

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

Sr. No.203

**CWP-9867-2020 (O&M)
Date of decision : 28.07.2021**

The Governing Body of Akal Degree College for Women, Sangrur

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Arjun Partap Atma Ram, Advocate
for the petitioner.

Ms. Anu Chatrath, Addl. A.G, Punjab,
for respondents No.1, 2 and 4.

Mr. Vikas Chatrath, Advocate with
Mr. G.S. Cheema, and Ms. Mandeep Kaur, Advocates
for respondent No.3.

Respondent No.5-deleted vide order dated 17.08.2020.

Mr. Mayank Mathur, Advocate, for respondent No.6.

Mr. Samarth Sagar, Advocate, for respondents No.7 to 9.

SUDHIR MITTAL, J.

The petitioner has established a college by the name of Akal Degree College For Women, Sangrur. Presently, the said college offers degree courses of Bachelor of Arts, Bachelor of Commerce, Bachelor of Computer Applications and Master of Sciences (Information Technology). It also offers the Bachelor of Vocational Studies Course and Post Graduate Diploma in Computer applications. On account of reduction in student strength and resultant financial stress, resolution

dated 27.01.2020 was passed stating that running of Arts classes may not be possible and that significant decisions need to be taken for the future. Consequently, communication dated 20.02.2020 was addressed to the Vice Chancellor, Punjabi University, requesting that the petitioner be permitted to discontinue the Bachelor of Arts course (B.A. course) w.e.f. academic session 2020-21. It was also mentioned that the students currently studying in the 2nd and 3rd year of the said course, would be permitted to complete the same. The University responded vide letter dated 05.03.2020 demanding (a) submission of an affidavit duly attested by a Magistrate of the First Class, stating that all University dues stood cleared and that any disputes would be resolved by the Management and (b) a No Dues Certificate from the different branches of the University. The Chairman of the petitioner submitted his affidavit dated 17.03.2020 in accordance with the demand alongwith an undertaking of a Director of the college that studies of existing batches will not be hampered in any manner. For two months there was no further communication from the University. On 27.05.2020, a letter was sent to the Principal of the college that the B.A. course being an aided course, approval of D.P.I (Colleges), Punjab, was necessary before the same could be discontinued. Accordingly, the Chairman of the petitioner sent an application dated 12.06.2020 to the D.P.I (Colleges), Punjab, reiterating the request made to the Punjabi University (hereinafter referred to as the 'University'). The D.P.I (Colleges) responded vide letter dated 16.06.2020 seeking certain information. Further, information was sought vide communication dated 18.06.2020 and a direction was also issued that till permission to

discontinue the course was granted, process of admission be carried on efficiently. Vide letter dated 30.06.2020, further directions were issued to run all regular courses as usual and in case, the management sought conversion of the college to a private college, grants-in-aid received till date be reimbursed. Meanwhile, an enquiry was commenced regarding the affairs of the college as allegedly, complaints of mis-management, mis-appropriation and diversion of funds were received. Vide order dated 06.07.2020, the D.P.I (Colleges), Punjab suspended the Managing Committee and appointed the Additional Deputy Commissioner (General), Sangrur as the Administrator. This action has led to the filing of the writ petition on the grounds; (a) the Government has no role to play in the matter of discontinuance of a course and (b) the order dated 06.07.2020 suspending the management and appointing an Administrator is without jurisdiction.

In its written statement, the State has pleaded that the claim of the petitioner that it seeks to discontinue the B.A course on account of reducing student strength and losses being suffered is misleading as student strength in other courses too is reducing. The strength in the B.A course in the year 2019 is more than the minimum strength required by the University calendar. Interests of the students would also be adversely affected. Interference in the matter of discontinuance of a course is sought to be justified in public interest as also because it would result in retrenchment of staff. Jurisdiction to suspend the management is claimed in terms of Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (hereinafter referred to as the 'Act'). In this respect, it is

submitted that vide order dated 18.06.2020, the petitioner had been directed not to discontinue the course, till the time a decision was taken by the department. However, in gross violation thereof, news items were published that no further admissions will be made. Thus, the orders of the Government have been defied and the same entitles it to suspend the management.

