

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 10864/2024

1. Managing Committee, K.d. Jain Shikshan Parishad,
Through Its Secretary.

2. Managing Committee, K.d. Jain Senior Secondary School,
Through Secretary.

----Petitioners

Versus

1. Smt. Santosh Pareek W/o Ashok Kumar Pareek, Aged
About 57 Years,

2. Director / Commissioner, Secondary Education,

----Respondents

Connected With

S.B. Civil Writ Petition No. 10854/2024

Managing Committee, Shree K.d. Jain Senior Secondary School,
Through Its
Secretary.

----Petitioner

Versus

1. Smt. Beena Mathur W/o Shri Shyam Narayan Mathur,
Aged About 74 Years,

2. Director, Primary Education,

----Respondents

S.B. Civil Writ Petition No. 10855/2024

1. Managing Committee, K.d. Jain Shikshan Parishad,

2. Managing Committee, K.d. Jain Senior Secondary School,

----Petitioners

Versus

1. Smt. Vibha Mishra W/o Dr. Ashok Kumar Mishra, Aged
About 63 Years,

2. Director / Commissioner, Primary Education / Secondary
Education,

----Respondents

S.B. Civil Writ Petition No. 10865/2024

Managing Committee, K.d. Jain Senior Secondary School,



-----Petitioner

Versus

Rameshwar Prasad Sharma S/o Shri Ghasiram Sharma, Aged
About 71 Years,

-----Respondent

For Petitioner(s)	:	Mr. Sandeep Pathak
For Respondent(s)	:	Ms. Namita Parihar, Dy. GC
		Mr. Rajat Ranjan
		Mr. Aman Pareek

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

14/11/2024

1. Issue involved in this batch of writ petitions, is identical in nature and with the consent of counsel for both parties, all these writ petitions have been heard together finally at this stage and are being disposed of by this common order.
2. Petitioner-Managing Committee, in these writ petitions, has impugned the judgment(s) passed by the Rajasthan Non-Government Educational Tribunal, Jaipur (hereinafter "the Tribunal"), as detailed out in the appended Schedule, however, counsel for petitioner does not dispute that if such judgments and directions, issued by the Tribunal, are allowed to be implemented in terms of the judgment delivered by the Division Bench in case of **State of Rajasthan & Anr. Vs. The Management Committee Sh. Bhagwan Das Todi College [2016(2) WLC (Raj.) 1]**, the petitioner-Management Committee has no objection.
3. It has *inter alia* been contended by the counsel for petitioner that petitioner-institution is an aided institution and appointment of respondent-Employee(s) was against sanctioned and aided posts, hence for his/ her dues against pay & allowances, arrears of

salary on revision of pay-scale and grant of selection grades, leave encashment etc. payable under the direction of the Tribunal as issued in the impugned judgment, petitioner is liable to pay 20% and the liability to pay the remaining 80% is to be borne by the State Government, being the amount of grant-in-aid, therefore, the employee may recover his/ her dues in that ratio from the petitioner and the State Government, in view of direction issued by the Hon'ble Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*supra*).

4. It has been contended by the counsel for petitioner that as far as 20% amount against dues is concerned, same has been paid by the institution, hence remaining 80% amount against dues, being part of the grant-in-aid may be realized by the Employee, directly from the State Government, but since such an application filed by petitioner has been rejected by the executing Court, hence petitioner has to file instant writ petitions, seeking clarification/ modification in the judgment(s) of the Tribunal in this regard. It has been prayed by the counsel for petitioner that taking into consideration the relief prayed for in the present writ petitions, appropriate direction be issued, allowing respondent-Employee(s) to receive their remaining dues of 80% directly from the State Government.

5. Counsel for petitioner submits that petitioner has not challenged the order passed by the executing Court, but has questioned the judgment(s) passed by the Tribunal in instant writ petitions. Learned counsel submits that in the judgment(s) impugned passed by the Tribunal, it has clearly been directed in the operative portion that respondent shall ensure to make payment of

dues to respondent-Employee(s) in terms of the directions issued by the Division Bench of Rajasthan High Court in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*). Learned counsel submits that since petitioner-Management Committee and the State Government did not release the due payments to respondent-Employee(s), hence execution has to be filed and impugned judgment(s) have been prayed to be executed against the petitioner-Management Committee as also against the State Government.

