

ਡਾਇਰੈਕਟੋਰੇਟ,

ਅਨੁਸੂਚਿਤ ਜਾਤੀਆਂ ਅਤੇ ਪੱਛੜੀਆਂ ਸ਼੍ਰੇਣੀਆਂ, ਭਲਾਈ ਵਿਭਾਗ, ਪੰਜਾਬ,
ਐਸ.ਸੀ.ਓ. ਨੰ: 128-29, ਸੈਕਟਰ 34-ਏ, ਚੰਡੀਗੜ੍ਹ।

ਸੇਵਾ ਵਿਖੇ,

1) ਡਾਇਰੈਕਟਰ,
ਤਕਨੀਕੀ ਸਿੱਖਿਆ ਅਤੇ ਉਦਯੋਗਿਕ ਸਿਖਲਾਈ ਵਿਭਾਗ,
(ਪੋਲੀ. ਵਿੰਗ ਅਤੇ ਆਈ.ਟੀ.ਆਈ.ਵਿੰਗ)
ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

2) ਡਾਇਰੈਕਟਰ,
ਖੋਜ ਅਤੇ ਮੈਡੀਕਲ ਸਿੱਖਿਆ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

3) ਡਾਇਰੈਕਟਰ,
ਡੀ.ਪੀ.ਆਈ.(ਕਾਲਜ), ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

4) ਡਾਇਰੈਕਟਰ,
ਡੀ.ਪੀ.ਆਈ.(ਸਕੂਲਜ), ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

5) ਡਾਇਰੈਕਟਰ,
ਐਸ.ਸੀ.ਈ.ਆਰ.ਟੀ, ਪੰਜਾਬ, ਚੰਡੀਗੜ੍ਹ।

6) ਡਾਇਰੈਕਟਰ, ਪ੍ਰਾਇਮਰੀ ਅਤੇ ਮਾਧਿਅਮਿਕ ਸਿੱਖਿਆ, ਪੰਜਾਬ

ਮੀਮੋ ਨੰਬਰ : ਸ-17/ 13117 -13123 ਮਿਤੀ, ਚੰਡੀਗੜ੍ਹ: 02-7-2015

ਵਿਸ਼ਾ:- ਸਿਵਲ ਰਿਟ ਪਟੀਸ਼ਨ ਨੰ: 15455 ਆਫ 2014 ਕਮਲਾ ਨਹਿਰੂ ਕਾਲਜ ਆਫ ਐਜੂਕੇਸ਼ਨ ਫਾਰ
ਵਿਮੈਨ ਬਨਾਮ ਸਟੇਟ ਆਫ ਪੰਜਾਬ।

ਸਿਵਲ ਰਿਟ ਪਟੀਸ਼ਨ ਨੰ: 15455 ਆਫ 2014 ਕਮਲਾ ਨਹਿਰੂ ਕਾਲਜ ਆਫ ਐਜੂਕੇਸ਼ਨ ਫਾਰ
ਵਿਮੈਨ ਬਨਾਮ ਸਟੇਟ ਆਫ ਪੰਜਾਬ ਕੇਸ ਮਾਨਯੋਗ ਪੰਜਾਬ ਅਤੇ ਹਰਿਆਣਾ ਹਾਈਕੋਰਟ, ਚੰਡੀਗੜ੍ਹ ਵਿੱਚ ਦਾਇਰ ਸੀ, ਇਸ
ਕੇਸ ਵਿੱਚ ਮਾਨਯੋਗ ਜਸਟਿਸ ਕੇ.ਕਾਨਨ ਜੀ ਵਲੋਂ ਮਿਤੀ 10-10-2014 ਨੂੰ ਦਿੱਤੇ ਗਏ ਫੈਸਲੇ ਦੀ ਕਾਪੀ ਸੂਚਨਾ ਤੇ
ਅਗਲੇਰੀ ਯੋਗ ਕਾਰਵਾਈ ਹਿੱਤ ਭੇਜੀ ਜਾਂਦੀ ਹੈ ਜੀ।

ਨੱਥੀ/ਉਕਤ ਅਨੁਸਾਰ

ਡਿਪਟੀ ਡਾਇਰੈਕਟਰ (ਜ)

