

STATE OF HIMACHAL PRADESH

v.

H.P. STATE RECOGNISED AND AIDED SCHOOLS MANAGING
COMMITTEES AND ORS.

MAY 10, 1995

[KULDIP SINGH, R.M. SAHAI AND B.L. HANSARIA, JJ.]

*Himachal Pradesh Education Code—Grant-in-aid Rules : Rules 45(Q),
45(J) and 47(2).*

*State of Himachal Pradesh—Recognised private aided schools—Grant-
in-aid—Prescription of maximum limit—Held contrary to rules—Schools held
entitled to full grant-in-aid i.e. 95% of the net approved expenditure.*

*Recognised and private aided schools—Teachers of—Held entitled to
parity in pay scales with their counterparts in Government schools.*

Constitution of India, 1950: Articles 21, 41, 45 and 46.

*Free and compulsory education to children upto the age of 14
years—State's obligation—Held cannot be circumvented on the ground of
economic incapacity—State must endeavour to review and increase the budget
allocation under the Head 'Education'.*

The respondents-teachers, employed in various recognised aide schools maintained by private managements, filed a writ petition in the High Court seeking directions that (i) they are entitled to parity in the matter of salary, allowances etc. with the teachers employed in the Government schools and (ii) the State Government shall pay grant-in-aid to meet 95% of the expenditure incurred by the aided schools. The State contested the petition on the ground that its economic capacity does not permit the disbursement of full grant as envisaged under the scheme of the Rules. The High Court allowed the petition and directed the appellant-State to pay 95% grant-in-aid with effect from February, 1988.

In appeal to this Court on the questions :

- (i) Whether the teachers employed in various recognised aided private schools in the State of Himachal Pradesh are entitled

A to the pay scales which are paid to their counter-parts in the Government Schools?

(ii) Whether such schools are entitled to receive grant-in-aid to meet 95% of the net approved expenditure?

B Dismissing the State's appeal and modifying the High Court's judgment, this Court

HELD : 1. The aided schools teach the same syllabus and curriculum, prescribe the books and courses as per Government directions and prepare the students for same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the State Government and the appointments are made with the approval of the State Government. The fees levied and concessions allowed are strictly in accordance with the instructions issued by the Education Department of the State Government from time to time.

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D The Managing Committees of aided schools are approved by the State Government and two members of the Committee are appointed by the Education Department. The service conditions of the teachers including disciplinary proceedings and award of punishment etc. are governed by the Rules framed by the State Government. Thus, the State Government has a deep and pervasive control on the aided schools. It is, therefore, late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary, allowances etc. with their counter-parts in the Government schools. [302-H, 303-A-C, 304-B]

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F *Haryana State Adhyapak Sangh and Ors. Etc. v. State of Haryana and Ors.*, [1988] Suppl. 1 SCR 682 and *Haryana State Adhyapak Sangh and Ors. v. State of Haryana and Ors.*, AIR (1990) SC 968, relied on.

2. Rule 45(J) and 45(Q) of the Grants-in-Aid Rules are the two conditions on the basis of which grant-in-aid is given to the aided schools. With an income of their own to contribute towards 5 per cent of the net expenditure, the managements of the aided schools cannot, ordinarily, bear the burden of the salary, allowances etc. to be paid to the teachers and other staff. The grant-in-aid must be sufficient to meet the net approved expenditure incurred by the management of the aided schools. Rule 47(2) of the Rules specifically provides that the management of the aided schools shall be required to meet 5 per cent of the net approved expendi-

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ture and the balance shall be met from the Government grant, but at the same time it further provides that the grant as assessed shall be admissible subject to the maximum amount shown in the said rule. The provision regarding "maximum - admissible grant" goes contrary to the scheme of the rules and also to the recommendations of the Kothari Commission. With the aforesaid limit, the aided schools cannot secure parity with the Government schools in the matter of payment of salaries. The High Court was right in taking the view that the imposition of the maximum limit for the disbursement of grant-in-aid to the respondents was arbitrary and unjustified. The High Court judgment is modified to the extent that the enhanced grant-in-aid be paid to the aided schools with effect from April 1, 1993. [304-E-G, 308-B]

3. Right to education is a fundamental right guaranteed under Part III read with Part IV of the Constitution of India. The State is under an obligation to provide free education to the children upto the age of fourteen. Judicial notice is taken of the fact that, ordinarily, a child in this country joins schools at the age of five years. All the children studying in the middle schools would be less than fourteen. Therefore, the State Government is under an obligation to provide free education to the children studying in the 144 non-Government schools. The constitutional mandate to the State - to provide free education to the children upto the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity. [307-A-D]

Mohini Jain v. State of Karnataka and Ors., [1992] 3 SCC 666 and *Unni Krishnan J.P. & Ors. v. State of Andhra Pradesh & Ors.*, [1993] 1 SCC 645, referred to.