6. Counsel appearing on behalf of respondent-Employee(s) pointed out that share of 20% of the dues, paid/ released by the petitioner-Management Committee is belated, hence the petitioner-Management Committee is liable to pay the interest on the belated period.

In respect of payment of remaining 80% of the dues, submission of learned counsel for respondent-Employee(s) is that the due amount may be permitted to be recovered directly from the State Government, but interest for the period of delay, until releasing the actual payment, may be permitted to be paid. His submission is that the Tribunal has directed to make payment of the dues with interest, hence petitioner-Management Committee and the State Government are also liable to pay the interest on the due amount and if there is inter se dispute about the liability to bear the dues and interest thereupon, between petitioner-Management Committee and the State Government, same may be clarified, but respondent-Employee(s) may be ensured payment of his/her entire dues with interest against the judgment debtors.

7. Learned counsel appearing for respondent-Employee(s) has further pointed out that as far as payment of gratuity is concerned, the employee(s) are entitled for gratuity in terms of Rule 80 of the Rajasthan Non-Government Educational Institution (Recognition, Grant-in-Aid and Service Conditions Etc.) Rules, 1993 (for short "the Rules, 1993") as admissible under the Payment of Gratuity Act, 1972 from the petitioner-Institution, since gratuity does not fall within purview of "approved expenditure". Learned counsel submits that such issue has finally been settled by the Apex Court in case of **Rajasthan Welfare Society Vs. State of Rajasthan [(2005) 5 SCC 275]**, therefore, for the gratuity, being not an approved expenditure, the State Government is obviously not under any obligation to sanction the grant-in-aid towards the amount of gratuity, hence it is the liability of the petitioner-Institution to pay the due gratuity of respondent-Employee(s).

8. Learned Deputy Government Counsel, appearing on behalf of respondent No.2, representing the Government of Rajasthan, states that even though the petitioner-Institution, being an aided institution, is covered under the Rajasthan Non-Government Educational Institution Act, 1989 (for short "the Act of 1989") and the Rules, 1993, yet is under legal obligation to prepare and send due drawn statement to the State Government, in respect of each respondent-Employee with regard to their dues after revision of the pay scale, grant of selection grades, leave encashment etc., which has not been done, hence at this stage, the State Government is not liable to pay the due amount directly to the respondent-Em-

employee(s) against the amount of grant-in-aid. Further, learned Deputy Govt. Counsel submits that as and when petitioner-Institution sends the due drawn statement of respondent-Employee(s) to the State Government, thereafter, the State Government after its due verification from the record, will make payment of dues to respondent-Employee(s). It has been contended by learned Deputy Govt. Counsel that the State Government is not responsible for delay, therefore, cannot be held responsible for payment of interest and if, any interest is payable on the delayed payment, same is the liability of the petitioner-Institution only, because delay was on the part of petitioner-Institution.

9. Learned Deputy Govt. Counsel submits that ratio decidendi expounded by the Division Bench of the Rajasthan High Court in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*), has been affirmed by the Apex Court and therefore, in the light of directions issued by the Tribunal, respondent-Employee(s) are entitled to execute the impugned judgments, following the ratio decidendi of the Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*) in letter & spirit.

10. Learned Deputy Govt. Counsel, in addition to above, submitted that in respect of payment of gratuity to the respondent-Employee(s), the issue has already been clarified in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*), following the judgment of the Apex Court in case of **Rajasthan Welfare Society** (*Supra*), hence the gratuity, not being part of the approved expenditure, is not covered under the Rule

14 of the Rules, 1993, hence the State Government is not under any obligation/ liability to release the grant-in-aid towards the gratuity. The attention of this Court has been drawn to Para No.16 of the judgment delivered in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*).

