IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

238

Date of Decision: 28.08.2024

1. CWP-14952-2023 (O&M)

MANAGING COMMITTEE SHEIKHUPURA KHALSA SENIOR SECONDARY SCHOOL AND ANOTHER

..... PETITIONERS

VERSUS

DISTRICT JUDGE EXERCISING THE POWER OF EDUCATION TRIBUNAL AND OTHERS

.....RESPONDENTS

2. CWP-15365-2023 (O&M)

MANAGING COMMITTEE SHEIKHUPURA KHALSA SENIOR SECONDARY SCHOOL AND ANOTHER

..... PETITIONERS

VERSUS

DISTRICT JUDGE EXERCISING THE POWER OF EDUCATION TRIBUNAL AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ranjit Saini, Advocate
for the petitioners.
Mr. Parveen Mehta, Deputy Advocate General, Haryana.

Mr. Yatin Sardana, Advocate with
Mr. Piyush Sardana, Advocate and
Mr. Aakash Wadhwa, Advocate
for respondent Nos. 2 to 7 in CWP-14952-2023
for respondent No. 2 in CWP-15365-2023

******

TRIBHUVAN DAHIYA, J. (ORAL)

The above petitions have been decided together as common questions of law on similar facts arise for consideration. For brevity, the facts have been taken from Civil Writ Petition No. 14952 of 2023.

2. The petition has been filed seeking a writ of *certiorari* quashing of the judgment dated 24.02.2023, Annexure P-3, passed by the

Education Tribunal, Karnal, whereby the appeal filed by private respondents no. 2 to 7 was allowed, directing petitioner no.1-Managing Committee and petitioner no.2-School run by the Committee, to release the benefit of salary/ dearness allowance, and arrears on account of revision of pay scales, for three years preceding the date of presentation of the appeal. The School was being run as an aided institution, getting seventy-five per cent grant-in-aid from the State Government. The respondents were working in the School as Masters/Mistresses/Teachers/Chowkidars/Physical Training Instructors, having been appointed as such between 01.10.1985 to 01.08.1997, as per details given in first paragraph of the impugned judgment. Although the private respondents were performing their duties to the satisfaction of School authorities, they were not being paid regular salary along with dearness allowance and the revised pay scales, etc.

2.1. On this account, they approached this Court by filing Civil Writ Petition No. 15600 of 2015 seeking the aforesaid benefits. Seventy-five per cent of the claimed benefits in the form of grant-in-aid to the School were later released to them by the government as stated in an affidavit to that effect before this Court. Accordingly, the petitioners were given liberty to approach the Tribunal for the remaining relief of twenty-five per cent of the salary and other benefits from the School Management with effect from July, 2012 till their absorption in Government service, i.e., 16.02.2018. Accordingly, the appeal was filed by the private respondents before the Tribunal claiming these benefits.

2.2. The petitioners contested the appeal before the Tribunal by submitting that the benefits could not be given to the private respondents herein for paucity of funds. The Managing Committee did not have sufficient resources to run the School; it was closed after some time and the staff was absorbed in government service in terms of the Haryana Voluntary State Education Rules, 2017 (for short, 'the 2017 Rules').

2.3. Considering the pleadings and material brought on record by the parties, the Tribunal accepted the appeal, directing the petitioners herein to make the payment of due benefits. Since the appeal claiming the benefits from July, 2012 had been filed only on 15.01.2019, the private respondents were held entitled to the arrears for three years preceding the date of filing the appeal, vide the impugned judgment.

3. Learned counsel for the petitioners has contended that School is not liable to make the payment of due benefits, as in terms of the resolutions passed by the Managing Committee dated 26.12.2015 and 29.02.2016, Annexures P-4 and P-5, respectively, it had already requested the State Government to discontinue seventy-five per cent grant, de-aid the School and take-over the staff. And in terms of Rule 62 of the Haryana School Education Rules, 2003 (for short, 'the 2003 Rules'), once the request to de-aid a School is made and no action thereupon is taken by the Government within a period of six months, it is deemed to have been de-aided. Accordingly, from the date of first resolution, i.e., 26.12.2015, the petitioners are not liable to pay any benefit to the private respondents.

4. Learned State counsel, on the contrary, contends that merely by passing the resolution the Managing Committee cannot escape the liability to pay salary and other benefits to the staff. As per requirement of the 2003 Rules, a resolution ought to be passed by two-third majority of the General Body in the meeting convened for the purpose. Whereas in the petitioners' case, such meeting was not convened and the resolution was passed only by the Committee. As the request was not made by the Committee in accordance with the Rules, it could not have been considered by the

Director, nor could liability on that basis have been shifted on the Government. He has also referred to Rule 6 (1) of the 2017 Rules to contend that the Managing Committee is bound to discharge all its liabilities in respect of the employees appointed in government service for the period prior to the date of their appointment in terms of the Rules.

