courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2008) 02 MP CK 0029

Madhya Pradesh High Court

Case No: None

Kamla Nehru Balika Uchchatar Madhyamik Vidyalaya	APPELLANT
Vs	
State of Madhya Pradesh and Others	RESPONDENT

Date of Decision: Feb. 26, 2008

Acts Referred:

- Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 - Section 5(2)

Citation: (2008) 117 FLR 827 : (2008) ILR (MP) 1656 : (2008) 3 LLJ 186 : (2008) 2 MPLJ 446

Hon'ble Judges: Viney Mittal, J

Bench: Single Bench

Judgement

Viney Mittal, J.

The petitioner before this Court is a society running a private aided educational institution. It has challenged a circular dated July 17, 2000 (Annexure-D), whereby it has been laid down that the provident fund with regard to the employees of aided institutions with effect from August 1,1982, would be the responsibility of the management of the institution itself and not of the State Government.

The facts on record depict that the petitioner-society runs a school in the name of Shri Kamla Nehru Balika Uchchatar Madhyamik Vidyalaya, Indore. The school run by the petitioner-society receives grant-in-aid from the State Government. Under the provisions of the then Central Provinces and Berar Education Manual, 1928, there was a'' scheme for constituting a provident fund for teachers in non-pensionable service. The proportion of contribution to be paid by the teachers was specified. The contribution by the Government and by the management of the school was also detailed. In the year 1978, the Madhya Pradesh Ashasakiya Shikshan Sanstha (Adhyapakon Tatha Anya

Karmchariyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (hereinafter referred to as Act) was promulgated. The aforesaid enactment was enacted for regulating the payment of salaries to the teachers and other employees of non-government institutions receiving grant-in-aid from the State Government and non-government educational institutions for higher education receiving grants from the Madhya Pradesh Uchcha Shiksha Anudan Ayog and other matters ancillary thereto. Under the provisions of Section 5 of the Act, an institutional fund was constituted for payment of salary to the teachers. Section 5(2) of the Act provided for the State Government or Ayog to place to the credit of the institution fund, in advance, such sums as may be required for the payment of salary to teachers and employees of the institution, including the institution''s contribution to the provident fund accounts at the rate it was required to make such contribution. The aforesaid Act did not provide for any provident fund scheme, as was the provisions under the then Central Provinces and Berar Educational Manual, 1928. Therefore, even after the enactment of the Act, the scheme under the 1928 Manual, continued to remain in force except that the institution''s contribution was now required to be deposited in the institutional fund. Under the Act, rules were also framed. Rule 8 of Ashasakiya Shikshan Sanstha Institutional Fund Rules, 1983, provided for opening of accounts for deposit of salary and teachers contribution with the provident fund.

Even prior to 1978 Madhya Pradesh Act, a Central enactment being the Employees Provident Funds and Miscellaneous Provisions Act, 1952 came to be promulgated. Initially, the said Central Act did not apply to educational institutions and the schemes under the 1928 Manual continued to operate for teachers and employees of educational institutions. However, by notification dated February 19, 1982, published on March 6, 1982, the aided schools of the State of Madhya Pradesh came within the ambit of 1952 Act.

It appears that a controversy arose between the Regional Provident Fund Commissioner, Jabalpur and Madhya Pradesh Shikshak Congress about the applicability of the Provident Funds and Miscellaneous Act, 1952, to such teachers and employees of the aided schools in the State of M.P., who were covered by a provision of the scheme. The matter ultimately was resolved by the Apex Court in the case of M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, . It was held by the Apex Court that after promulgation of the Act 1952, the provident fund to the employees was to be paid under the provisions of the said Act and the schemes, which were inconsistent to the said Act stood automatically abolished.

After judgment of the Apex Court, a circular dated July 17, 2000 has been issued by the State Government through which the State Government has provided that the liability to pay the provident fund w.e.f. August 1,1982 was to be that of the employer i.e. of the management of the institution and the State Government was not liable to make any contribution/reimbursement.