The respondent-University as well as the private respondents contest the writ petition broadly on grounds similar to those of the State.

Learned counsel for the petitioner has argued that in the matter of discontinuance of a course, only the University has a say in terms of Clause-8 of the University calendar. The State has no jurisdiction in the matter either in terms of the conditions for grant of financial aid or under the Act. Thus, the insistence of the University to get prior approval of the Government is illegal. Further, no action has been taken by the Government under the Act and no order has been passed thereunder. Consequently, the order of suspension of management and appointment of an Administrator is also without jurisdiction. In this regard, reliance is placed upon I.I.T.T College of Engineering Vs. State of Himachal Pradesh, 2004 (1), S.C.T 691. It has also been argued that the interests of the staff would be safe-guarded as they could be transferred to other aided colleges in terms of judgment of this Court in Smt. Sudha Agnihotri (Lecturer in Physics) and others Vs. State of Haryana and others, 2012 (22), S.C.T 652. In addition, the petitioner would continue to pay their salaries, even in the event of their transfer to another college, till the date of their retirement. It has also been

submitted that even, order dated 18.06.2020, has not been violated, because, public notice dated 06.07.2020 clarifies that admissions to the B.A course would be made only after the matter is decided by the University/State Government.

The learned State counsel has argued in accordance with the written statement.

Learned counsel for the University has argued that the Government had jurisdiction in the matter of discontinuance of a course as the said action would result in retrenchment of employees. He has the support of learned counsel for the private respondents in this regard.

Thus, the following questions arise for determination:-

- (a) Whether the State Government is entitled to interfere in the matter of discontinuance of a course, on the ground that it would result in retrenchment of staff ?
- (b) Whether, in the facts and circumstances of the case, it can be said that the petitioner violated order dated 18.6.2020 ?.
- (c) If, answer to above question is yes, whether, the State Government could suspend the management in exercise of powers under the Act ?

Broadly, the facts are not in dispute, except the fact of strength of staff appointed against aided posts. However, the same is irrelevant for the decision of this case. The petitioner applied to the University for discontinuance of the B.A course w.e.f. academic session 2020-21. The University demanded some documents for the purpose of indemnification. Thereafter, it directed the petitioner to approach the

D.P.I (Colleges) for approval. The D.P.I (Colleges) demanded more information and documents and directed the petitioner not to discontinue admission for the B.A course for the academic session 2020-21 till the time a decision was taken by him. No such decision has been made as yet. Instead, the petitioner has been directed to refund the grant-in-aid received till date, if it wanted to convert to a private unaided college. The management of the petitioner has also been suspended in order to facilitate enquiry to be conducted by a high level committee appointed for going into the issue of misuse of grant-in-aid. The enquiry, referred to in the order of suspension of management, has been completed and is under consideration.

The stage is now set for examination of the questions framed.

Question (a)

For decision of this question, it is necessary to refer to various provisions relied upon by learned counsel for the parties. Learned counsel for the petitioner has relied upon Clause-8 contained in Chapter-VI of the University calendar. The said chapter is under the heading 'admission of colleges.' As signified by the heading, the chapter deals with the procedure and conditions for admission of colleges to the privileges of the University. Clause-8 is reproduced hereunder:-

“A college may not, without the previous permission of the Academic Council, suspend instruction in any subject or course of study which it is authorized to teach and teaches.”

The State relies upon Section 7 of the Act regarding retrenchment. It provides that an employee of an affiliated college cannot

be retrenched without prior approval of the Director. The provision is reproduced:-

“7. Retrenchment:- (1) No employee of an affiliated college shall be retrenched on account of reduction in work load without prior approval of the Director who shall before according approval examine each case in accordance with the norms of work load laid down by the University with which such college is affiliated.

