
(2010) 04 AHC CK 0040

In the Allahabad High Court

Case No : C.M.W.P. No. 38439 of 2000, C.M.W.P. No. 54157 of 2003 and
C.M.W.P. No. 14863 of 2004

Balihari Yadav and Others

APPELLANT

Vs

Basic Shiksha Adhikari, Kanpur Nagar and Others

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Citation : (2010) 126 FLR 254

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Ashok Khare, B.K. Singh Raghubanshi, Ajay Srivastava, S.D. Shukla, Vijay Cautam, Virendra Pratap, B.K. Singh, R.C Uttam and S.K. Srivastava, for the Appellant; Pramod Kumar Sharma, P.K. Sinha, J.N. Maurya and P.K. Sharma, S.C., for the Respondent

Judgement

A.P. Sahi, J.—These three writ petitions narrate, and rather repeat, the on going scams that continue to engulf our educational infrastructure involving State funds. The exposure is of illegal appointments far beyond the sanctioned strength in Mahatma Gandhi Junior High School, which has changed three addresses and premises within Kanpur Nagar, of which one Rajendra Kumar Verma claims himself to be the Manager.

2. The Junior High School imparts education between Classes 6 to 8 and is recognized under the provisions of U.P. Basic Education Act, 1972 whereas the employment of teachers in the institution is governed by the provisions of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. The terms and conditions of the ministerial staffs and Group-D is regulated by the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group "D" Employees) Rules, 1984. The payment of salary in such institutions is regulated by the U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978.

3. All three writ petitions have been heard together and the learned Counsel have advanced their submissions. Shri P.N. Saxena, Senior Advocate assisted by Shri Ram Chandra Uttam has appeared for Raman Pratap Singh, who is petitioner No. 23 in Writ Petition No. 38439 of 2000 and petitioner No. 1 in Writ Petition No. 54157 of 2003. He has been arrayed as respondent No. 6 in Writ Petition No. 14863 of 2004. There are other Counsel shown for the petitioners in the leading Writ Petition No. 38439 of 2000.

4. For the respondents-Basic Education Department submissions have been advanced by Shri K. Shahi and Shri J.N. Maurya.

5. The Committee of Management through its alleged Manager-Shri Rajendra Kumar Verma, who is the key player in this litigation, was issued notices and it is evident from the order-sheet of Writ Petition No. 14863 of 2004 that the learned Counsel for the petitioner had not supplied the notices to be served on the said respondents, which was reported by the office on 15.5.2004. On this report being submitted steps were taken and the office note dated 18th May, 2004 indicates that notices were issued to the opposite party No. 5 namely the Committee of Management by registered post fixing 25.5.2004. It is, therefore, evident that notices were dispatched, yet the Committee of Management through Shri Rajendra Kumar Verma has not chosen to file any effective response.

6. Apart from this, it is noteworthy to mention that there were several inquiries that were conducted during the pendency of these writ petitions and during the said inquiries, which were under the directions of this Court in Writ Petition No. 14863 of 2004, the alleged Manager Shri Rajendra Kumar Verma was associated and was given a hearing. A perusal of the report dated 5.7.2004 of the Additional Director of Education (Basic) to the Special Secretary, Government of Uttar Pradesh also demonstrates the same. Not only this, the report has also been filed on record but unfortunately, Shri Rajendra Kumar Verma in spite of having knowledge of the pendency of these proceedings through the said inquiry as well has not chosen to file any response.

7. The institution is stated to have been established in the year 1950 when a temporary recognition was granted under the then Education Code. A permanent recognition was granted to the institution on 2nd March, 1962 and was also included in the grant-in-aid list. The institution changed the location of the premises thrice and when the dispute presently in question began, the institution is stated to be housed at Mohalla-Juhi Barra, District Kanpur Nagar.

8. The genesis of the dispute began with certain alleged appointments made in the institution between the year 1997 and 1999. According to the reports, which have been brought on record, the status of the institution was such that it consisted of a sanction strength of 01 Head Master, 04 Assistant Teachers, 01 Clerk and 04 Peons. Prior to 1997, the post of Head Master was lying vacant and there were 05 Assistant Teachers, 01 Clerk and 02 Peons working in the institution. One Shri Balihari Yadav, who is the petitioner No. 1 in Writ Petition

No. 38439 of 2000 was officiating as the Head of the institution and late Shri Badan Singh Sachan, Shri Ram Prakash Shakya, Shri Ram Prasad Kushwaha and Smt. Mithilesh Kumari were the Assistant Teachers, Shri Ram Ratan Kashyap was an Assistant Clerk and Shri Vinod Kumar Sharma and Shri Ram Pal were the peons in the institution.

