

Court No. - 3**Reserved****Case :-** SPECIAL APPEAL DEFECTIVE No. - 266 of 2010**Appellant :-** State Of U.P.Through Secy. Higher Education 1900 (S/S of 2006)**Respondent :-** Munshi Raghunandan Prasad Sardar Patel Mahila Mahavidyalaya**Counsel for Appellant :-** C.S.C.**Counsel for Respondent :-** Dr. L.P.Misra**AND****Case :-** SPECIAL APPEAL DEFECTIVE No. - 573 of 2011**Appellant :-** State Of U.P.Through Secy.(Higher Edu.) Lko.3219 (M/S)2010**Respondent :-** Committee Of Management Gramodaya Ashram P.G. College And**Counsel for Appellant :-** C.S.C.**Counsel for Respondent :-** Manik Sinha,Pradeep Shukla,Ramesh Pandey**Hon'ble Shri Narayan Shukla,J.****Hon'ble Anant Kumar,J.****(Per Hon'ble Sri Narayan Shukla, J.)**

Heard Mr. Sanjay Bhasin, learned Additional Chief Standing Counsel for the appellants as well as Dr. L.P. Mishra, learned Senior Advocate assisted by Mr. Ramesh Pandey, learned counsel for the respondents.

In this appeal the validity of order dated 28.04.2008 passed by learned Single Judge in writ petition No.1509 (M/S) of 1999 and order dated 19.05.2011 passed by learned Single Judge in writ petition No. 3219 (MS) of 2010 respectively have been challenged. By means of order impugned the learned Single Judge allowed the writ petition and issued direction to the respondents/appellants to take the petitioners/respondent's institution in the list of grant-in-aid by 30 June 2008 failing which the Principal Secretary Finance as well as Principal Secretary Higher Education was directed to appear in person on 30

June 2008. The aforesaid direction of learned Single Judge is based on the backbone of the following observations.

“Having considered the submission made by learned counsel for the parties, I am of the view that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. Appointment of qualified and efficient teachers is a sine qua non for maintaining high Standards of teaching in any educational institution. The Government cannot shirk from its responsibility of providing primary and secondary education and grant-in-aid to private schools for efficient functioning of schools and maintaining standards of teaching. The Government's difficulty in bearing additional financial burden cannot be accepted as a valid ground for denying the pay parity.”

The learned Additional Chief Standing Counsel Mr. Sanjay Bhasin has urged that the learned Single Judge has committed manifest error of law in holding that Chaudhary Charan Singh Degree College, Heowra, District Etawah was established in 1998 and was granted affiliation after the respondents College, but it was taken in the list of grant-in-aid, whereas the correct fact is that Chaudhary Charan Singh Degree College was started w.e.f. 1 July 1983, whereas the respondents college was started w.e.f. 1 July 1990 with temporary affiliation. Chaudhary Charan Singh Degree College was also granted permanent affiliation before the respondents college and it was taken grant-in-aid list on 03.10.1994.

Mr. Bhasin, learned Additional Chief Standing Counsel has contended that the learned Single Judge issued a writ of mandamus without examining the merit of the case as well as policy framed by the State Government. The respondents college was granted permanent

affiliation w.e.f. 1 July 1994 vide order dated 7 November 1995 issued by the Chancellor of the University in certain subjects at graduation level vide letter dated 24.02.1986. The State Government had prescribed certain standard for inclusion of unaided non government degree colleges in grant-in-aid list, there are certain conditions which had not been fulfilled by the respondents college. One of the conditions is that there should be a provision in the budget to include the college in question for the grant-in-aid list.

The State Government on the basis of suggestions of the Finance Department had submitted a note to the Cabinet about fiscal deficit on the basis of which the Cabinet took a decision that no institution of Secondary/Higher Education should be extended in grant-in-aid. The Government Order dated 21.08.2000 was also issued to this effect, accordingly, no budgetary allocation was made by the State Government for extending the benefit of grant-in-aid to the respondents institutions.