4. It is high time that the State must accept its responsibility to extend free education to the children upto the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless the economic capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget allocation under the head "Education". The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Gross National Product. [307-F]

A **CIVIL APPELLATE JURISDICTION** : Civil Appeal Nos. 1233-34 of 1993.

From the Judgment and Order dated 9.9.92 of the Himachal Pradesh High Court in W.P. Nos. 413-14 of 1989.

B Prashant Bhushan for the Appellant.

P.P. Rao, R.K. Kapoor and P. Varma for Anis Ahmad Khan, Adv. for the Respondents.

The Judgment of the Court was delivered by

C **KULDIP SINGH, J.** The question for consideration is whether the teachers employed in various recognised aided private schools in the State of Himachal Pradesh are entitled to the pay-scales which are being paid to their counter-parts in the Government schools? If so, whether such schools are entitled to receive grant-in-aid to meet 95 per cent of the net approved expenditure?

D Respondents, in the appeal herein, are teachers employed in various recognised aided private schools (aided schools) in the State of Himachal Pradesh. These schools are being maintained by the private management. They receive aid from the State Government. The respondents approached the Himachal Pradesh High Court seeking a direction that they are entitled to parity in the matter of salary, allowances etc. with the teachers employed in the Government schools. They further sought a direction to the State Government to pay grant-in-aid to meet 95% of the expenditure incurred by the aided schools. A Division Bench of the High Court allowed the writ petitions. These appeals by way of special leave are against the judgment of the High Court.

E The Central Government appointed Kothari Commission to examine the conditions of service of teachers with the object of improving the standard of education in the country. Kothari Commission, inter alia, recommended that the scales of pay of school teachers working under different managements such as Government, local bodies or private management should be the same. Almost all the States in the country, including the State of Himachal Pradesh, agreed to implement the recommendations of the Kothari Commission. The adjoining State of Haryana declared, as back as January 1968, that the grades of teachers of privately

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managed schools would be revised on the pattern of the grades of teachers working in Government schools. A

The State of Himachal Pradesh framed rules called Grants-in-Aid Rules (the Rules) which are incorporated in the Himachal Pradesh "Education Code". B

Rules 45(Q) and 45(J) which are in conformity with the recommendations of the Kothari Commission are as under :

"(Q) Management shall introduce such scales of pay and allowances for teachers and to other staff members as are prescribed by the Government for corresponding staff in Government schools." C

"(J) That the income from subscription, endowments and other sources (excluding fees) suffices to ensure that the management can contribute at least 5 per cent of the net expenditure from their own funds after the school is aided." D

The State of Himachal Pradesh, therefore, is committed to implement the Kothari Commission recommendations regarding parity in the pay scales of the teachers working in the government schools and the aided schools. While agreeing in principle to revise the pay-scales of the teachers in the aided schools and also to meet 95% of the net approved expenditure, the Himachal Government has fixed the maximum limit upto which the grant can be paid to various schools. In this respect we may notice Rule 47(2) of the Rules which is as under : E

"(2) Management of the aided schools shall be required to meet 5 per cent of the net approved expenditure in any school year. The balance of the expenditure being met from the Government grant, the net approved expenditure being the total expenditure approved by the Education Department minus the income from the fees, fines, Etc. In case of girls schools and schools located in scarcely populated area the Government may, at its discretion authorise payment of grant-in-aid to the full extent of the difference between approved expenditure and approved income. This authority shall be exercised by the Government only in special circumstances where the school management is unable to meet the deficit from F
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A its own financial resources. The grants as assessed above shall be admissible subject to the maximum amount shown against each category of institutions :-

The Government have laid down the following enhanced maximum limits :-

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1. High/Higher Secondary Schools having more than 1000 students and classes 1 to X/1 to XI Rs. 20,000

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2. High/Higher Secondary Schools having less than 1000 students and classes 1 to X/1 to XI: Rs. 17,000

3. Higher Secondary Schools having classes VI to XI: Rs. 15,000

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4. Higher Secondary Schools having classes VI to X classes. Rs. 15,000