(2) An employee who is relieved from an affiliated college as a result of retrenchment, shall have preference for appointment to future vacancies in the affiliated college in which he was serving immediately before retrenchment or in another affiliated college under the same Managing Committee.”

Apart from above, the State also draws sustenance from over-riding public interest. It has been said that closure would adversely affect the interests of girl students of the area. Education of girls is a matter of priority.

It may be noted that learned counsel for the University has not denied that the University has authority in the matter of discontinuance of a course. However, the State is sought to be introduced into the equation by raising the issue of retrenchment and public interest.

The Act has been framed to provide for security of service to employees of affiliated colleges and to grant pensionary benefits to employees appointed against aided posts. It deals with probation of

employees, suspension and dismissal, removal or reduction in rank. Retrenchment is also included therein. Further, it provides for appointment of a college Tribunal for the decision of appeals filed against orders of approval of dismissal and removal passed by the Director. The provisions of the Act do not entitle the Government to interfere in the matter of discontinuance of a course. Jurisdiction is sought to be vested by a process of reasoning that result of discontinuance of a course would be retrenchment. Had that been the intention of legislature, it would have stated so specifically. Implied jurisdiction is not permissible in law and thus, it has to be held that in the matter of discontinuance of a course, the State has no jurisdiction. No public interest is involved as it is an uncontroverted fact that there are almost twenty other girls colleges in District Sangrur and the strength of students at the entry level in the B.A. course has reduced over the years. Accordingly, direction by the University to seek approval of D.P.I (Colleges) is illegal and unsustainable in law. The University is required to consider the matter dispassionately and in accordance with the principles required to be taken into consideration while examining such an issue based upon material supplied by the petitioner. It is at liberty to seek further material before taking an informed decision. The decision should be conveyed through the medium of a speaking order.

The question is thus, answered in the negative.

Question (b)

Although, it has been held that referring the petitioner to D.P.I (Colleges) in the matter of discontinuance of a course was illegal,

parties have acted upon the said reference resulting in issuance of some directions. Thus, the contention of the State that directions issued have been violated needs to be examined. Factually, vide letter dated 18.6.2020, the D.P.I (Colleges) sought certain information from the petitioner in the matter of discontinuance of B.A course and also directed the petitioner to continue admitting students in the said course till the matter was decided by the department. This was followed by a letter dated 30.6.2020 issued by the Special Secretary, Higher Education, demanding refund of grant-in-aid received till date, if the petitioner wanted to convert to a private college. On 02.07.2020, the petitioner published a notice to the general public that the college was not accepting admission to the B.A course for the academic session 2020-21. This was followed by public notices dated 04.07.2020, 06.07.2020 and 07.07.2020, clarifying that the college had applied for discontinuation of the B.A course and that admissions, if any, would be made only after the decision of the competent authority. It was also notified that admissions were possible upto 30.11.2020 as per the University calendar.

From the above, it is evident that college or its management had no intention of defying the direction contained in communication dated 18.06.2020. The intention appears to be that future of students be not adversely affected, in case, permission for discontinuance of course is granted after admissions were made. It appears to be a prudent step rather than an act of defiance.

That being the case, the answer to this question is also in negative.

Question (c)

In view of the answer to question (b), this question has been rendered academic. However, I deem it appropriate to deal with the same so as to elucidate the legal position.