The learned Chief Standing Counsel invited the attention of this Court towards the letter dated 30 August 2000 issued by the State Government indicating the decision of the State Government taken on 21 August 2000, whereby the State Government had taken a decision not to grant the financial assistance to any of the unaided non government degree college. He submitted that the Government Order dated 24 February 1986 provided for extension of grant-in-aid to the institution serially keeping in view the dates of permanent recognition. It further warned that no supersession in serial shall be accepted. Vide letter dated 6 March 1998, the State Government issued direction to the Director of Higher Education to provide proposal in accordance with terms of Government Order dated 24.02.1986 with respect to petitioners College as well as one another college i.e. Gramodaya

Ashram Post Graduate College, Birsinghpur, Saya, Ambedkar Nagar. The college in question was required to produce the evidence as to whether the Principal of the respective college was selected by the Higher Education Service Commission and after allocation of the respective college he was appointed by the Committee of Management in accordance with rule, but no such information was provided by the respondents college till date. He further urged that the decision of the State Government dated 21 August 2000 for not taking any college in the grant-in-aid list has not been challenged so far, therefore, the direction issued by the learned Single Judge is contrary to policy decision. It has been submitted that decision of providing/non providing financial aid to the institution falls within the realm of policy decision, therefore, no writ of mandamus could be issued contrary to policy decision. In support of his submission he has cited the following decisions: -

(1) Madhu Pandey and others Vs. State of U.p. And others [2015 (2) ADJ 183 (DB)] in this case the Coordinate Bench of this Court held that no mandamus can be issued commanding the respondents to act contrary to law.

(2) Dr. Smt. Lakshmi Vs. State of U.P. and others [2014 (6) ADJ 333 (BD)] in this case the petitioners had prayed for issuing a writ of mandamus to provide G.P. Fund and other retiral benefits. This Court held that grant of equivalence to University teacher is a matter of policy. In the matter of finance the State Government is the competent authority to take decision.

He further cited a decision of the Supreme Court in **State Fishery Officer's Association West Bengal and another Vs. State of West Bengal and another [1997 (9) SCC 65]** in which the Hon'ble Supreme Court held that in this case the petitioners have filed the

petition in the Tribunal seeking direction for payment of arrears on the premise that it was a tripartite agreement and therefore, the Government is bound by the undertaking given in the agreement. The Tribunal has perused the record and sated thus:-

“It appears from the documents on record that the Finance Department was not a party to such decisions. Nor does it appear that subsequently concurrence of the Finance Department was obtained in this connection. Besides, it does not appear that the decision were translated into any formal government order. Be that as it may, it will not be proper to grant such financial benefits in favour of Assistant Fishery Officers, Fishery Extension Officers, etc. with effect from 01.04.1961 while other actions of the Government were to take effect only from 01.04.1981.”

In view of the above finding the Supreme Court held that in view of the policy decision taken by the Government it cannot be said that the decision of the Government is arbitrary. The Supreme Court further held that no direction can be issued to the Government to grant the monetary benefits contrary to its policy which falls within the realm of the executive policy decision.

The learned Additional Chief Standing Counsel has further cited in **Financial Handbook Volume-5 Part-I it is Article 369-A** provides as under:-

“369-A. The payment of various classes of grants to local bodies and institutions, e.f. contributions to hospitals and dispensaries, educational grants-in-aid, contributions for the maintenance of roads, etc. will be regulated, subject to the following instructions, by the general or special orders of Government sanctioning each class of payment.”

It has laid down certain terms and conditions which being elaborative are not required to be quoted herein, however, it has been urged that since the Government had taken a decision not to extend the financial aid to the respondents institution, there was no occasion to extend the same by this Court.

He further invited attention of this Court towards the provision of Chapter XI-A of the U.P. State Universities Act, 1973 which contained Section 60-A to H. Section 60-E deals with the liability in respect of salary and provide that the State Government shall be liable for payment of salary against such posts of teachers and employees of very such college that was taken in grant-in-aid list by the State Government on or after March 31 1975. Section 60-A (i) defines the term 'College'. It means any college affiliated to or recognized by any University in accordance with the provision of this Act or the Statutes made thereunder and for the time being receiving maintenance grant from the State Government (but does not include a college maintained exclusively by the State Government or a Nagar Mahapalika).

In the light of the aforesaid provisions, he has submitted that since the State Government is liable to pay salary against the post which was taken in grant-in-aid list, the respondents' institution, having been not granted the financial aid by the State Government, is not entitled to claim the salary for teachers, he urged that under this chapter for the payment of salary to teachers and others employees of degree colleges the respondents' college is not covered under the definition of College since it has not received the maintenance grant from the State Government.

On the aforesaid factual backdrop as well as the legal position settled by this Court as well as by the Supreme Court the learned Additional Chief Standing Counsel has submitted that the judgment and order passed by learned Single Judge is unsustainable.