9. This is reflected in the information given by the District Inspector of Schools, Kanpur to the officiating Principal that after the institution has been brought under the purview of the Payment of Salary Act, the employees referred to therein are the permanent employees and there is no occasion for any regularization of such employees. This document has been filed as Annexure-3 at page 49 of the paper book of Writ Petition No. 38439 of 2000.

10. Thereafter, it appears that the Management was disputed and the institution was brought under the purview of the authority for payment of salary through single upeiarion. Mr. Rajendra Kumar Verma some how the other managed himself to be reflected as a Manager and manipulated appointments. 13 teachers were allegedly appointed as Assistant Teachers for which approval is alleged to have been granted by the Basic Education Officer on 27.2.1997 and 22.11.1997 respectively. Similarly in the year 1998 five other teachers are alleged to have been appointed and approved by the District Basic Education Officer on 16.3.1998. This was followed by another approval in respect of Smt. Gayatri Devi, who was allegedly appointed against the vacancy caused by the death of Shri Badan Singh Sachan, through approval order dated 31st July, 1999. Another appointment of Shri Raman Pratap Singh as an Assistant Teacher was also approved in the year 1999 alleging that he has been appointed against the vacancy caused by Shri Krishna Bahadur Singh, who was an appointee in the year 1997 and had resigned Shri Ajay Kumar is alleged to have been appointed and approved by the Basic Education Officer as a Class-IV employee on 16.3.1998. Thus, a total number of 21 appointments were made and approved by the Basic Education Officer between 1997 and 1999, which is evident from the approval orders appended as Annexure-3 to Writ Petition No. 38439 of 2000. It is this sudden swelling and over flowing number of appointments against the sanctioned strength of the institution that has given rise to this trouble. These appointments and approval orders, which were obviously murky in nature, led the authorities to stop payment of salary in February, 2000. The salary of existing staff of seven employees as well as the 20 others, who have been inducted (leaving aside Krishna Bahadur Singh, who had been approved vide order date 22.11.1997 and had subsequently resigned) i.e., 27 employees filed Writ Petition No. 38439 of 2000 praying for payment of salary on the strength of the approval orders referred to herein above.

11. At this juncture, it would be relevant to point out that Balihari Yadav had retired on 30th June, 2002 and on account of the vacancy of the head of the institution as well as the post of assistant teacher held by Shri Balihari Yadav, two fresh appointments were made namely that of Raman Pratap Singh as Head

Master of the institution through a fresh selection on 22.12.2002 and Devendra Kumar as an Assistant Teacher both of whom have filed Writ Petition No. 54157 of 2003. This fact is to be stated to clarify that Shri Raman Pratap Singh is the same person, who is the petitioner No. 23 in Writ Petition No. 38439 of 2000 claiming his continuance on the strength of the approval order of November, 1999. This duality of claim of Shri Raman Pratap Singh is worth noting. The candidature of Shri Raman Pratap Singh has a third dimension as well as he is stated to be also a petitioner No. 16 in Writ Petition No. 30112 of 2001, which was also filed by 19 persons claiming payment of salary after the Deputy Director of Education (Basic) had passed orders on 25.11.2000 stopping payment of salary.

12. Upon the filing of Writ Petition No. 38439 of 2000, the following interim order was passed on 30.8.2000:

Hon"ble P.C. Verma, J.

Notices on behalf of opposite parties 1 and 2 have been accepted by Shri P.K. Sharma.

Issue notice to respondent No. 3 returnable within three weeks. They may file counter-affidavit within three weeks. List thereafter.

In the meantime the opposite parties are directed to pay salary to the petitioners.

Dated: 30.8.2000

Sd/- Illegible

13. It appears that the Director of Education (Basic) passed an order on 25.11.2000 stopping payment of salary through the Director of Education (Science). This document is Annexure-1 to Writ Petition No. 14863 of 2004.

14. This led to the filing of Writ Petition No. 30112 of 2001 by Shri Ruddra Pal and 18 others, in which Shri Raman Pratap Singh was also a petitioner as indicated above. In the said writ petition, orders were passed on 13.8.2001 as an interim measure that the petitioners therein shall be reinstated and paid salary within six weeks or cause be shown by filing a counter-affidavit. The said writ petition had been filed alleging that the petitioners therein had been removed from services. The order dated 13.8.2001 passed in the aforesaid writ petition is quoted below:

The petitioners allege that their services have been terminated by oral order.

It is directed as an interim mandamus that the petitioners will be reinstated and paid salary by respondent Nos. 3 and 4 within a period of six weeks from the date on which a certified copy of this order is produced before each of the said respondents or will show cause by filing a counter-affidavit to justify the alleged termination.