5. Heard.

6. It is not in dispute that the School was being run as a Government aided institution getting seventy-five per cent grant-in-aid. Private respondents were working there as Master/ Mistress/ Teachers/ Chowkidar/ Physical Training Instructors, etc. They had been rendering satisfactory service, and were accordingly entitled to due salary and other benefits. The only ground on which the Managing Committee has sought to deny the liability to pay due benefits is, the provisions of the 2003 Rules. The contention of learned counsel for the petitioners is, General Body of the Education Society consists of only the members of Managing Committee. Accordingly, the School is deemed to have been de-aided from the date of Committee's resolution dated 06.12.2015, which was passed unanimously. The facts regarding total membership of the General Body and what was its required number as per the relevant law, were not established by the petitioners before the Tribunal, and its findings cannot be assailed on that basis. Besides, the argument is mis-conceived, since it is a fact recorded in the impugned judgment that before any decision could be taken on the Committee's resolution by the Director, the Government issued a notification, dated 19.8.2017, absorbing the School staff, including the private respondents, in service. In terms of the notification, the Committee is bound to discharge its liabilities with respect to its employees prior to the date of their appointment under the 2017 Rules. It is not in dispute that

pursuant to this notification, the private respondents were taken in Government service, and there was no requirement for the Director to take any decision on the Committee's resolutions dated 26.12.2015/ 29.02.2016. Accordingly, the petitioners cannot escape the liability to pay salary and dues to the private respondents for the service rendered by them in the School.

7. The relevant aspects of the case have been duly considered by the Tribunal as apparent from the following paragraphs of the impugned judgment.

> 13. Now, it is to be seen whether the appellants are entitled for other benefits claimed by him or not? In this case, respondents school was aided school, but the financial condition of the school was deteriorating gradually and the school reached at the stage, where it was not possible for it to make payment of 25 per cent of its share to the employee and for that reason the school made request to the Government to de-aid the school in order to avoid liability of making payment of 25 per cent share. But before any decision was taken on the said representation, the Government issued Notification dated 09.08.2017, for absorbing the staff of the school. The notification dated 09.08.2017 states that the Management shall be bound to discharge all the liabilities in respect of employees appointed to the Services for the period prior to date of their appointment under these rules. The mere appointment of employee in the service shall not absolve the management of the responsibility to clear the pending dues. The employees taken-over shall have every right to claim their dues from the previous management in

respect of the previous services rendered to them. In view of above, it was duty of the School Management to make payment of arrears prior to the absorption of its employees by the Government of Haryana. The school authorities, in order to avoid its liability and in order to take benefit of situation, succeeded in obtaining affidavits from the employees, giving undertaking for not claiming arrears from the school. But the said undertaking of not be said to be voluntary act of employees, as the employees gave such affidavits in order to get themselves absorbed in the Government service and as such the appellants cannot be said to be estopped from claiming benefits.

14. Further, it is to be seen whether the respondents school rightly made request for de-aiding school or not? Rule 62 of the Haryana School Education Rules, 2003 provides that in case any managing committee of existing aided schools desires to get it de-aided, it will have the liberty to do so after observing the following conditions, namely:

(a) The managing committee shall pass a resolution to this effect with at least two-third majority of the general body in the meeting convened for this purpose.

(b) It will be the responsibility of the such managing committee to meet the liabilities of staff for which they were getting grant-in-aid and the liability of the State shall be limited to the extent the benefits are admissible under the pension scheme as applicable from time to time.

The Managing Committee shall also move an application with the proposal of setting up of claims of the employees working in the school for de-aiding school to the Director and the Director shall pass order of de-aiding school after verifying the application as per rules. If the decision is not conveyed by the Director to the managing committee within a period of six months, it shall be deemed to have been de-aided. The grant-in-aid of the school shall be ceased from the date of application or any date specified by the Managing Committee.

15. In this case, the school made request on 28.12.2015, with which letter dated 15.12.2015 was annexed, which certified that in the emergent meeting of the management of Sheikhpura Khalsa Senior Secondary School Karnal, on account of lesser strength of the student in view of the poor result of the school and on account of stoppage of donation and funds, has decided to get the school de-aided.

16. As per rule 62 (2) of the Education Rules, 2003, the said resolution was to be passed by the two-third majority of the General Body in the meeting convened for that purpose and in this case meeting of General Body was not convened and it was only Management Committee, which resolved to get the school de-aided. As such the request for de-aiding the school was not made in accordance with rules and therefore, the school cannot shift its burden upon the Government.

17. Counsel for the respondents also referred Rule 65 of the Haryana School Education, 2003, which is reproduced as under:

> (2) Non payment of salary, gratuity, pension etc. by the managing committee to their employees for which the

grant-in-aid was released to the concerned managing committee. It shall be lawful for the Director to pay, out of the aid payable to the aided school such sum of money as is found to be due to any employee from such school.

18. Above provision does not state about arrears of pay. As per notification dated 09.08.2017, the Management was bound to discharge all the liabilities prior to the date of absorption of appellants in Government Service. Paucity of funds cannot be said to be a ground for declining the benefits.

8. There is no infirmity or error of law in the findings recorded by the Tribunal.

9. For the reasons aforementioned, this Court finds no merit in both the petitions and the same stand dismissed.

Photocopy of this order be placed on the file of other connected case.

(TRIBHUVAN DAHIYA)
JUDGE

28.08.2024
Seema

Whether speaking/reasoned ***Yes****/No*
Whether reportable *Yes/No*