bound only to meet 75% of the deficit of the school. She is right in contending that it is the primary duty of the school to discharge its liabilities towards it staff and pay salaries in the first instance and make claims to Government afterward from the grant-in-aid scheme by following the procedure prescribed. This may be the correct position in law as was first propounded in Anandi Mukta Satguru Shree Mukta v. V.R. Rudani and others, AIR 1989 SC 1607. The Supreme Court observed that the Court is only concerned with the liability of the management of the college towards its employees. Under the relationship of master and servant, the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the State compensates, it will not make full payment to the staff. There can be no dispute with the legal position that the primary duty falls on the management but the employer is a Society run by HMT Ltd. which is a company in the process of being wound up and pleads that it has no money left to source and meet 25% balance. It is another matter that Mr. Namit Kumar, counters that HMT still receives substantial rent from its properties as asserted by the petitioners in para.7 of the petition. However, this issue can be agitated before the learned Tribunal since this Court is restraining itself from proceeding further in the matter on account of alternative remedy and want of maintainability of the petition.

5. Accordingly, with these observations and directions, the file is

closed from the doors of this Court. Nevertheless, a direction is issued to the respondent State of Haryana as above and will be complied with as an exception to the general rule to grant-in-aid which is based on quarterly payments of share liability under the head of this order to meet the future salaries of the teaching and other staff on monthly basis or as thought fit without causing sudden dislocation of 75% share of the deficit so that the school does not keel over and close down and the students enrolled left in a lurch.

6. Therefore, this arrangement will continue till it is superseded by any scheme which may come into existence in the future. The amounts due after April 01, 2016 will be paid to the extent of 75% of the deficit to the petitioners in a manner that they get their salaries to the extent indicated with balance 25 % to be considered and dealt with by the learned Tribunal after hearing parties. The arrears will be calculated and paid to the petitioners within a month together with their normal salaries to the extent of 75%. The management will cooperate with the Government and furnish full and truthful information/data as desired by the respondent-Department to facilitate in this process.

7. The petition stands disposed of with the liberty as aforesaid. File be sent to the appropriate Tribunal for further proceedings being the proper forum of competent jurisdiction. Petitioners will indicate to the registry where the file is to be remitted at their expense. Original order sheets be retained by office by supplying certified copies of the same at the expense of the petitioners, in case they desire so. However, this order will not be cited as a precedent as it has been passed on its own special facts

only to keep the school effectively running and imparting education in the backdrop of HMT being in the process of closure.

(RAJIV NARAIN RAINA)
JUDGE

13.07.2016
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