The said circular has been appended as Annexure-D with the present petition and is subject matter of challenge before this Court. The petitioner-society has also challenged an order dated August 27, 2001 (Annexure-G) passed by respondent No. 2.

The basic grievance raised by the petitioner-society is that under the provisions of the Act of 1978, Section 5(2) thereto, specifically provided for the constitution of an institutional fund for payment of salary and provident funds of the employees of the aided institution and therefore, in terms of the said statutory provisions, issuance of the circular, Annexure D, dated July 17, 2000, by the State Government was wholly contrary to the said provisions and as such was ultra vires. It has also been pleaded by the petitioner-society that issuance of the circular by the State Government was on the basis of a misinterpretation of the judgment of the Apex Court.

The claim of the petitioner-society has been contested by the State Government. A detailed reply has been filed. The State Government has maintained that since under the provisions of the 1978 Act, the employees of an aided institution were for all practical)purposes under the employment of the institution itself, therefore, all liability towards such employees was that of the management of the institution and could never been fastened upon the State Government, in any manner.

I have heard the learned Counsel for the parties and with their assistance, have also gone through the record of the case.

At the outset, the relevant provisions of Section 5 of 1978 Act, may be reproduced as under:

5. Constitution of Institutional fund for payment of salary of teachers, etc., and amounts to be deposited therein. -(1) There shall be opened in a treasury or sub-treasury, a separate head of account under which shall be constituted a separate fund for each institution (hereinafter referred to as institutional fund) in accordance with the rules made in this behalf for the purpose of payment of salary of the teachers and employees of that institution.

[(2) The State Government or the Ayog, as the case may be, shall place to the credit of the institution fund in advance by such date or dates as it may, from time to time, by notification specify, such sum as may be required for the payment of salary to teachers and employees of the institution including the institution''s contribution to the provident fund accounts at the rate at which it is required to make such contribution under any enactment for the time being in force,

XX XX XXX.

A perusal of Sub-section 2 of Section 5 clearly shows that the State Government or the Ayog, as the case may be, has to place such funds to the credit of the institution fund in advance, as may be required for the payment of the salary to teachers and employees of

the institution, including the institution''s contribution to the provident fund accounts, at the rate at which it is required to make such'' contribution under any enactment for the time being in force.

In view ï¿½f the mandatory provisions contained in Section 5(2) of the Act, it is not; understandable as to how and in what manner the State Government can deny its liability to make the contribution of the employees provident fund payable for the employees of the petitioner-society. In such circumstances, the liability of the State Government to pay its part of the salary and the provident fund, is obvious.

At this stage, it may be noticed that during the course of arguments, learned Counsel for the petitioner-society has contended that it appears that at the time of issuance of the circular dated July 17, 2000, the real import of the provisions of Section 5(2) of the Act was lost by the State Government and therefore, the circular in question, had in fact, been issued in ignorance of the said provisions, but later on, on realizing the said mandatory provisions of the Act, an amendment was made in the year 2000, whereby Sub-section (2) of Section 5 was completely substituted by a new provision and as per the new provision, the liability of the State Government to pay the provident funds etc. payable for the employees of an institution, was withdrawn.

I have also perused the amended provisions of the Act made through an amendment in the year 2000. The contention raised by Shri N.K. Dave, learned Counsel for the petitioner-society appears to be correct. Whereas under the 1978 enactment, there was a clear stipulation creating a liability of the State Government to pay not only the salary of an employee of an aided institution, but also the provident fund, there is no such provisions in the amended 2000 provision.

Thus, it is apparent that the circular Annexure-D, denying the liability of the State Government to pay the provident fund of an aided institution is clearly in contravention of the mandatory provisions of Section 5(2) of the Act and therefore, the said circular has to be declared as ultra vires of the Act and is quashed.

However, it may be clarified that the amended provisions of the Act shall continue to operate with regard to the institution in question from the date of enforcement of the amendment of Section 5(2) of the Act.