

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 3211 of 2021

Date of Decision: February 11, 2021.

Harsh Kumar and others

..... PETITIONERS

Versus

State of Punjab and others

..... RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. HPS Ghuman, Advocate
for the petitioners.

Ms. Diya Sodhi, AAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this writ petition is for directing respondent No.5 to charge tuition fee as per order dated 01.10.2020 passed by the Division Bench of this Court in LPA No.409 of 2020 and a further direction to respondent No.5 to charge tuition fee as per order dated 30.10.2020 passed by the District Education Officer, Fatehgarh Sahib.

It is submitted that objections stood raised regarding enhancement of tuition fee from Rs.1300/- per month for the academic year 2018-2019 to Rs.2,000/- per month for the academic year 2019-2020. Said enhancement of tuition fee was claimed to be in violation of the Punjab Regulation of Fee of

Unaided Educational Institutions Act, 2016 (for short, the 'Act'), which lays down that it is only an increase of 8% which is permissible in an academic year. In this situation, the respondent-school is entitled to charge tuition fee at the rate which was applicable for the academic year 2018-2019 and that too for the period which the student in question had attended online classes offered by the school. Learned counsel refers to order dated 30.10.2020 (Annexure P12) passed by the District Education Officer, Fatehgarh Sahib wherein it is observed that for the academic session 2018-2019, Rs.1,300/- per month was charged for the classes of Nursery to 10th and for the classes of 11th and 12th Rs.2,000/- per month was charged and for the academic session 2019-2020, tuition fee at the rate of Rs.3,000/- per month was being charged. It is observed that as per the Act, the increase in fee for the every academic year cannot be more than 8%. It is directed that application by parents of the students for waiver of fee, if made, be considered sympathetically.

Ms. Diya Sodhi, AAG, Punjab, learned counsel for the State, to whom an advance copy of the petition has been supplied, informs at this stage that order dated 30.10.2020 has been kept in abeyance by the District Education Officer, Fatehgarh Sahib himself on 15.01.2021 as a similar complaint was pending before the Deputy Commissioner, Fatehgarh Sahib. Parents of the students and management of the school have been called before the Deputy Commissioner, Fatehgarh Sahib for a decision regarding the fee structure as above.

It is to be noticed at this stage that CWP No.7409 of 2020 was filed by an Association of 78 unaided privately managed schools/educational institutions being aggrieved of a direction issued by the State, not to charge

tuition fees for the period of lockdown as well as summer break. Those institutions offering online classes were permitted to charge only 'tuition fee' with a missive for not increasing school fee for academic session 2020-2021 from the rate for academic session 2019-2020. A number of other writ petitions were filed and decided alongwith CWP No.7409 of 2020 taking into consideration various other issues. Following directions were issued:-

- “(a) The schools are permitted to collect their admission fee, henceforth.
- (b) All schools irrespective whether they offered online classes during the lock-down period or not, are entitled to collect the tuition fee. However, they will continue to endeavour and impart online/ distance learning so that education is not adversely impacted due to the present or future lockdowns imposed due to COVID-19.
- (c) The school management of each schools shall work out their actual expenditure incurred under the annual charges for the period the school remained closed and recover only such genuine expenditure incurred by them including actual transport charges and actual building charges but shall not recover any charge for this period for any activity or facility towards which no expenditure was incurred. However, the annual charges for the remaining period shall be recovered as already fixed by the school;
- (d) The schools shall restrain themselves for the reasons, as mentioned above, from increasing the fee for the year 2020-21 and adopt the same fee structure as of 2019- 20.
- (e) Any parent not able to pay the school fee in the above terms may file their application alongwith necessary proof about their financial status, which shall be looked into by the school- authority and, after looking into it sympathetically, give concession or exempt the entire fee, as the case may be. In case the parent is still aggrieved, in any manner, with an adverse decision by the school on his application, he may approach the Regulatory Body, so constituted under Section 7 of the Punjab Regulation of fee of Un-aided Educational Institutions Act, 2016. No parent shall misuse the concession by laying a false claim.
- (f) Section 7 of the Punjab Regulation of fee of Un-aided Educational Institutions Act, 2016 is already in place for looking into the complaints

of the parents or guardians with regard to charging of any excessive fee or to do any other activity with the motive to give financial benefit or profit. The parents are at liberty to take recourse to the same and, therefore, no specific direction is required to be given by this Court separately;