5. High Schools having Classes IX to X: Rs. 15,000

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6. Middle Schools classes I to VIII: Rs. 10,000

7. Middle Schools classes VI to VIII: Rs. 8,000

8. Primary Schools classes I to V: Rs. 3,000

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After the introduction of 10 + 2 system, the limits of maximum grant-in-aid respect of Senior Secondary Schools, recognised and privately managed, are as under :-

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(1) Where the students are less than 1000: Rs. 30,000

(2) Where the students are more than 1000 students: Rs. 35,000

H The aided schools teach the same syllabus and curriculum, prescribe the books and courses as per Government directions and prepare the

students for same examinations for which the students studying in government schools are prepared. The qualifications of the teachers are prescribed by the State Government and the appointments are made with the approval of the State Government. The fees levied and concessions allowed are strictly in accordance with the instructions issued by the Education Department of the State Government from time to time. The Managing Committees of aided schools are approved by the State Government and two members of the Committee are appointed by the Education Department. The service conditions of the teachers including disciplinary proceedings and award of punishment etc. are governed by the Rules framed by the State Government.

It is, thus, obvious that the State Government has a deep and pervasive control on the aided schools. The Government Schools and the aided school specially after the Kothari Commission Report - have always been treated at par. It has been authoritatively laid down by this Court that the teachers working in the aided schools are entitled to the same salaries and allowances as are being paid to the teachers in the Government schools. In *Haryana State Adhyapak Sangh and Ors. Etc. v. State of Haryana and Ors.*, [1988] Suppl. 1 SCR 682 Pathak, CJ speaking for this Court held "in our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in the Government schools for the entire period claimed by the petitioners...". This judgment was subsequently interpreted by this Court in *Haryana State Adhyapak Sangh and Ors. v. State of Haryana and Ors.*, AIR (1990) SC 968, where Agrawal, J. speaking for the Court observed as under :

"The judgment of this Court dated July 28, 1988 also accepts the principle of parity in the matter of salaries and dearness allowance of teachers employed in aided schools and those employed in Government schools and there is nothing in the judgment which indicates that the said principle of parity is to be applied upto December 31, 1985 only, and not thereafter. In the circumstances we are of the view that the direction of this Court in the judgment dated July 28, 1988 must be construed to mean that the respondent are required to maintain such parity and to revise, from time to time, the pay scales and dearness allowance of the teachers employed in aided schools as and when the pay scales and dearness allowance of teachers employed in Government schools are

A revised. It is, therefore, incumbent upon respondent to revise the pay scales of teachers employed in the aided schools so as to bring the same at par with the pay scales of the teachers employed in the Government schools with effect from January 1, 1986 and fix the salaries of the teachers employed in aided schools in the revised pay scales with effect from January 1, 1986 and pay the salaries and dearness allowance to these teachers on that basis."

It is, therefore, late in the day to say that the teachers in the aided schools are not entitled to parity in the matter of salary, allowances etc. with their counterparts in the Government schools. The question, for our consideration, however, is whether the State Government or the management is to meet the consequent expenditure.

Rule 45(Q) of the Rules specifically provides that the management shall introduce such scales of pay and allowances for teachers and to other staff members as are prescribed by the Government for corresponding staff in Government schools. Apart from that, Rule 45(J) clearly provides that the income of the aided schools from subscription, endowments and other sources (excluding fees) should be sufficient to ensure that the management can contribute at least 5 per cent of the net expenditure from their own funds after the schools is aided. Rules 45(J) and 45(Q) are the two conditions of the basis of which grant-in-aid is given to the aided schools. With an income of their own to contribute towards 5 per cent of the net expenditure, the managements of the aided schools cannot, ordinarily, bear the burden of the salary, allowances etc. to be paid to the teachers and other staff. The grant-in-aid must be sufficient to meet the net approved expenditure incurred by the management of the aided schools. Rule 47(2) of the Rules specifically provides that the management of the aided schools shall be required to meet 5 per cent of the net approved expenditure and the balance shall be met from the Government grant, but at the same time it further provides that the grant as assessed shall be admissible subject to the maximum amount shown in the said rule. The provision regarding "maximum - admissible grant" goes contrary to the scheme of the rules and also to the recommendations of the Kothari Commission. With the limit on the maximum admissible grant, the aided schools in the State of Himachal Pradesh cannot secure parity with the Government schools in the matter of payment of salaries. Kothari Commission's recommendations having been accepted by the State of Himachal Pradesh, it stands committed to

give grant-in-aid to the aided schools to the extent that they are in a position to meet the expenditure incurred on payment of salaries to the teachers in terms of the law laid-down by this Court in *Haryana State Adhyapak Sangh's* case. A

Right to education is a fundamental right guaranteed under Part III read with Part IV of the Constitution of India. This Court in *Mohini Jain v. State of Karnataka and Others*, [1992] 3 SCC 666 held as under:- B .