15. The matter was brought to the notice of the Director of Education (Basic)

again and the Basic Education Officer in compliance of the directions of the superior authorities passed an order on 8.12.2000 refusing to make payment of salary to these 20 persons, who were the petitioners in Writ Petition No. 38439 of 2000. It as found by the Basic Education Officer that all these appointments were illegal and the 07 employees, who had been earlier working, would be entitled to obtain payment of salary subject to any orders being passed in Writ Petition No. 38439 of 2000.

16. During the pendency of the aforesaid writ petitions, Shri Balihari Yadav retired and as such Shri Rajendra Kumar Verma again entered into a conspiracy and sought permission from the Basic Education Officer to make appointments on the post of Head Master and an Assistant Teacher. These vacancies were on account of the non-availability of the Headmaster and an Assistant Teacher. The Basic Education Officer appears to have granted permission on 23rd November 2002 and it is alleged that selections were held on 22.12.2002 after the retirement of Shri Balihari Yadav. Shri R.P. Shaky a one of the Assistant Teachers, who was functioning prior to 1997, is alleged to have taken officiating charge as the Head of the institution. Shri R.P. Shakya filed Writ Petition No. 18679 of 2003 challenging the action of the Committee of Management and the Basic Education Officer to process the aforesaid two appointments on the post of the Head of the Institution and the post of Assistant Teacher. However, no interim orders were passed therein and during the pendency of the said writ petition, the Joint Director of Education on 2nd September, 2003 passed an order for maintaining status quo. The Additional Director of Education (Basic) however proceeded to permit the approval of two appointments of Shri Raman Pratap Singh as Headmaster and Shri Devendra Kumar as an Assistant Teacher vide order dated 18.9.2003. As a consequence of the said permission, the Basic Education Officer granted approval on 22.9.2003 specifying some conditions therein.

17. It appears that on some representation, the Basic Education Officer stayed the operation of his approval on 6.10.2003 and the Joint Director of Education on 8.10.2003 passed an order staying the payment of salary. This was followed by another order of the Director of Education on 31st October, 2003. The Additional Director of Education (Basic) following the same, also issued instructions for staying the payment of salary of Shri Devendra Kumar and Shri Raman Pratap Singh vide order dated 4.11.2003.

18. A second writ petition was filed by Shri R.P. Shakya being Writ Petition No. 49478 of 2003 challenging the approval order of the Basic Education Officer dated 22.9.2003. This Court on 17th December, 2003 passed an interim order that the said two appointees shall get payment of salary if they had been paid earlier.

19. Shri R.P. Shakya died in February, 2004, as a result whereof the two writ petitions filed by him being Writ Petition Nos. 18079 of 2003 and 49478 of 2003 automatically stood abated.

20. Shri Ram Prasad Kushwaha, who is the petitioner in Writ Petition No. 14863 of 2004, filed this writ petition challenging the same approval order dated 22.9.2003 that had been questioned by late Shri R.P. Shakya. Shri Ram Prasad Kushwaha contended that he took over charge as an officiating head and therefore, he had a right to question the validity of the approval order dated 22.9.2003 in favour of Raman Pratap Singh on the post of Head of the Institution. It is in these writ petitions that this Court traced out the entire history of these illegal appointments and delivered the order dated 15.4.2004 directing the Secretary, Education Basic, Government of Uttar Pradesh to get an inquiry conducted through a responsible officer. A mandate was issued not to make payment of salary to all the teachers forthwith. Accordingly, the salary was stopped.

21. Shri Raman Pratap Singh filed a special appeal being Special Appeal No. 577 of 2004 against the said order of the learned Single Judge but the Division Bench refused to interfere with the same and dismissed the said special appeal. Thereafter, an inquiry was conducted and through the letter dated 5th July, 2004, the officer appointed by the Secretary, Education Basic submitted report. A copy of the same has been filed along with an affidavit before this Court as well.

22. This is the background of the entire litigation. It is stated that the Writ petition No. 30112 of 2001, which was also filed for payment of salary by the said new appointees has been dismissed in default on 3.9.2008. Nonetheless, in view of the entire facts having been brought on record and all the parties duly represented, the matter is being disposed of final at this stage itself with the consent of the parties.

23. Instead of multiplying the facts giving rise to this litigation a brief reference to the report submitted through the letter dated 5th July, 2004 would solve a major problem.

24. The report, which has been given by the Additional Director of Education Basic-Smt. Achala Khanna, indicates that Shri Rajendra Kumar Verma manipulated these appointments between 1997 and 1999 without there being any sanctioned post. Shri Raman Pratap Singh, who subsequently claims himself to be appointed through a regular selection in the year 2002, was also a beneficiary of this illegal transaction. It is thus clear that the institution was being run in connivance with the educational authority as a house hold affair in which Mr. Rajendra Kumar Verma played the key role claiming himself to be the Manager.

