IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 4193 of 2019
Date of decision : May 29, 2023

DAV College Trust and Management Society and another

...... Petitioners

Versus

State of Punjab and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :-Mr. R. S. Cheema, Advocate
for the petitioner.

Mr. Aman Dhir, DAG., Punjab.

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PANKAJ JAIN, J. (ORAL)

1. Present petition has been filed under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari for quashing the order dated 03.04.2018 (Annexure P-5).

2. That the petitioners being registered society (s) are running educational institutions including one Mehar Chand Polytechnic College, Jalandhar. The same is admittedly a privately managed aided college since 1954 receiving non-recurring, recurring and special grants from the government. The college is getting 95% grant-in-aid from the Government of Punjab and is affiliated to Technical Education and Industrial Training (Technical Education Wing, Punjab). It has been claimed by the petitioner that it is mandatory to deduct Contributory Provident Fund of all employees irrespective of the fact that whether they are permanent or are serving on contractual basis. The State Government sanctioned 26 contractual posts (teaching) under grant-in-aid scheme which are filled on annual basis.

3. In view of the fact that the aforesaid posts have been sanctioned by the State and that too under the grant-in-aid scheme, the State is required to contribute to the extent of 95% of employee's share. The petitioner management contributes the same and thereafter gets reimbursed from the State to the extent of 95% of the same. However, the same was allowed by the audit. The petitioner represented to the respondents on 23.12.2017. The representation has been placed on record as Annexure P-4. However, the same stands rejected vide order dated 03.04.2018 (Annexure P-5).

4. Learned counsel for the petitioner submits that in view of the fact that these posts were sanctioned by the government under grant-in-aid scheme and the contribution towards CPF is mandatory. The reimbursement of the same cannot be disallowed by the State and that too without any reason mainly on the ground that there is an audit objection.

5. Per contra, learned counsel for the respondents has supported the order passed by the authorities claiming that CPF is not salary. He has tried to rely upon Punjab Privately Managed Recognized Affiliated Aided Colleges (Pension and Contributory Provident Fund) Rules, 2002 to submit that Provident Fund being not part of the pay is not required to be contributed by the State.

6. I have heard learned counsel for the parties and have gone through the record of the case.

7. The precise issue involved is as to whether the State Government is under the liability to pay contribution of 95% qua the amount of CPF to the aided Colleges under the grant-in-aid scheme.

8. Facts are not much in dispute. The conceded position is that the contractual posts have been sanctioned by the State and that too under the

grant-in-aid scheme. The impugned order justifying denying of reimbursement of the employee's contribution to the CPF element reads as under:-

> *"With reference to the letter under reference it is stated that the amount of Rs.12,24,312/- of the C.P.F.of the teaching staff working on contract basis, have been disallowed correctly by the Audit Party of the Head Office, beacause the approval of engaging the teaching staff against the sanctioned posts only on the basis of the pay-in-pay band+ grade pay+D.A."*

9. The grant-in-aid scheme has been placed on record as Annexure P-1. Chapter 9 deals with admissibility of items of income and expenditure. The same reads as under:-

> *"9.1 The schedule of income and expenditure is given at appendix I.*
>
> *9.2 In the case of disputed items (not specifically noted in Appendix 10, the decision of Director shall be final--- binding."*

The relevant extract of Appendix 1 attached to the Scheme reads as under:-

"*Expenditure*		*Income*
1.Salary of Teaching staff including provident fund		*Tuition fee for Ist year student*
2. Salary of non-teaching staff including provident fund		*Tuition fee for second year student*
XX	*XX*	*XX"*

10. Thus, in the chapter that deals with admissible items of income and expenditure where ever the term 'salary' has been used in the Appendix attached to Chapter 9 the same includes provident fund which itself is explicit and there can't be any denial by the State to that effect. Once the posts have been sanctioned under grant-in-aid scheme and the terms thereof includes provident fund as part of element of pay impugned order, Annexure P-5 cannot be sustained.

11. Further learned counsel for the State is not in a position to dispute the following facts:

i) That the employees working on aided posts are entitled to 95% of the contribution towards the Provident Fund paid by the Management which is in turn reimbursed by the Government.

ii) The contractual appointees were appointed after the sanction was obtained from State.

iii) The contribution towards Provident Fund is the mandate of the statute and the management cannot escape from the payment of the same.

12. In view of the above, this Court does not find that the State has any reason not to reimburse the management qua the CPF for being paid to the employees as per grant-in-aid scheme.

13. The writ petition is allowed in the aforesaid terms.

(PANKAJ JAIN)
JUDGE

May 29, 2023
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Whether speaking/reasoned Yes
Whether Reportable : No