

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

For Private Use

(EXAMINER)

Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.

21-2-2020

W. P. No. 21822 of 2010

Judicial Activism Panel & another

Versus

The Government of Pakistan through Secretary
Education, Islamabad & others

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
-----------------------------	---------------------------	--

11.02.2020. Muhammad Azhar Siddique, Mian Ali Asghar, Ch. Muhammad Naeem, Muhammad Javed Arshad, Mian Shabbir Ismail, Muhammad Irfan, Munir Ahmad, Ahmad Imran Ghazi, Arshad Ali Azhar, Ms. Salma Riaz, Naveed Shahryar Kasuri, Azha Siddique, Waqar Mushtaq Toor, Umair Ahmad, Asad ul Azeem, Sultan Ali Dogar, Rana Sher Afzal, Asif Imran Awan, Advocates for petitioner-students / parents.
Mr. Zahid Sikandar, Assistant Attorney General for Pakistan.
Mr. Ameer Abbas Ali Khan, Assistant Advocate General along with Muhammad Javed Chohan, Law Officer, office of CEO Education, Lahore.
Khawaja Ahmad Hosain and Zaheer Cheema, Advocates for LACAS (Private) Limited, Educational Services Private Limited and Lahore Grammar School, Lahore.
Barrister Momin Malik, Advocate for Bloomfield Hall (Pvt.) Limited.
Mr. Muhammad Siddique Awan, Advocate for Central Model School, Lahore.
Mian Muhammad Kashif, Advocate for SSS Educational Management Private Limited.
Mr. Sameer Khosa, Advocate for SCIL (Pvt.) Limited.
Mr. Ibrahim Haroon, Advocate for ALM (Pvt.) Limited.

This order shall dispose of instant as well as connected petitions i.e. W.P. Nos. 57838, 59442, 60192, 67580, 68919, 70529, 70599, 70762, 73785 & 76540 of 2019 and 1304 of 2020, as common questions of law and facts are involved in these cases.

2. Basically, the controversies in all these cases arise during practical implementation of the directions issued by Hon'ble Apex Court vide judgment dated 12.06.2019, passed in **Civil Appeals No.1095-1097 and 1021-1026 of 2018 & other cases** titled Mohammad Imran and others v. Province of Sindh through Chief Secretary and others.

3. During proceedings in these cases, this Court passed certain directions for implementation of decision of Hon'ble Apex Court, however, the parties were in disagreement on different points. Therefore, the complaints of parents / students as well as private schools were referred to District Registering Authority, Lahore ("DRA"), which after affording reasonable opportunities of hearing to all concerned passed orders dated 23.10.2019 and 13.01.2020 and furnished a report before this Court. The parties have raised certain objections on the said report, and some of the schools and parents have filed constitutional petitions as well.

~~ACCEPTED~~
 (EXAMINER)
 Copy Supply Section (Copy Branch)
 Lahore High Court, Lahore.
 n-v

4. Learned counsel for students / parents submit that private schools are violating the orders of Hon'ble Apex Court. They add that fees are being charged including the arrears along with 5% increment, in violation of decision of Hon'ble Apex Court. They further submit that parents / students are being exploited at the hands of private schools. They maintain that schools are putting students under mental torture on the pretext of non-payment of fee. They argue that increase in fee has been given by DRA in 2018 and not 2017 but schools are charging increases from 2017 against the determination of DRA. They contend that schools are not correctly applying the base fee, and fee calculations are not in accordance with the relevant law / rules.

5. Conversely, learned counsel appearing on behalf of private schools, submit that orders passed by DRA are not in compliance with the directions of this Court, especially order dated 20.11.2019. They add that the schools are entitled to increase their fees at the start of each academic year, which usually starts in July. They further submit that decision of DRA is not showing the quantum and rate of fee to be charged for academic year 2019-2020. They argue that it is also not clarified whether private schools are entitled to claim / receive arrears for the period w.e.f. 12.06.2019 till date. They maintain that schools are entitled to increase annual fees @ 5% without any approval and up to 8% with approval of DRA. They further argue that schools are entitled to three increases @ 8% i.e. for academic years 2017-18, 2018-19 & 2019-2020, in the month of July/August each year.

6. Arguments heard. Available record perused.

7. This Court has given anxious consideration to the submissions of the learned counsel for the parties as well as some individual aggrieved persons including representatives of students and private schools, and has gone through the available record, decisions of DRA and judgment of Hon'ble Apex Court with the able assistance of learned counsel for the parties. Regarding exorbitant increase in the fee by private schools in 2017, the Hon'ble Apex Court observed as under:-

"50. We have been informed that since the beginning of June, 2017 a number of private educational institutions have been increasing their fee exorbitantly in violation of the relevant laws/rules. The regulatory authorities have turned a blind eye to the plight of students and their parents who have been hard pressed to meet the ever increasing demands of private educational institutions being faced with the prospect of either paying the increased fee by hook or by crook or to look for other alternative options which in the field of education are extremely limited. It was in order to cater for this situation that we had, through an interim order dated 30.12.2018 directed all educational institutions receiving fee

~~ATTESTED~~
 (EXAMINER)
 Copy Supply Section (Copy Branch)
 Lahore High Court, Lahore.