(g) In case any school is facing a financial crunch for not having charged the increased fee for the year 2020-21, may move a representation to the District Education Officer alongwith its proof of the same, who shall look into it and pass appropriate orders within three weeks of the receipt of such an application. However, this may be exercised only in a very hard case where the school is facing financial crunch and has no reserved resources to meet the expenses.

(h) It is clarified that there is no modification in the direction Nos.(ii), (iii) and (v) of the impugned order dated 14.05.2020.

(i) There is also no modification in the direction No.(iv) of the order dated 14.05.2020 that no child will be deprived of attending the schools and online classes. However, the same is subject to the parent of such a child moving an application in terms of direction (e) above of this order and final decision on the said application.”

Abovesaid directions were modified by the Division Bench of this Court in LPA No.409 of 2020 as under:-

“It is a case where the principle of *Quid Pro Quo* would be applicable. The tuition fee can be charged only if the students are being imparted education on regular basis by offering on-line classes during the lock-down period in order to balance equities. We direct that tuition fee would be charged only if the students are offered on-line classes on day to day basis during lock-down period.

We also direct that all the teachers and staff members, whether permanent or appointed on contractual basis/ad-hoc basis/temporary shall be entitled to their regular salaries, which they were getting before imposition of lock-down on 23.03.2020. Since the students are not being transported to and fro due to lock-down, the School Managements shall not charge any transportation charges till further orders. The School Managements are directed to file balance sheets for preceding seven months from today, duly verified by a Chartered

Accountant within two weeks from today.”

A perusal of judgment dated 30.06.2020 in CWP No.7409 of 2020 (Annexure P2) as well as order dated 01.10.2020 in LPA No.409 of 2020 (Annexure P3) clearly reveals that respondent-school is entitled to charge tuition fee, if the students are offered online classes on day-to-day basis during the lockdown period. In this view of the matter, I am unable to agree with the argument raised by learned counsel for the petitioners that the students are liable to pay tuition fee only for those classes which they may attend. Such an interpretation is clearly uncalled for and neither can it be the import and purport of order dated 01.10.2020 in LPA No.409 of 2020. To accept such an interpretation would mean that even if classes are being held regularly by the educational institution, it is open to the student to deposit tuition fee only for those classes which he/she may choose to attend. Said argument being untenable is rejected.

In respect to enhancement of tuition fee for the academic session 2019-2020, it is to be noticed that the matter is admittedly pending before the Deputy Commissioner, Fatehgarh Sahib. At the same time, it is not disputed by learned counsel for the petitioners that tuition fee in respect to the academic session 2019-2020, already stands deposited by the petitioners. Admittedly this is the period before imposition of the lockdown actuated by outbreak of the pandemic, COVID-19. It is further not in dispute that there is no enhancement in tuition fee for the academic session 2020-2021 and the same amount, as was charged in the year 2019-2020, is being demanded by the respondent-school.

In the given facts and circumstances, I do not find any ground, whatsoever, to interfere in this writ petition for restraining the respondent-school

to charge tuition fee from the students in terms of decision dated 30.06.2020 in CWP No.7409 of 2020 as modified by order dated 01.10.2020 in LPA No.409 of 2020. Needless to say, deposit of the tuition fee shall not be in derogation of the rights of the students to pursue the matter regarding enhancement of the tuition fee for the academic session 2019-2020 by the respondent-school. Necessary adjustments can be carried out in case of enhancement of the tuition fee for the academic session 2019-2020 is found to be excessive.

Keeping in view the facts and circumstances, Deputy Commissioner, Fatehgarh Sahib is directed to take a final decision in the matter regarding enhancement of rate of tuition fee for the academic session 2019-2020 expeditiously, in accordance with law.

Writ petition is accordingly disposed of.

February 11 , 2021.
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(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No