IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.30571 of 2018(O&M)
Date of decision:-09.01.2019

Managing Committee, Public High School, Bullowal, District Hoshiarpur (Punjab) through its Chairman

........Petitioner

Versus

State of Punjab and others

......Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. P.S. Thiara, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

CMNo.53 of 2019

Application is allowed as prayed for.

Documents at Annexures P-10 to P-14 are taken on record.

Main Case

The petitioner Managing Committee, Public High School, Bullowal, District Hoshiarpur, has filed the instant petition assailing the order dated 16.01.2018, passed by the Educational Tribunal, Punjab (Annexure P-8) and in terms of which directions have been issued to re-calculate the salary of respondent No.3 herein on the basis of pay-scale applicable on 01.04.2010, after due modification for enhancement of pay-scales, increments etc. and to release salary w.e.f.01.04.2010 minus the grant-in-aid amount paid by the Government and the amount already paid by the petitioner school within a period of three months.

Facts in brief may be noticed at the outset.

Respondent No.3 herein was appointed by the petitioner Managing Committee as a Hindi Mistress in the pay scale of Rs.1650-2925 against an aided post on 22.08.1995. The Circle Education Officer, Jalandhar, approved the appointment of respondent No.3 on 30.10.1995 for 95 % grant-in-aid. Petitioner-school as such was required to pay the remaining 5%. On 07.08.2010, the State Government issued a circular containing a decision that if number of students in a section is less than 30, then grant-in-aid would be reduced proportionately. In pursuance to such decision, the grant-in-aid in respect of the post against which respondent No.3 was working was also reduced. The petitioner school however, decline to pay to respondent No.3 anything more than 5% of the salary component. Respondent No.3 being aggrieved, filed CWP No.3355 of 2013 and which disposed of by directing the DPI (Secondary Education), Punjab to decided her representation. Vide order dated 27.03.2015, the DPI (SC), Punjab, rejected the prayer of respondent No.3 for restoration of grant-in-aid and took a view that the salary has to be paid by the School in question. Respondent No.3 then filed a petition before the Educational Tribunal, Punjab, challenging the order dated 27.03.2015, passed by the DPI(SC), Punjab and praying for directions for release of full salary and allowances alongwith arrears w.e.f. 01.04.2010. It is such petition that has led to the passing of the impugned order dated 16.01.2018 at Annexure P-8.

Mr. P.S. Thiara, learned counsel representing the petitioner school has argued that respondent No.3 was appointed in the light of appointment letter dated 22.08.1995 (Annexure P-1) and in terms thereof the school was responsible to pay only 5% of the salary share. It is conceded that the number of students in the petitioner school got reduced to 22 and as such by way of operation of circular dated 07.08.2010 the grant-in-aid in respect of the post held by respondent No.3 had been reduced proportionately. As per counsel the petitioner school under such situation was not liable to make good to respondent No.3, the reduction in grant-in-aid. The precise submission made by counsel is that the school management is only liable to pay 5% of the salary and 95% is to be paid by State of Punjab under the grant-in-aid scheme and if for any reason the State of Punjab reduced the grant-in-aid then in such eventuality the petitioner school cannot be made liable to pay the balance amount. Counsel submits that such aspect has been overlooked by the Educational Tribunal, Punjab, while passing impugned order. Counsel has also adverted to the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme to contend that under such scheme teachers working in aided schools are granted pension by the State Government and no part of the pension is contributed by the management of the school in question. It is sought to be argued that since the entire burden towards admissible pensionary benefits lies on the State Government, the liability to pay 95% of the full salary should also be discharged by the State Government. Counsel has also adverted to the documents placed on record at Annexures P-10 to P-14, to submit that a subsequent development has taken placed inasmuch as from April 2018 onwards the State Government has started paying full amount of grant-in-aid qua respondent No.3. It is urged that under such circumstances the State Government cannot escape its liability even with regard to the intervening period i.e.from April 2010 to April 2018. Financial constraints being faced by the petitioner school are also cited by counsel towards implementation of the impugned order passed by the Educational Tribunal, Punjab.

Having heard learned counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant petition and the same deserves to be dismissed.

Section 7 of Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979 (herein 'the Act'), reads as follows:-

> ***"Notwithstanding anything contained in section 3, 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.***
>
> ***Provided that where the scales of pay and dearness allowance of the employees are less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government, the Director shall direct the concerned managing committee to bring the same at par with those of such employees of the State Government."***

A bare reading of the afore-reproduced provision makes it clear that it would be the obligation of the petitioner Managing Committee to disburse salary in favour of respondent No.3 as per pay scale which is not less than the salary pay scale admissible to the corresponding posts under the State Government. By virtue of Circular dated 07.08.2010, the State Government had only taken a decision that if number of students in a section is less than 30 then grant-in-aid would be reduced proportionately. Such circular did not have the effect of reducing the pay scale admissible to respondent No.3. The Educational Tribunal, Punjab in the impugned order dated 16.01.2018, has rightfully observed that even if the State Government had reduced its obligation under the grant-in-aid scheme, respondent No.3 would continue to remain an employee of the petitioner school and the obligation to pay salary as per pay scale admissible in the light of Section 7 of the Act, would lie squarely upon the management of the school.

Even otherwise the issue sought to be raised by the petitioner school is no longer res integra.

Respondent No.3 herein had earlier in point of time filed CWP 26445 of 2015, challenging the vires of Clause 67 (1) of the grant-in- aid rules, contained in Chapter 3 of the Education Code. The writ petition was dismissed by taking a view that an employee cannot insist upon the Government subsidizing her salary as grant-in-aid has been validly reduced and the employees salary is payable by the school in question in terms of Section 7 of the Act. Relevant extract of the judgment reproduced as follows:-

> *The petitioner is employed by a privately managed school.* ***The responsibility of disbursal 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.***
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> *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 fall 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.

Apart from the fact that 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."***

The challenge as such raised by the petitioner Managing Committee to the impugned order dated 16.01.2018 (Annexure P-8) would stand negated in terms of the observations made by this Court in CWP No.26445 of 2015 and as such reproduced hereinabove.

The contention raised by counsel by placing reliance on the appointment letter dated 22.08.1995 (Annexure P-1) to limit the burden of the school only with regard to release of 5% of the salary is wholly misconceived. The stipulation in the appointment letter dated 22.08.1995 and which was sought to be invoked by counsel reads as follows:-

" *The Managing Committee and Headmaster of Public High School, Bullowal, will not be responsible of your pay if your appointment is not approved by the Education Department."*

It is not the case of the petitioner school that the appointment of respondent No.3, has not been approved by the Education Department, State of Punjab, against an aided post. Even otherwise any stipulation contained in the appointment letter would not override the right vested in favour of respondent No.7 in terms of Section 7 of the Act.

The grant of pensionary benefits under the Punjab Privately Managed Recognized Aided Schools Retirement Benefits Scheme, would have no relevance to the issue at hand.

Even the subsequent development brought to the notice of this Court whereby the State Government has commenced releasing 95% aid qua respondent No.3 w.e.f. April 2018, would not absolve the petitioner Managing Committee of its liability to pay the salary component as directed by the Educational Tribunal for the period April 2010 to April 2018.

For the reasons recorded above, no infirmity is found in the impugned order dated 16.01.2018 passed by the Educational Tribunal, Punjab (Annexure P-8).

Writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.01.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No