Per-contra Dr. L.P. Mishra, leaned counsel for the respondent has contended that the State Government had granted a temporary affiliation to the respondents college vide letter dated 17 January 1990 in six subjects at graduation level with certain conditions. One of the

condition was that the college shall bear the financial burden for five years and shall pay the salary to the Principal, Lecturers and non teaching staff from his own sources. Accordingly, the college was liable to pay the salary to its teaching and non teaching staff only for five years from the date of temporary affiliation i.e. 17 January 1990 and after completion of five years it had become the liability of the State Government to pay salary to the teaching and non teaching staff of the respondents' college. He further submitted that subsequently vide order dated 7 November 1995 the Chancellor of the University had granted permanent affiliation to the respondents' institution w.e.f. 01.07.1994.

By passage of time the college upgraded to impart education to post graduate level. The State Government had issued a Government Order dated 24 February 1986, whereby it had prescribed certain standards for inclusion of unaided non government degree college in grant-in-aid list. The grant of permanent affiliation is one of the conditions which is fulfilled by the respondents' institution. He has contended that there was no dispute in the Committee of Management of the College which is duly recognized by the University. The Principal as well as the teachers of the college are duly selected by the Higher Education Services Commission and have been duly appointed by the Committee of Management in accordance with rule. The non teaching staff of the College have been duly appointed with the approval of the competent authority. The result of the college has, all along been excellent being 95% to 100%. Since the academic session 1990-91 to 1997-98 and the college educationally and financially is viable. The strength of the students are more than the required strength thus the college in question fulfills all the conditions of the Government Order dated 24 February 1986. It has also been recipient of the State Level award granted by His Excellency Hon'ble Governor.

In 1993-94 it has been the recipient of another award i.e. Indira Gandhi National Service Scheme Award 1996-97. It has also been a regular participant in the Republic Parade at New Delhi held on 26 January 1998 in which six girls of the college represented the State of U.P. And all these girls belonged to the respondents college. It has been achieving the other co-curricular and cultural activities as well as exemplary status in (National Cadet Core) N.C.C. He heavily relied upon a letter dated 6 March 1998 issued by the Executive Officer of the State Government to the Director Higher Education State of U.P. Allahabad, whereby the Director of Higher Education was directed to send the proposal for inclusion of respondents college including one another college in the list of grant-in-aid with certain details. Pursuant to which the detailed information was provided by the Principal of the college to the Executive Officer of the State Government vide letter dated 11 March 1998. The State Government was intimated that the Principal of the College was selected by Higher Education Service Commission Allahabad, she was allocated for issuing appointment order to respondents college by the Director of Higher Education. The Committee of Management appointed her and handed over the charge of office of Principal of the college on 1.11.1994 and since then she has been working as such continuously. All these information had been sent to the Director of Education by the Secretary of the society of the college vide letter dated 1.11.1994.

It has been submitted that appellant had nowhere stated that the respondents college had not fulfilled any of the conditions laid down in Government Order dated 24 February 1986. He further contended that in the counter affidavit filed by the answering respondent in Special Appeal (Defective) No. 573 of 2011. He has brought on record one letter dated 13.04.2009 issued by the Director of Higher Education to the State Government which had recorded that the Directorate had

vide letter dated 11.06.1997 sent a proposal for inclusion of the following degree colleges in grant-in-aid list. The names of seven degree colleges are mentioned therein. The name of the respondents colleges is mentioned at serial No.3. The Director of Higher Education reminded the State Government that earlier vide letter dated 2.05.2008 the report had been sent by the Directorate pursuant to its letter dated 12.11.2007. In the said letter the history of the college in question was at serial No.7 of the list of colleges. It was granted permanent recognition in seven subjects of Art side on 01.07.1994. On 1 July 2004 it was granted permanent affiliation in English, Urdu subject and at graduation level. It was granted permanent recognition in seven subjects of science side on 1 July 2006. It has also been granted temporary affiliation under self-financing scheme in two subjects at post graduate level w.e.f. 1 July 2007. Mostly teachers are approved by the University. Thirty two non teaching staff are approved by the Regional Higher Education Officer. The strength of female students is 10148 at graduate level and at post graduate level it is 120, the total turnover of the degree college is Rs.98.00 Lacs.

He has further submitted that on 27 December 2013 the Cabinet of the State Government took some important decisions to include six self-financing degree colleges for grant-in-aid list to run B.Ed. Courses.