As has been observed hereinabove, the Act has been framed for the purpose of ensuring that employees of affiliated colleges have security of service and those appointed against aided posts are granted pensionary benefits. Security of service implies that the policy of 'hire and fire' cannot be applied in affiliated colleges. A proper procedure has to be followed before service of an employee is terminated and platform has been provided for redressal of grievances. Accordingly, Section-7 has been incorporated making retrenchment illegal unless done with prior approval of the Director. Section 9-A has been incorporated to make managements comply with orders of the Tribunal or the Director under the Act. It is, thus, clear as day-light that if, an order of retrenchment is passed without approval of the Director and the Director issues an order to the management to reinstate such a person, on a refusal of the management to do so, action that may be deemed fit including stoppage of grant-in-aid may be taken by the State Government. Section-7 has been reproduced hereinabove. Section 9-A is being reproduced hereunder:-

“9-A. Non-compliance with order or direction:- if the Managing Committee fails to carry out any order of the College Tribunal or any directions of the Director under this

Act, the State Government may take such action as it may think fit including stoppage of the grant in aid”.

As is evident from the narration, the order whose violation is claimed is dated 18.6.2020 and the said order was passed in proceedings taken upon an application of the college for discontinuance of B.A course. Thus, by no stretch of imagination, it can be said that the order of the Director was passed under the Act. Consequently, order of suspension of management dated 06.07.2020 is patently without jurisdiction. The ratio of judgment of the Supreme Court in I.I.T.T College of Engineering (supra), squarely applies. In the said case, the High Court had appointed an Administrator for managing the affairs of a private college while deciding a writ petition filed by the students seeking directions for approval of the information technology course and affiliation. The Supreme Court set aside the order as no provision of any statute was brought to its notice, under which, the action of suspension of a management and appointment of Administrator could be taken. An identical situation exists in this case also as no statute apart from the Act has been relied upon by the State.

It may also be noted that power under Section 9-A of the Act can be exercised only by the State Government and not by the D.P.I. (Colleges). Order dated 06.07.2020 has been passed by the D.P.I. (Colleges) and is illegal and without jurisdiction on this ground also. Further, an order of suspension of a management involves serious civil consequences and before subjecting a party to such consequences, grant of opportunity of hearing is essential. Even, show-cause-notice has not

been issued to the petitioner, leave-alone grant of opportunity of hearing and on this ground also, the order dated 06.07.2020, deserves to be set aside.

A related issue of scope of Section 9-A of the Act would also arise, however, the same is not being dealt with as no arguments have been heard on this question.

This question is also thus, answered in the negative.

With reference to letter dated 30.06.2020, whereunder, the petitioner has been directed to refund grant-in-aid received till date, if it desires to convert to a private college, it has been submitted that the demand is un-justified and illegal as no such condition exists in the terms and conditions of financial grant applicable to private colleges. A copy of the said terms and conditions has been annexed with the petition as Annexure P-3 and has been read by learned counsel for the petitioner in extenso in support of his submissions. Upon perusal thereof, I am of the view that the contention is well-founded. Even otherwise, the demand appears to be unjustified as the grant-in-aid has already been disbursed for payment of salaries and returns regarding the same have been submitted to the concerned quarters.

The State has alleged that the grant-in-aid funds were mis-used and diverted. I need not opine upon the same as an enquiry has already been conducted and the report is being processed. If, findings of the same are against the petitioner, it would be at liberty to challenge the same, in accordance with law.

In view of the above, the writ petition is allowed to the extent of quashing of orders dated 27.05.2020 (Annexure P-11), 16.06.2020 (Annexure P-13), 18.06.2020 (Annexure P-14), 30.06.2020 (Annexure P-16) and 06.07.2020 (Annexure P-23).

The University is directed to take a decision on the request of the petitioner, expeditiously and in any case, not later than four weeks from the date of receipt of certified copy of this judgment. Needless to say that decision should be taken keeping in mind the observations in this judgment and un-influenced by any extraneous considerations. Till the matter is decided, the petitioner may not make admissions for academic session 2021-22. A public notice be issued in this regard, in case, time schedule for admissions for the academic session 2021-22 has already been released. Students admitted during the academic session 2020-21 shall be made to complete the course.

Written submissions made by the parties are directed to be taken on record.

(SUDHIR MITTAL)
JUDGE

28.07.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No