11. In rebuttal, counsel for petitioner-Management Committee of the Institution, though not in a position to oppose the contention of counsel for respondent-Employee(s) and learned Deputy Govt. Counsel appearing for State, in respect of liability of petitioner-Institution to pay the gratuity amount, however, in respect of preparing and furnishing due drawn statement of its each employee, it has been submitted that due drawn statement in respect of each respondent-Employee has been submitted before the State Government wayback in the year 2016-17 and thereafter, it is for the State Government to verify the same and release the legal admissible dues of the employees against the grant-in-aid, hence delay in release of 80% of dues of respondent-Employee(s) by the State Government, is on the part of State Government, for which the interest, if any, is liable to be paid by the State Government. Learned counsel for petitioner-Management Committee has also relied upon the judgment dated **07.12.2021** passed by the Division Bench of the Rajasthan High Court in case of **DB Special Appeal Writ No.280/2021; Managing Committee, Agarwal Senior Secondary School Vs. Ghanshyam Sharma**, wherein the ratio decidendi laid down by the Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*) was followed and order passed by the Tribunal was set

aside, being not in conformity with the judgment delivered in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*).

12. Having considered the rival contentions of counsel for respective parties as noted hereinabove, this Court finds that the parties are ad idem (having common understanding), in respect of implementation of the judgment(s) passed by the Tribunal, which are questioned herein, as per directions issued by the Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*supra*). The perusal of judgment(s) impugned reveals that in the operative portion of the judgment, the Tribunal has also observed to implement this judgment in terms of **The Management Committee Sh. Bhagwan Das Todi College** (*supra*). Hence, on that aspect, no further clarifications/ modifications are required by this Court.

13. It is also noteworthy that parties are not at factual dispute that the petitioner-Institution is an aided institution and the respondent-Employee(s) were appointed against the sanctioned and aided posts therein. The judgment(s) passed by the Tribunal have not been questioned in respect of entitlement of the respondent-Employees for their dues as ordered by the Tribunal, but petitioner has impugned the judgment(s) of the Tribunal, raising a limited issue that the liability to pay the dues of respondent-Employee(s) is required to be borne by the petitioner-Management Committee and the State Government, to the extent of their respective shares i.e. 20:80, since 80% grant-in-aid was to be released by the State Government.

14. It appears that respondent-Employee(s) have initiated execution of the impugned judgment(s) before the Civil Court and in the execution proceedings, application filed by and on behalf of petitioner-Management Committee under Section 151 CPC, seeking to absolve the petitioner-Institution from the liability to pay dues beyond 20% as claimed by the respondent-Employee(s) in the execution, has been rejected. Hence, in such eventuality, petitioner has filed instant writ petitions. Although, in instant writ petitions, order passed against the petitioner-Institution by the executing Court has not been impugned, however the grievance and issue raised by the petitioner can be addressed and resolved even otherwise, since same is squarely covered by the judgment of the Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*), therefore, mere not impugning the order of the executing Court passed against the petitioner, is of not much relevance.

15. Indisputably, petitioner-Institution is an aided institution and the appointment of respondent-Employee(s) was qua sanctioned and aided posts. Petitioner claims to have 80% grant-in-aid with the government. In respect of dues of the respondent-Employee(s), in furtherance to the judgments and direction of the Tribunal, petitioner-Institution admits its liability upto 20% and for remaining 80%, liability is to be borne by the State Government out of the amount of grant-in-aid. Counsel for respondent-Employee(s), in explicit terms stated at Bar that remaining 80% of their dues may be allowed to be recovered from the State Government, but he claims interest on the delayed payment against the

petitioner-Institution as also against the State Government, whosoever is liable for the delay and further, for gratuity, he has confined his claim qua petitioner-Institution only. Such agreement and understanding stands in conformity with the judgment of the Division Bench in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*).

In case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*), the Division Bench has clearly held that the grant-in-aid can be sanctioned and paid directly by the State Government to the employees of the aided educational institutions in the light of Section 31(2) of the Act of 1989. For ready reference, relevant portion of the judgment i.e. Para Nos.39, 40 & 46 are being reproduced hereunder:-

“39. Thus, the grant-in-aid can be sanctioned and paid directly by the State Government to the employees of the Aided Educational Institutions in the exigency, if arises, as being postulated, by the Legislature in its wisdom, u/ Sec.31(2) of the Act, 1989 and in our considered view the financial liability, which has been created upon the State Government and settled by this court, of which we have made reference supra receiving grant-in-aid from the State Government against the approved expenditures under the Act, 1989 and Rules, 1993 framed thereunder, at least for the period till the employees are absorbed in the State Government under the Rules, 2010, w.e.f. 01.07.2010 remained on the sanctioned & aided posts in the Non- Government Aided Institutions, cannot be abrogated or absolved by creating a subordinate Legislation by virtue of Cl. (vii) and u/C. (xi) of R.5 of the Rules, 2010.