ਕੇਸ ਨੰਬਰ 15455 ਆਫ 2014 ਕਮਲਾ ਨਹਿਰੂ ਕਾਲਜ ਆਫ ਐਜੂਕੇਸ਼ਨ ਫਾਰ
ਵਿਮੈਨ ਬਨਾਮ ਸਟੇਟ ਆਫ ਪੰਜਾਬ ਕੇਸ ਵਿੱਚ ਮਾਨਯੋਗ ਜਸਟਿਸ ਕੇ.ਕਾਨਨ ਜੀ ਵਲੋਂ ਮਿਤੀ 10-10-2014 ਨੂੰ ਦਿੱਤੇ ਗਏ ਫੈਸਲੇ ਦੀ ਕਾਪੀ ਸੂਚਨਾ ਤੇ
ਅਗਲੇਰੀ ਯੋਗ ਕਾਰਵਾਈ ਹਿੱਤ ਭੇਜੀ ਜਾਂਦੀ ਹੈ ਜੀ।
Decision of the Hon'ble Justice K. Kanunji in the case of Kamla Nehru College of Education for Women v. State of Punjab & Haryana High Court, Chandigarh, dated 10-10-2014, is being forwarded for the necessary action.
ਸਤਿਨਾਮ
20/7/15
20/7/15

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.15455 of 2014

Date of Decision.10.10.2014

Kamla Nehru College of Education for WomenPetitioner
Versus

The State of Punjab and othersRespondents

2. CWP Nos.16889, 16922, 16963, 20280, 20286 and 20287 of 2014

Present: Mr. Rahul Sharma-I, Advocate
for the petitioner.

Ms. Vandana Malhotra, Addl. A.G., Punjab.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

K. KANNAN J. (ORAL)

1. All the petitioners are colleges who are aggrieved about the letters issued by the Government on various dates which are impugned in the writ petitions that purport to take serious action if the colleges collected tuition fees from Scheduled Caste students. The letters draw the inspiration from a scheme of Post Matric Scholarship the Central Government has announced which is effective from 01.07.2010 for students belonging to Scheduled Caste for States in India. It is attached with several conditions which is not necessary for us to reproduce. It is admitted by a scheme which the Central Government has floated. The State Government undertakes the responsibility of making the scholarship payments to the eligible students. The scheme introduced by the Government itself spells out the mode of disbursal of scholarship which is as follows:-

"In order to ensure timely payment of scholarship amount to the beneficiaries, the State Government/UT administrations are requested to avoid cash payment of scholarship amount and are required to issue instructions to all concerned that payment of scholarship should be made to beneficiaries through their accounts in post offices/banks with phased transition to Smart Cards."

2. It is again an admitted fact that the amount is not disbursed in the manner contemplated in the scheme and there is a particular history for this deviance as well.

3. There was an occasion when several colleges had approached this Court complaining that persons who joined the college for a year passed out of the college without paying the fee in view of directions from the Government that the colleges shall not collect tuition fee from SC students in view of the scholarship scheme. In the writ petition filed by Ramgarhia Polytechnic College and others in CWP No.21682 of 2012, it was contended that the Scheme which provided for disbursement of scholarship to the students was fraught with serious difficulties for colleges could not be compelled to chase the students who had passed out from the college without paying the fee. The Court, therefore, passed an order directing that in any situation of the Government not being in a position to release the scholarship in time to the students, colleges which could not collect the tuition fee from the students in view of the fact that the scholarship had not been released to them, the amount need not be disbursed to the students but the same will be transferred to the colleges directly if statements are prepared and given. This has worked for some time but it has again come with load of difficulties.

4. The present petitioners have grievances that they have not

received the fees from either the Government nor they had been paid by the students. In spite of the fact that they had made the demands, the amounts have not been paid from any quarter. After the filing of the petition, the Government has made certain payments to the colleges but the issue is not whether the colleges could be satisfied by receiving payments from the Government within a period of time as and when the Government makes its resources available to be transferred to the colleges. The petition is on a legal plane namely of the competency of the State to dictate to private self-financing colleges not to collect fee from SC students. It is urged that there is simply no control which a Government can exercise other than the prescription of fee and the norms which they have to comply for standards of education. Following TMA Pai Foundation Vs. State of Karnataka AIR 2003 SC 355, Islamic Academy of Education and another v. State of Karnataka and others, (2003) 6 SCC 687 has considered the degree of control which the State could exercise on private unaided colleges came for consideration. The attempt at that time was to frame a viable fee structure so that the unaided private colleges do not collect capitation from students and exploit the vulnerable students. A Committee was, therefore, constituted with a person of the rank of High Court Judge in each State to examine the expenses that may have to be incurred and the appropriate fee that could be collected from the students by each professional college. The regulation by the State can, therefore, in terms of the Supreme Court judgments be no more beyond the prescription of the maximum fee leviable from the students. The issue of affiliation will concern itself about the norms and other

