IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.214

CWP-258-2018 (O&M)
Date of decision : 4.2.2020

Mahesh Yadav and others ..... Petitioners

VERSUS

State of Haryana and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajesh Lamba, Advocate, for the petitioners.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Aashish Chopra, Advocate with
Ms. Rupa Pathania, Advocate, for respondent No.4.

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SUDHIR MITTAL, J. (Oral)

The petitioners are the parents of students, who are studying in respondent No.4-school. They are aggrieved with order dated 8.11.2017 passed by the appellate authority under the Haryana School Education Rules, 2003 (hereinafter referred to as 'the 2003 Rules'), whereby, the appeal of the school has been allowed and order dated 31.7.2017 passed by the Fee and Fund Regulatory Committee (for short FFRC) has been set aside.

The dispute is regarding the enhanced fee charged by the school-respondent No.4 for the academic session 2017-18. As per the Haryana School Education Act, 1995 (hereinafter referred to as 'the 1995 Act'), the details of fee to be charged for any academic session have to be submitted through Form-VI to be filed before the commencement of the academic session. The school-respondent No.4 submitted Form-VI on 3.1.2017. Thereafter, a complaint was made by the parents before the FFRC regarding charging of increased fee. The FFRC entertained the said complaint and vide order dated 26.5.2017 ordered an audit of the accounts of the school. Vide final order dated 31.7.2017 a direction was issued by the

FFRC that the charging of increased fee for academic session 2017-18 was illegal as the Form-VI had been submitted on 3.1.2017, whereas, according to Rule 158 (3) of 2003 Rules, the said form could be submitted not later than 31.12.2016. Accordingly, the school was directed to refund the increased amount to the respective parents. Aggrieved by the said order, the school filed an appeal, which was allowed vide order dated 8.11.2017. It was held that the slight delay was unintentional and not material. The order dated 31.7.2017, was consequently set aside. Thus, the parents have approached this Court.

Learned counsel for the petitioners submits that the learned appellate authority was in error in condoning the delay of two days in submission of Form-VI. The provision of Rule 158 of the 2003 Rules regarding the last date of submission of Form-VI is mandatory in nature and the appellate authority is bound by the said provision. He could not have extended the period provided in the 2003 Rules and thus, the order dated 8.11.2017, is illegal. Further, the appellate authority was not justified in accepting the explanation of the school that there was some error in the portal where Form-VI was to be submitted as there is no such averment in the letter dated 3.1.2017, whereby, the Form-VI was submitted.

Learned State counsel submits that a conjoint reading of Rule 158 (4) and (6) shows that fee can be charged only after the commencement of the academic session. The academic session commences from 1st April of a particular year and accordingly, the Form-VI could be submitted before the commencement of the academic session. The stipulation contained in Rule 158 (3) is not mandatory in nature. The scheme of the 1995 Act and 2003

Rules is to ensure that adequate notice is given to the parents prior to the commencement of an academic session regarding the fee structure of the school and the purpose behind the scheme is fulfilled, even if, there is a couple of days delay in submission of the Form-VI. As per Rule 193-A of the 2003 Rules, the Government is the final authority to interpret the Rules and the appellate authority being the Additional Chief Secretary to the Government of Haryana, School Education Department, possesses the jurisdiction to interpret the Rules. The interpretation has been done and the same is final.

Learned counsel for respondent No.4 submits that a notice dated 26.5.2017 was received vide Email dated 8.6.2017 regarding the pendency of proceedings before FFRC, whereupon, reply dated 8.6.2017 was submitted and all requisite documents were supplied. Rule 158 of the 2013 Rules has been enacted on account of enactment of Section 16 of the 1995 Act and the said provision does not stipulate any time limit for submission of Form-VI. The only requirement is that the same should be submitted before the commencement of the academic session. Further, the stipulation in Rule 158 of 2003 Rules regarding the date of submission of Form-VI is directory in nature as no penal consequence is attached for non-submission of Form-VI. Thus, the order of the appellate authority was legal and valid and no interference is called for. He placed reliance upon <u>'State of Bihar and others Vs. Bihar Rajya Bhumi Vikas Bank Samiti, 2018(9) SCC 472.'</u>

Rule 158 of the 2003 Rules is reproduced below:-

Fees and Funds in Unaided Schools:

> ‘Rule 158. (1) The fees and funds to be charged from the pupils shall be notified by every recognized school.
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> (2) The manager of every recognized school shall submit the detail of minimum facilities being provided and the maximum fee charged in Form VI. He shall before the commencement of each academic session, file with the Department a full statement of the fees and all types of funds levied by such school during the ensuring academic session justifying it. No such school shall charge any fee in excess of the fee/funds specified by the manager in the said statement during the academic session. Each school shall submit proforma duly filled in by 1st January of every year to the appropriate authority which shall publicly display these details. Such charges can only be levied after these have been displayed in its wamper.
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> (3) No other charges such as capitation fee shall be taken from the children/parents.
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> (4) No school shall be allowed to charge admission fee, tuition fee, pupil’s fund in advance before the commencement of the academic session. However, a token registration fee can be charged.

(5) No admission fee, tuition fee except school leaving certificate (SLC) fee be charged from the pupil who apply for SLC within 15 days of start of new academic session.

(6) Admission fee shall only be charged from a student at the time of admission in class 1st, 6th, 9th and 11th or fresh entry in the school.

(7) The fees shall preferably be taken from the students through bank.'

A perusal thereof shows that Form-VI is to be submitted by 1st January of every year. This stipulation has been placed in addition to the direction to the Manager of every recognized school to submit all details regarding fee to be levied before the commencement of the academic session. There is no penal consequence provided for non-submission of the details in Form-VI after 1st January of the year. It is well settled that even where the language of the statutory rules is couched in positive terms such as use of word 'shall', the provision would not be mandatory by virtue of the said language alone. A provision is mandatory in nature if a penal consequence is provided for non-fulfillment of the requirement. The case of Bihar Rajya Bhumi Vikas Bank Saimiti (supra) also holds so in the context of Section 34 (5) of the Arbitration and Conciliation Act, 1996.

Section 16 of the 1995 Act and Rule 158 of the 2003 Rules have been enacted with the aim of ensuring that adequate notice is given to the parents of any increase in fee in an academic session. Even if, there is a delay of a couple of days in submitting the Form-VI, the purpose behind the 1995 Act and 2003 Rules stands fulfilled and thus, I do not find any illegality in the order dated 8.11.2017.

The writ petition is accordingly, dismissed.

(SUDHIR MITTAL)
JUDGE

4.2.2020
Ramandeep Singh

Whether speaking / reasoned Yes / No

Whether Reportable Yes/ No