40. At the same time, it may be noticed that such of the employees who were in service of the Non-Government Aided Institution and working against the sanctioned & aided post when the Rules, 2010 came into force either retired before screened and appointed in the State Government or are not inclined to join service under the Rules, 2010, R.5(vii) indisputably, shall not come in their way and the State Government is under legal obligation to sanction grant-in-aid and has to part with its share against arrears of salary and other approved expenditures provided u/R.14 of the Rules, 1993

for such employees and two different yardsticks/standards cannot be adopted for those who joined service under the Rules, 2010 and others who are not inclined to join, as observed and in our considered view, SUB-R. (vii) of R.5 of the Rules, 2010, has no application and entitlement/right of the institution accrued cannot be divested or abrogated by the State Government on creation of subordinate Legislation and that is not permissible by law.

46. The Special Appeals filed by the State Government are without substance and accordingly dismissed and taking note of the Sec.31(2) of the Act, 1989 we direct the Non-Government Educational Institution to prepare due drawn statement of each of the employees of their Institution who have worked against sanctioned and aided posts in regard to their arrears of salary and their dues which are approved expenditures to the extent of grant-in-aid and the same be sent to the State Government and the State Government after its due verification from their records will make payment of arrears to each of the employee who either have now become members of Rules, 2010 or have retired or left the job (upon the period one has worked" and to other employees similarly situated under intimation to the concerned Non-Government Recognized Institution."

Thus, it is crystal clear that the respondent-Employee(s) are entitled to recover their dues directly from the State Government in a ratio of sanctioned grant-in-aid and since in the case at hand, same is 80%, therefore, if 20% of dues has been paid/ released by the petitioner-Institution, then respondent-Employee may proceed for execution proceedings to recover the remaining 80% of their dues directly from the State Government, following the ratio decidendi expounded in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*).

16. As far as claim of interest on the delayed payment is concerned, obviously for 20% of dues, for which petitioner-Institution accepts its liability, interest is to be borne by the petitioner-Institution only. In respect of remaining 80% of dues, the issue hinges

on the point that whether the due drawn statement in respect of each employee has been prepared and forwarded by the petitioner-Institution to the State Government?

In this respect, the executing Court has observed that the due drawn statement in respect of each respondent-Employee was not furnished by the petitioner-Institution. Counsel for petitioner although submitted that due drawn statement in respect of each respondent-Employee had been furnished wayback in the year 2016-17, yet undertakes to furnish afresh before the executing Court within a period of eight weeks from the next date already fixed.

17. In such scenario, the liability to pay the interest on the remaining 80% dues of the respondent-Employee(s), is to be decided and determined by the executing Court, having considered the factual aspect that who is responsible for the delay i.e either fault lies on the part of petitioner-Institution or the State Government is liable for delay and that 80% of the dues of respondent-Employee(s), for which they are entitled as per the judgment and directions passed by the Tribunal, is concerned, same being the part of grant-in-aid for which the State Government is liable to pay, will be paid by the State Government and the liability to pay interest thereupon for the delayed period, shall be borne as per decision of the executing Court on this issue.

18. In respect of payment of gratuity, it is made clear that the petitioner-institution shall pay the amount of gratuity, if same has not been entirely paid to the respondent-Employee(s).

19. In view of above observations, which are in conformity to the ratio decidendi of the judgment delivered in case of **The Management Committee Sh. Bhagwan Das Todi College** (*Supra*), the impugned judgment(s) passed by the Tribunal, as detailed out in the appended Schedule, which have been put to challenge by the petitioner-Management Committee herein, do not warrant any interference, hence same are hereby affirmed and shall be implemented/ executed in the manner as directed hereinabove. The executing Court shall ensure the compliance accordingly.
20. With the aforesaid observation, the writ petitions stand disposed of.
21. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

Sachin/374-377

SCHEDULE

S.No.	Writ Petition(s)	Date of impugned orders	Applications, on which impugned orders have been passed
1.	SBCWP No.10864/2024	09.11.2016	821/2012
2.	SBCWP No.10854/2024	06.11.2017	504/2014
3.	SBCWP No.10855/2024	29.06.2018	50/2014
4.	SBCWP No.10865/2024	19.01.2021	168/2012