

Shrimanth and ors. Vs. the State of Karnataka Represented by Its Secretary and ors.

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Court : Karnataka

Decided On : Apr-07-2006

Reported in : 2006(3)KarLJ479

Judge : K. Bhakthavatsala, J.

Acts : Karnataka Education Act - Sections 49; [Constitution of India](#) - Articles 226 and 227; Karnataka Educational Institutions (Grant-in-Aid for Primary, Secondary and Pre-University Educational Institutions) Rules, 1988 - Rule 3; Karnataka Educational Institutions (Grant-in-Aid for Education Institutions) Rules, 1998 - Rules 3

Appeal No. : Writ Petition No. 20723/2003

Appellant : Shrimanth and ors.

Respondent : The State of Karnataka Represented by Its Secretary and ors.

Advocate for Def. : B. Manohar, Additional G.A. for R-1 to 4 and ;Chandrashekar P. Patil, Adv. for R-5

Advocate for Pet/Ap. : K.M. Eshwarappa, Sr. Adv. and ;G.G. Chagashetty, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Bhakthavatsala, J.

1. This is a Writ Petition filed under Articles 226 and 227 of the [Constitution of India](#) praying for the following reliefs:

(a) Issue a Writ of certiorari and to quash the impugned order dated 11.2.2003 passed in Case No. ED 2003 PMC 2002 Bangalore produced at Annexure-N.

(b) Issue a Writ in the nature of mandamus directing the Respondents 1 to 4 to release the salaries of the Petitioners which was in due from 2000.

(c) Issue a Writ of certiorari and to quash the endorsement dated 24.4.2003 issued by the 2nd respondent in case No. C 7(5). PRA. SHIP.ha. dave. 1/2003-04 produced at Annexure-P and to quash the impugned endorsement dated 18.8.2003 issued by the 2nd respondent in case No. C.7(5) PRA. SHIP.ha.dave. 1/2003-04 produced at Annexure P3.

(d) Issue any other suitable writ, order or direction as this Hon'ble Court deems fit under the facts and circumstances of the case including an order of costs.

2. The petitioners are represented by Sri. K.M. Eshwarappa Learned Senior Counsel along with Sri. G. G. Chagashetty. The Respondent Nos. 1 to 4 are represented by Government Advocate Sri B. Manohar. The Respondent No. 5/Institution is represented by Sri Chandrashekar P Patil.

3. The Respondent Nos. 1 to 4 have filed statement of objections narrating the facts as stated in the impugned order dated 11.2.2003 (Annexure-N) and prayed for dismissal of the Writ Petition.

4. Sri K.M. Eshwarappa, Learned Senior Counsel appearing for the petitioners, submitted that due to non co-operation of the Respondent No. 5 with the Teachers, the strength of the students was decreased from the academic year 2003-04 and the Petitioners are honestly discharging their duties. It is further

submitted that the 5th Respondent/Management has not closed the Institution by issuing notice as required under the law and therefore the Petitioners are entitled for salary.

5. On the other hand, the Learned Government Pleader submitted that there is no illegality or infirmity in the impugned order dated 11.2.2003 (Annexure-N) and Annexures-P and P-3 and the Petitioners are not entitled for any such relief, as prayed for in the Writ Petition, and prayed for dismissal of the same.

6. Heard arguments of the Learned Advocates for the parties.

The Present Petitioners had challenged Annexure-J dated 20.11.2000 (withholding salary of the petitioners) in W.P. No. 37415-420/2000. The Learned Single Judge of this Court followed the decision rendered in Raman Janeyasamu Vidhya Samasthe v. State of Karnataka : ILR 2000 KAR922 (in short R. V. Samsthe Case). In the above said case Rule 3 of the Karnataka Educational Institutions (Grant-in-Aid for Primary, Secondary and Pre-University Educational Institutions) Rules, 1988, framed under Section 49 of the Karnataka Education Act, which declares private educational institutions established after 1.6.1987 to be ineligible for receiving Grant-in-Aid from the State Government, Constitutional validity of the said Rule was challenged. This Court has held that the Rule did not suffer from any un-constitutionality, and Private Education Institutions do not have any fundamental or any legally enforceable right to claim Grant-in/Aid from the State. It was further held that all that such institutions can demand is an equal treatment vis-a-vis those that fall in their category in case of classification like the one introduced by Rule 3 of the Impugned rules. In W.A. 682/2000 and other appeals the correctness of the judgment rendered in R.V. Samasthe's case was assailed. While dismissing the said Writ Appeal the Division Bench has made an observation' that the framing of the Rule could not affect the right of the institutions that stood admitted to aid as on the date the rules were framed. Orders stopping the aid only on the ground that the institutions had been established after the cut off date were accordingly held to be bad', and the following directions were issued;

(i) Rule 3 of the Karnataka Educational Institutions (Grant-in-Aid for Education Institutions) Rules, 1998 is valid and does not offend any provisions of the

Constitution or the Karnataka Education Act.