In so far as the application of the provision of Chapter XI-A of the U.P. State Universities Act, 1973 is concerned, Dr. L.P. Mishra, learned Senior Counsel has submitted that section 60-E has been inserted by U.P. Act No. 1 of 2004 w.e.f. 11.07.2003, whereas the respondents college had fulfilled the requisite conditions for grant of financial assistance since before. However, after clear recommendation of the Director of Education for extension of

financial aid to the respondents institution, there is no occasion for State Government to withhold its decision for extension of grant to the respondents' institution. He further contended that after completion of three years from 24 February 1986 the respondents' college had become entitled to get financial aid, but the State Government has deliberately withheld it without any reason. The State Government had issued a Government Order dated 30 August 2000, whereby the State Government took a decision not to extend the financial aid to unaided non Government colleges, during pendency of the respondents proposal which was under consideration with the State Government, therefore, the Government Order dated 30 August 2000 shall not come in the way of taking a decision of the State Government. He further urged that keeping in view the deliberate act of the respondents the learned Single Judge had no option but to call upon the State Authorities for implementation of the interim order as well as final order passed by learned Single Judge.

He further contended that this Government Order dated 30 August 2000 was in fact with regard to grant of approval to run the self-financing courses which is of no avail with regard to the matter of grant of financial aid to the respondents institution.

Regard being had to the aforesaid submission we have considered the matter and make the following deliberations:-

The respondents/petitioners had failed to establish that the case on hand is a case of disparity as no institution has been indicated which had received grant-in-aid being below to the respondents institutions in the list prepared on the basis of the date of permanent affiliation. The grant extended to the Professional Courses extended under the self-financing scheme can be said to be special grant unlike to the grant of financial aid to the institution running ordinary courses.

The respondents/petitioners has also failed to establish the fact that on the basis of recommendations of the Director of Education to the State Government for inclusion of the various colleges including the respondents' college in the grant-in-aid list any of the colleges has been provided grant-in-aid, particularly after issuance of Government Order dated 30 August 2000 whereby the Government took a decision not to extend the financial aid to unaided non Government Colleges.

The matter of extension of grant-in-aid is a matter of policy as has been held by the Supreme Court in the case of **Principal Madho Institute of Technology and Sciences Vs. Rajendra Singh Yadav 2000 (6) SCC608**.

“11. Learned Senior counsel for the 1st respondent then contended that if there was no grant-in-aid, then the State must be directed to pay the tuition fee in respect of such individual candidates who had undergone sterilisation, though the part-time course was not aided. In our view, it is not possible to issue any such direction in this Writ petition. Grant-in-aid, either for the Institution or for the School or for individuals is a matter of policy. In view of the clarification given in the counter affidavit set out above, if any such direction is given by this Court to benefit individuals, it would amount to amendment of the existing government policy by way of a judicial order and amounts to extension of benefit to persons to whom the policy was not intended to apply.”

In view of the law laid down by the Supreme Court there was no occasion to learned Single Judge to issue a writ of mandamus to the respondents to take the respondents institution in the list of grant in aid. The Government Order dated 24.02.1986 has laid down certain conditions to be fulfilled by the Institute seeking grant in aid, however, since the State Government has taken a policy decision for not extending the grant-in-aid, we do not feel it appropriate to deal with the petitioners eligibility in the light of Government Order dated 24 February 1986.

The learned counsel for the respondent Dr. Mishra, has given much emphasis over his argument that in the light of temporary recognition letter dated 17 January 1990 issued by the State Government, the liability for payment of salary to the teaching and non teaching staff has been fastened with the State Government after completion of five years from the date of temporary recognition. Whereas, we are of the view that this letter had laid down the condition for grant of temporary recognition and had provided that till five years the degree college shall bear the financial burden from its own sources for payment of salary to teaching and non teaching staff of the college but it does not mean that after completion of five years the liability for payment of salary shall be fastened to the State Government. The State Government vide letter dated 24 February 1986 itself had laid down the criteria for extension of maintenance grant to the unaided non Government degree colleges, therefore, untill and unless the colleges fulfill the conditions laid down therein, they would not be entitled to claim the grant-in-aid. That apart, once the Government has taken a decision for not extending the grant-in-aid which is a policy decision of the Government, it is not the domain of the Court to interfere with the policy decision of the Government.

In **TATA Cellular Vs. Union of India 1994 (6) SCC 651**, the Hon'ble Supreme Court held that it is not for the Court to consider whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which the decisions have been taken. The Court does not sit in Court of appeal to review the administrative decision.

In view of the law propounded above by the Supreme Court, we are of the view that the learned Single Judge has committed error in issuing direction to the appellants/respondents to extend the grant-in-

aid to the respondents. That being so the order dated 28.04.2008 passed by learned Single Judge in writ petition No.1509 (M/S) of 1999 and order dated 19.05.2011 passed by learned Single Judge in writ petition No. 3219 (MS) of 2010 respectively being unsustainable are hereby quashed. The special appeals stand allowed.

Order Date :-22.09.2016

A.K. Singh

(Anant Kumar, J.) (Shri Narayan Shukla,J.)