

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Date of decision: 9th May, 2023

201	CWP No.9561-2021 (O&M)	
DAV College Trust and Management Society and another		...Petitioners
	Versus	
State Information Commissioner, Haryana and others		Respondents
201-2	CWP No.9749-2021 (O&M)	
DAV College Trust and Management Society and another		...Petitioners
	Versus	
State Information Commissioner, Haryana and others		Respondents
201-3	CWP No.9750-2021 (O&M)	
DAV College Trust and Management Society and another		...Petitioners
	Versus	
State Information Commissioner, Haryana and others		Respondents
201-4	CWP No.9751-2021 (O&M)	
DAV College Trust and Management Society and another		...Petitioners
	Versus	
State Information Commissioner, Haryana and others		Respondents
201-5	CWP No.9752-2021 (O&M)	
DAV College Trust and Management Society and another		...Petitioners
	Versus	
State Information Commissioner, Haryana and others		Respondents

CWP No. 9561 of 2021 and connected matters		2023:PHHC:069273	[2]
201-6	CWP No.9756-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			
State Information Commissioner, Haryana and others			Respondents
201-7	CWP No.9759-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			
State Information Commissioner, Haryana and others			Respondents
201-8	CWP No.9767-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			
State Information Commissioner, Haryana and others			Respondents
201-9	CWP No.9769-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			
State Information Commissioner, Haryana and others			Respondents
201-10	CWP No.9770-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			
State Information Commissioner, Haryana and others			Respondents
201-11	CWP No.9934-2021 (O&M)		
DAV College Trust and Management Society and another			...Petitioners
Versus			

State Information Commissioner, Haryana and othersRespondents

201-12

CWP No.9936-2021 (O&M)

DAV College Trust and Management Society and another

...Petitioners

Versus

State Information Commissioner, Haryana and others

....Respondents

201-13

CWP No.9945-2021 (O&M)

DAV College Trust and Management Society and another

...Petitioners

Versus

State Information Commissioner, Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.S. Cheema, Advocate for the petitioners.
Mr. Sharad Aggarwal, DAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This order shall dispose of above mentioned petitions as the facts and issues involved are similar.
2. For the sake of convenience, the facts of CWP No. 9561 of 2021 are being considered.
3. This writ petition is filed seeking quashing of order dated 15.3.2021 passed by State Information Commission (for short 'the Commission').
4. The brief facts are that respondent No. 2 (for brevity, 'the respondent') filed an application dated 23.11.2020 to State Public Information Officer, Director General Higher Education, Haryana (hereinafter referred to as 'SPIO') seeking following information:

- “1. List of Colleges having common governing body with its constitution, power, function and duty and since when.*
- 2. Copy of the list of common governing body of 13 DAV Colleges with names of the office bearers, nominees of the Government and university, elected teaching and non-teaching representatives of the staff of 13 DAV Colleges mentioning tenure of this alleged common governing body having not more than 21 members and not less than 16 as mentioned in the university Calendar.*
 - 3. Statutory rule stating common governing body as the competent appointing and punishing authority of the teaching staff and principals of 13 DAV colleges, including issuance of the advertisement by common governing body inviting applications for vacant posts in 13 DAV Colleges.*
 - 4. Position before the alleged amendment regarding who was the appointing and punishing authority of the teaching staffs principal in 13 DAV colleges of Haryana and the rule of their transfer before and after the amendment of the Act of 1979.*
 - 5. Rule stating transfer of a lecturer/principal from one DAV College to another by DAV Mgt. New Delhi and the approval granted thereof by the Government and university. Seniority and grant of selection grade/senior scale to the transferred employee in the new DAV College. Whether treated as new and fresh appointment.*
 - 6. Rule stating contract of a regular permanent employee of a DAV college with the common governing body of 13 DAV Colleges.*
 - 7. Rule stating non statutory DAV Mgt New Delhi as the appointing, punishing and transferring authority of a lecturer/principal in 13 DAV colleges and as the Employer Institution under Article 12 of the*

Constitution.”

5. The SPIO in accordance with Section 6(3) of the Right to Information Act, 2005 (for short, 'the Act') transferred the application on 9.2.2021 to SPIO, DAV College, Sadhaura, Yamuna Nagar and copy of the transfer letter was forwarded to the respondent. Aggrieved of non-action, first appeal was filed by respondent before the Director General, Higher Education, Haryana and during the pendency of the first appeal preferred second appeal to the Commission on 17.2.2021. The Commission on 15.3.2021 directed the SPIO of DAV College to provide complete information to respondent. Further in case of discrepancy, respondent shall file a point-wise rejoinder and thereafter SPIO of DAV College was directed to supply point-wise information as per the rejoinder. Considering that there was delay in providing information, show cause notice was issued under Section 20 of the Act. The petitioner sent reply dated 26.3.2021 to the respondent that the orders passed on the similar applications made by the petitioner were challenged in High Court and direction to supply of information were stayed, the information cannot be supplied as the matter is *subjudice*.

6. Learned counsel for the petitioner contends that respondent had filed appeal before the Director General, Higher Education, Haryana instead of first appellate authority of the DAV College. Further grievance is that the Commission without affording an opportunity of hearing or impleading the concerned SPIO, issued directions.

7. Learned counsel for the State defends the impugned order.

8. The respondent has not put in appearance despite service.

9. Learned counsel for the petitioner on instructions submits that he is unconditionally withdrawing the allegations of *mala fide* against respondent No. 3 and prays that the matter be decided on merits.

10. From the perusal of the pleadings, it is evident that the petitioner and respondent have a long drawn history of litigation. Respondent was ex-employee of the petitioner and had been regularly filing applications seeking informations. Challenge to the directions to provide information to the respondent is pending in this court and interim protection has been granted to the petitioner.

11. Section 6 of the Act lays down the procedure to be followed for seeking information. Sub-section (3) deals with the instances where the information asked for relate to another public authority or is closely connected with the functions of another public authority. In such cases, the SPIO of the public authority shall transfer the application or part of it to the concerned public authority and inform the applicant in this regard.

12. In the case in hand, the application was transferred to SPIO of DAV College and the petitioner was intimated of the transfer. In spite of this, respondent chose not to file first appeal before the appellate authority of DAV College. The Commission while deciding the second appeal lost sight of the fact that the directions were being given to SPIO, DAV College who was neither party in appeal nor opportunity of being heard was granted to concerned SPIO. The order is violative of principles of natural justice.

13. It would be appropriate to note that after transfer of the application under Section 6(3) of the Act, PSIO of DAV College became the relevant party in the appellate proceedings and without the impleadment

of the necessary party, directions were issued.

14. The information relating to the petitioner was sought by the respondent through Director General, Higher Education, Haryana and by not availing the first appeal before the appropriate appellate authority, he adopted a methodology ensuring that the petitioner at no stage gets a chance to put forth its stand regarding supply of information.

15. The impugned orders are set aside. The matter is remitted back to the Commission to decide the appeals in accordance with law.

16. The writ petitions are allowed.

17. Since the main writs have been allowed, pending application(s), if any, is rendered infructuous.

18. Photocopy of the order be placed on the file of each connected case.

[AVNEESH JHINGAN]
JUDGE

9th May, 2023
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1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No