(ii) However, the said Rule does not apply to the private educational institutions set up and run by the appellants (Scheduled Caste/Scheduled Tribe Management's) which started functioning from the academic year 1987-88 or 1988-89 which were already admitted to grant-in-aid before 1.6.1995 i.e., the date of commencement of the Rule. In other words, the impugned Rule shall not have the automatic effect of discontinuing the aid already granted prior to the date of commencement of the Rule.

(iii) It is however open to the concerned educational authorities to verify whether the appellants' schools are effectively functioning and complying with the conditions laid down for the grant or recognition,

(iv) Depending on the result of such enquiry, we leave it open to the State Government or the competent authority, in this behalf, to withdraw the aid after issuing the show cause notice and taking into account the representations of the concerned Management's, if such action is warranted,

(v) Subject to such verification and enquiry as indicated above, the arrears of grant-in-aid for the purpose of disbursement of salaries to the appellants-teachers should be released within a period of two months from the date of receipt of Judgment copy subject to the fulfillment of usual formalities.

The State Government had challenged the order made by the Division Bench of this Court before the Hon'ble Supreme Court of India in SLP (Civil) No. 7640/2001. The State, after arguing the matter for some time, sought for permission to withdraw the SLP and pursue other remedies under law. Therefore, the Special Leave Petition was dismissed as withdrawn. Consequent to the dismissal of the Special Leave Petition on 11.1.2001, the order made by Division Bench of this Court has become final.

The Learned Single Judge of this Court allowed the present Petitioners W.P.No. 37415-420/2000 and W.P. 38125-131/2000 and other connected cases and quashed the Annexure-J dated 20-11-2001 pertaining to the case of the

Petitioners, with an observation as under:. I however make it clear that the quashing of the orders passed by the respondents shall not be understood to result in an automatic resumption of aid to the institutions. As directed by the division bench, the respondents shall be entitled to verify whether the institutions are effectively functioning according to the conditions laid down for the grant of aid. Depending upon the result of such an enquiry, the respondents shall be entitled to withdraw the aid to such institutions after issuing a show cause notice to them and after taking into consideration the representations that may be received in response to such a notice. Subject to such verification and enquiry, the arrears of grant in aid for the purpose of disbursement of salaries to the teachers whose appointment had been approved by the competent authority shall be released within a period of four months from the date of receipt of a copy of this order.

Therefore, the Government took necessary action to constitute Inspection Team so as to conduct inspection and verification of the Schools and determine the eligibility of each School for Grant subject to compliance of the conditions laid down for Grant or Recognition. In pursuance of the instructions issued by the Government in its letter dated 31.7.2002, the Inspection Team on 11.9.2002 visited the 5th Respondent School viz., Indira Higher Primary School, Hudagi, Humanabad, Bidar. As per the report of the Inspection Team, the Management has not made available the records of appointment of teachers and other relevant records. The team noticed that as per the register, 163 students were enrolled, but the students' attendance as on the said date of inspection was nil. The prescribed Pupil-Teacher ratio in the aided primary school as per Grant-in-Aid Code was 40:1. The Inspection Team submitted its report stating that none of the Teachers became eligible for salary Grant. Subsequently, the Government issued a show cause notice dated 28.10.2002 to the Management (Respondent No. 5). In spite of that the Respondent No. 5/Management did not submit its reply. The Teachers of the said School had submitted representation to the Government admitting the deficiencies pointed out by the Inspection Team and pleaded that the Teachers, who have been serving since so many years should not be penalised. Since the Respondent No. 5/Management has not given any reply, the State Government presumed that the Management had nothing to say, and therefore Government considered the inspection report, and representation of the Teachers, and issued

an order dated 11.2.2003 (Annexure-N), rejecting the request for release of salary Grant to the Petitioners/Teachers of Indira Higher Primary School, Hudagi, Humanabad Taluk, Bidar.

7. It is pertinent to mention that this Court by order dated 30.5.2005 directed the Learned District Judge, Bidar, to inspect the school and report as to whether the Respondent No. 5/Institution is effectively functioning with the required strength or not. The Learned District Judge, after making a detailed inspection, has submitted his detailed report dated 3.8.2005 to this Court. According to the said report also the 5th Respondent/School is not effectively functioning with the required strength. Keeping in view the Inspection Team report and the report of the Learned District Judge, Bidar, there is no merit in the Writ Petition and the petitioners are not entitled for any relief.

8. Therefore, I pass the following order:

The Writ Petition fails and the same is hereby dismissed. No costs.

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