2017

in excess of Rs.5,000/- per month to reduce their fee by 20%. We have reason to believe that the said order was duly complied with. In furtherance thereof we direct as follows:-

- (i) The said amounts equivalent to 20% of fee (reduced under our orders) or any other amount shall not be recovered as arrears for any reason or under any circumstances.
- (ii) In view of our finding that schools have excessively increased fee since 2017 in violation of the law, all such increases are struck down. It will be deemed that there was no increase in fee since 2017 and fee were frozen at the rates prevailing in January 2017.

With respect to re-calculation of fee in accordance with the law / rules / regulations, the Hon'ble Apex Court directed as under:-

"50....

- (i)
- (ii)
- (iii) Schools fee shall be recalculated using the fee prevailing in 2017 as base fee in accordance with the provisions of Laws of Punjab and Sindh, respectively (adding annual increases permitted by the law / rules / regulations) till-2019 and onwards. The process of recalculation shall be supervised by the regulators and only the fee approved by them shall be treated as the chargeable fee.

ATTESTED
(EXAMINER)
Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.
21/5/2

Regarding annual enhancement in the fee, the relevant provisions i.e. amended Section 7A of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 and Rule 7(3) of the Rules of 2005 were declared intra vires the Constitution. Relevant observations are reproduced hereunder:-

51. The foregoing are the detailed reasons for our short order of even date which reads as under:-

For the reasons to be recorded later, the instant matters are decided as follows:-

.....

2. It is unanimously held and declared that section 7-A of the Punjab Private Educational Institutions (Promotion and

Regulation) Ordinance, 1984, as amended by the Punjab Private Educational Institutions (Promotion and Regulation) (Amendment) Act, 2017 is intra vires the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution") and does not violate Articles 18, 23, 24 or 25-A thereof.

3.

4. With a majority of two against one, we are not persuaded to interfere with Rule 7(3) of the Rules of 2005, with Faisal Arab, J. Expressing the view that the restriction imposed by Rule 7(3) ibid is unreasonable and hence invalid."

8. The following clarifications in understanding the directions issued by Hon'ble Apex Court in judgment under implementation are made:-

- i) For the purposes of re-calculation of fee of private schools having monthly fee of Rs.4,000/- and above, base fee would be the fee existing in January, 2017.
- ii) Five percent increase in the base fee will be made from the beginning of the academic year i.e. firstly in July, 2017, secondly in July, 2018 and thirdly in July, 2019.
- iii) In the cases where DRA has allowed reasonable increase in the fee not exceeding 8% of the fee charged for the class during the previous academic year in accordance with the procedure provided in Section 7-A of the Ordinance, 1984, the same is not in violation of the judgment passed by the Hon'ble Apex Court. However, all increases in fee since January, 2017, beyond the above criteria and in violation of the provisions of law stood struck down in terms of the judgment of Hon'ble Apex Court.
- iv) The Hon'ble Apex Court ordered reduction of 20% in fee for schools charging monthly fee of Rs.5,000/- or above vide order 30.12.2018, thus, schools cannot claim any arrears in this respect for any reason or under any circumstances as held by the Hon'ble Apex Court.
- v) Any excess fee charged / received over and above the criteria shall be adjusted in future fee.

~~ALLEGED~~
(EXAMINER)
Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.
21-2

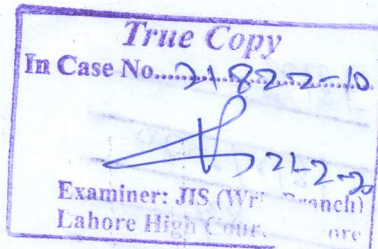
9. Resultantly, it is declared that the impugned orders passed by DRA, partly being not in conformity with judgment of the Hon'ble Apex Court, are declared to be illegal and without lawful authority, which are modified in terms of the above clarifications. The private schools as well as parents / students are obliged to abide by the directions of Hon'ble Apex Court and shall facilitate the process of implementation of the decision in its letter and spirit. DRA shall closely monitor the whole process in order to ensure strict compliance of decision of Hon'ble Apex Court and observance of applicable law, rules and regulations. DRA shall also set up complaints cells to deal with future grievances of the parties, if any.

10. With the above clarifications, observations and directions, instant as well as connected petitions coupled with miscellaneous applications / objection petitions, stand disposed of accordingly.

sdl

(Muhammad Sajid Mehmood Sethi)
Judge

Sultan



(EXAMINER)
Copy Supply Section (Copy Branch)
Authorized under Article 87 of
The Qanun-e-Shahadat Order, 1984.

21

Copy Petition No: 98776

Case No. _____

Submission Date: 18/1/2020

No of Pages: 83

Fee (Rs. 2/- per Page): _____

Urgent Fee (if any): 166

Total Fee (Rs.): 21-2-20

Date of Completion: _____

Date of Delivery: _____

21/1/20

22/02/2020