"We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions - whether state-owned or state-recognised - in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution" C D

Mohini Jain's case for consideration before a Constitution Bench of this Court in *Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others*, [1993] 1 SCC 645, wherein Jeevan Reddy, J. speaking for the Court observed as under:- E

"In *Mohini Jain* the importance of education has been duly and rightly stressed. The relevant observations have already been set out in para 7 hereinbefore. In particular, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words.... In the above state of law, it would not be correct to contend that *Mohini Jain* was wrong insofar as it declared that " the right to education flows directly from right to life". F G H

A The Constitution Bench, emphasising the constitutional policy as disclosed by Articles 41, 45, and 46 read with Article 21 of the Constitution of India, held as under:-

B "Be that as it may, we must say that at least now the State should honour the command of Article 45. It must be made a reality - at least now. Indeed, the National Education Policy 1986 says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a fundamental right to free education up to the age of 14 : years.....
C The right to freedom is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development."

D The State of Himachal Pradesh is, therefore, under a constitutional obligation to provide free education to children till they complete the age of 14 years. The obligation does not end thereafter, but it is subject to the limits of its economic capacity and development. Before the High Court and also before this Court, the primary contention raised by the learned counsel for the State of Himachal Pradesh is that the economic capacity specially the financial condition of the Government does not permit the disbursement of full grant to the aided schools as envisaged under the scheme of the Rules. We may examine this contention in the facts of the present case. The writ petition was filed by the respondents before the High Court in the year 1992. A Directory of Educational Institutions in Himachal Pradesh was published by Government of Himachal Pradesh,
E Department of Education. The District-wise list of schools - Government and others - has been given in the said directory. The list indicates that there were total of 2163 schools in the State of Himachal Pradesh as on March 31, 1992. Out of these 2019 were Government schools and 144 were non- Government schools. The detail regarding Middle, High and Senior
F Secondary schools as given in the said directory is as under:

Name of District	Middle		High		Sr. Sec.		Total	
	State Govt.	Others	State Govt.	Others	State Govt.	Others	State Govt.	Others
H Total :	1007	54	862	82	150	8	2010	141(sic)

We proceed on the assumption that all the 144 non-Government schools are the aided schools. This Court has authoritatively held that the State is under an obligation to provide free education to the children upto the age of fourteen. We take judicial notice of the fact that, ordinarily, a child in this country joins school at the age of five years. All the children studying in the middle schools would be less than fourteen. Therefore, the State Government is under an obligation to provide free education to the children studying in the 54 non-Government middle schools. In other words, the 54 middle schools are entitled to full grant-in-aid from the State Government. So far as the high and senior secondary schools numbering 90 (82 + 8) are concerned, the State Government is again under an obligation to provide free education to the children studying in these schools who are fourteen years of age or less. The net result is that even in high and senior secondary schools upto 8th/9th class - the students being 14 or below - the State Government is bound to provide free education and as such bound to meet the total expenditure of the schools to that extent. The large majority of students, in the 144 non-Government schools, being fourteen years of age or below the contention of the learned counsel for the State based on financial constraints, is wholly untenable.

The constitutional mandate to the State, as upheld by this Court in *Unni Krishnan's* case - to provide free education to the children upto the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity.

It is high time that the State must accept its responsibility to extend free education to the children upto the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless the economic capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget-allocation under the head "Education". The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Gross National Product.

We, therefore, agree with the High Court that the imposition of the maximum limit for the disbursement of grant-in-aid to the respondents was arbitrary and unjustified in the facts of the present case. As mentioned above, the respondent-schools are recognised, aided and are under deep

- A and pervasive control of the State Government. The Government is under an obligation to provide the grant-in-aid to the respondent-schools as envisaged under the scheme of the Rules. The High Court has directed the State of Himachal Pradesh to pay 95% grant-in-aid with effect from February, 1988. The High Court judgment was delivered on September 9, 1992. We modify the High Court judgment to the extent that the enhanced grant-in-aid be paid to the aided schools with effect from April 1, 1993.
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With the above modifications the appeals are dismissed. No costs.

T.N.A.

Appeals dismissed.