25. There is nothing on record to indicate any sanction of posts against which 20 petitioners referred to herein above have claimed their continuance. The payment of salary under alleged orders of approval are therefore either fake or totally unauthorized. In this view of the matter, the claim of those 20 persons has to be rejected outright and the writ petition in respect of these petitioners, who are arrayed in Writ Petition No. 38439 of 2000 as petitioner Nos. 5 to 23 and

27 stands dismissed.

26. Needless to repeat that the claim of Shri Raman Pratap Singh in respect of his alleged approval of year 1999 is also founded on the same fake approval orders. Even otherwise, there is no other document to the contrary or any challenge to the aforesaid report before this Court so as to gather a different impression. The said petitioners have not able to successfully challenge the said report nor they have also able to bring any material on record that may improve their case. So far as, the other employees, who were already appointed prior to 1997 and have also been arrayed as petitioners in Writ Petition No. 38439 of 2000 as petitioner Nos. 1 to 4 and 24 to 26, their cases have to be dealt with separately. The Court however deprecates their conduct in joining with the other writ petitioners praying for a mandamus of the nature as claimed in the writ petition. However, since the report submitted by the Additional Director of Education (Basic) indicates a semblance of claim in their favour, a direction is hereby issued to the Director of Education (Basic) presently in-charge to examine their claims and pass a fresh order in respect of their continuance and payment of salary. It is to be noted that the educational authorities may take steps to eliminate this malady by taking recourse to supercession of the Committee of Management under the 1978 Payment of Salary Act, in case the same is required to be done in view of the aforesaid serious irregularities committed by the alleged Manager.

27. This leads to the consideration of the second writ petition filed by Shri Raman Pratap Singh and Shri Devendra Kumar being Writ Petition No. 54157 of 2003. Here the contention raised is that the Assistant Director of Education (Basic) through the impugned order dated 4.11.2003, the payment of salary has been incorrectly withheld.

28. In my opinion, the impugned order was rightly passed keeping in view the entire confusion that was created as pointed out herein above. In the instant case, there are allegations in the affidavit of Shri Ram Prasad Kushwaha, who has filed an impleadment application and stay vacation application along with a counter-affidavit. The said impleadment application has been entertained and I have heard Shri K.K. Tripathi, Advocate in support of the said impleadment application under Chapter XXII, Rule 5-A of the High Court Rules. It has been categorically stated by Shri Ram Prasad Kushwaha that the petitioner-Raman Pratap Singh has a B.Ed, degree and, therefore, he was not qualified according to the 1978 Rules for being appointed as Head of the institution. It has also been stated that he does not possess the experience of three years as claimed by him. In such a situation, the claim of Mr. Raman Pratap Singh has also to be examined in view of the background that Shri Raman Pratap Singh himself was a beneficiary of the earlier illegal transactions.

29. So far as, the second petitioner-Shri Devendra Kumar is concerned, it is alleged that his appointment is also illegal and it has been carried out by Shri Rajendra Kumar Verma who is not the validly elected Manager and secondly, the

advertisement is defective and illegal. This issue has also to be examined before the claim of Shri Raman Pratap Singh and Shri Devendra Kumar can attain finality.

30. Accordingly, Writ Petition No. 54157 of 2003 is disposed of with a direction to the Director of Education (Basic) to re-examine the claim of Shri Raman Pratap Singh and Shri Devendra Kumar on the strength of their fresh selections in the year 2002 particularly with regard to the authority of Shri Rajendra Kumar Verma to hold selections and the question of eligibility conditions of the said two petitioners.

31. The said exercise shall be carried out and till then no payment of salary shall be made to the said two petitioners. The order shall be passed keeping in view the report which has been submitted by the Additional Director of Education (Basic) on 5.7.2004 and other documents in relation thereto.

32. Coming to the third writ petition being Writ Petition No. 14863 of 2004 filed by Shri Ram Prasad Kushwaha, the same raises a challenge to the order dated 22.9.2003.

33. Having considered the submissions advanced and keeping in view the conclusions drawn herein above, there was no occasion either for the Additional Director of Education (Basic) or for the Basic Education Officer to have proceed to grant approval in the manner in which, it has been done. The infirmities regarding the constitution of the Managing Committee authorised to hold selections, the conditions and eligibility and qualifications of the candidates has been completely overlooked. In my considered opinion, the order dated 22.9.2003 therefore deserves, to be quashed. The Write Petition No. 14863 of 2004 is accordingly allowed and the order dated 22.9.2003 is set aside.

34. In view of the directions given herein above, the Basic Education Officer shall comply with the directions of the Director of Education (Basic), who shall proceed to decide the claim of the respondent-Raman Pratap Singh and the others Assistant Teacher-Devendra Kumar in accordance with law.

35. With the directions aforesaid, all three writ petitions stands disposed of. The Director of Education (Basic) shall proceed to pass orders in the light of the observations made herein above within three months from today.