infrastructural capacities of an educational institution and it will not exigent to allow for any control on the part of the State in a situation such as what obtains in this case of institution which are run on their own finances without aid from the Government and which, therefore, have a right to collect the tuition fee from the students. Indeed a right to administer educational institutions has been seen through the prism of Article 19(1)(g) of the Constitution in P.A. Inamdar v. State of Maharashtra 2005 (2) Suppl. SCR 603 . Even an appointment of administrator for an educational institution on alleged grounds of maladministration could not be for an indefinite period, for, a right to administer a college was seen as a fundamental right guaranteed under Article 19(1)(g) in IIT College of Engg. Vs. State of HP (2003) 7 SCC 73. Under this circumstance, I hold that any fetter on the right of a college to collect the fee from the students within the scale which is permissible is an infliction on the fundamental right to establish an educational institution. The impugned letters have no sanction of law. If there is such a law, it will be even unconstitutional. The impugned letters by the Government that the institute shall not collect fee from SC students on pain of being visited with penal consequences is without any legal sanction and liable to be quashed and accordingly quashed. If any payment is due and payable from the students, the institute shall be at liberty to collect the same from the students themselves. In the order that I have made, I have not attempted to breach any of the norms already laid down by this Court in the decision in CWP No.21682 of 2012. It is open to any of the institutes to avail to itself the benefit of transfer of grants from the State Government and such of those

institutes who wish to avail of such a benefit may continue to enjoy that benefit but they shall not be permitted to collect tuition fee from the students. This direction of what I have given is only applicable to such of those institutes which do not want to avail the benefit of transfer of funds from the State Government in which case they shall be at liberty to collect the fee directly from the students. It shall be the responsibility of the State to disburse the funds to the students within time in order that they do not expose themselves to expulsion from the college if the fee is not paid within the time which is prescribed. The State shall apprise itself at all times the last date for payment of fee and ensure that the amounts are transferred to the students before the last date that various colleges set. It shall be the endeavour of the State, therefore, to ensure that there is a seamless procedure that it draws for the benefit of the students and also ensure that the amounts are not mis-spent and they are transferred to the students which in turn will be appropriately paid towards the tuition fee.

5. The writ petitions are at the instance of aided and unaided colleges. Petitioners in CWP Nos.16922, 16963, 20286, 20287 and 16889 of 2014 belong to the former category and petitioners in CWP Nos.15455 and 20280 of 2014 belong to the latter category. As regards the aided colleges, the issue will invariably be the conditions attached to the grants which are issued by the Government. Any condition in the grant must conform to law. The principle which I have brought out on a right to establish and administer college which is protected under Article 19 (1) (g) must still make possible for them to carry out its administration unfettered by any restrictions which are not reasonable. A direction

that amounts shall not be collected from the students is unreasonable for the fact that it is violative of the terms of the Central Government scheme which prescribes a mode of disbursal of the scholarship. The direction which was already given by this Court in the batch of writ petitions in CWP No.21682 of 2012 was under some special circumstances where the students were not getting paid their money within time and the colleges had to cope with the directions not to collect the fee from the students. It was typically a direction brought under special circumstances that left the colleges in unenviable position of not being able to collect the tuition fee from the Government within time and barred from collecting the fees from the students also by the State Government's directives. We have seen that the system does not operate. If it cannot operate then I would only find that a restriction which is sought to be imposed is unreasonable.

6. The counsel appearing on behalf of the State points out that some of the colleges have actually collected fee from the students and they have also claimed amounts from the State. To prevent such an occurrence any college that collects fees from the SC students shall in the receipt endorse a declaration that it will not claim any amount from the State that purports to defray admission fee or other charges payable on behalf of SC students under Post Matric Scholarship Scheme. If any college opts to avail of the transfer of funds from the Government, it shall not be required to give such a written undertaking engrossed in the receipt for the collection of fee. In respect of the outstanding payment of fees from any of the students, the college shall serve notices giving an extended time of another four weeks from the last date stipulated

already and no precipitate action of expulsion shall be taken till the cut off period is over. This direction shall be applicable only with reference to the outstanding fee for a term fee which has not accrued and not been collected yet. In respect of the term which has already expired, the right of institutes shall be exercised only against the Government and not from any of the students.

7. The writ petitions are allowed on the above terms.

(K. KANNAN)
JUDGE

October 10, 2014
Pankaj*