

(2008) 11 AHC CK 0134

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38988 of 1999

Chandra Bhana Awasthi and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Citation : (2008) 11 AHC CK 0134

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned counsel for the parties.

2. Petitioners, who are 15 in number, claim to be Assistant Teachers in Primary School Kishan Uchchar Madhyamik Vidyalaya Dhangarhi, Munderi, District Maharajganj. They have described themselves as such in the array of the parties. Petitioners also claim that the Primary Section/School in which they are teaching is attached with the Higher Secondary School. It has further been asserted by the petitioners that the primary school is being run since 1971 and it was recognised as such by District Basic Education Officer, Gorakhpur (BSA in short) through order dated 10.01.1973 through which temporary recognition from 01.07.1972 to 30.06.1973 was granted.

3. This writ petition was allowed on 30.08.2000, however the said order was set aside in Special Appeal No.(d)185 of 2001, State of U.P. and others Vs. Chandra Bhan Awasthi and others, through order dated 06.08.2008 and matter was remanded. Earlier writ petition was allowed following the judgment dated 07.01.1993 given in Civil Misc. Writ Petition No.6241 of 1994.

4. Through Government Order dated 06.09.1989 (Annexure1 to this writ petition) with regard to the teachers of 393 Basic Schools, which were continuing to function from prior to 1973, the Government took decision to pay salary to them under U.P. Payment of Salaries Act, 1971. Before the Supreme Court in the judgment reported in State of U.P. Vs. Pawan Kumar Divedi, JT 2006 (8) SC 579,

(Paragraph23), Government gave an undertaking in respect of teachers of those 393 schools to continue to pay salary. According to the aforesaid G.O. of 1989, Government decided to pay salary to the teachers of those 393 Primary Sections, which were attached with some High School or Intermediate College before 1973. Some petitions were filed and allowed on the ground that even though a particular school was not included in the list of 393 schools given in the G.O. dated 06.09.1989, however it was attached with some High School or Intermediate College before 1973, hence teachers of the said school must also be paid salary. Petitioners of the instant writ petition also claim that the school, in which they were teaching, was also attached with the Higher Secondary School prior to 1973.

5. Earlier also petitioners filed Writ Petition No.33256 of 1996, which was disposed of on 06.01.1999 with liberty to the petitioners to make representation before respondent No.1, i.e. State of U.P. through Secretary, Education Department. Thereafter, the Secretary through order dated 28.07.1999 negated the claim of the petitioners, hence this writ petition.

6. The Secretary before deciding the representation of the petitioners called for report from Director of Education, Secondary and District Inspector of Schools, Maharajganj. In the impugned order, it is mentioned that the recognition as attached primary school was extended after 1975 also while by a G.O. of 1973, such recognitions or extensions had been prohibited. Secretary therefore concluded that recognition order of 1975 as well as of 1973 were forged.

7. In Para4 of the writ petition, it has been stated that petitioners are working as teachers in primary section since 1983, 1984, 1987, 1988 & 1989.

8. Petitioners for the first time raised the dispute in 1996 by filing the first writ petition (supra). In case petitioners had been entitled to payment of salary under U.P. Payment of Salary Act, 1971, they would have raised the dispute immediately after G.O. dated 06.09.1989 when their school was not included therein. The mere fact that they waited 7 years clearly shows that the school did not fulfil the necessary qualifications and it was rightly not included in the list of 393 schools in the G.O. dated 06.09.1989. Annexure3 to the writ petition is copy of letter written by Manager of Purva Madhyamik Vidyalaya requesting for grant of attachment of the primary section. The said application is dated 12.02.1973. At the end of the said letter, just one line is mentioned that permission for attachment granted and it contains the seal and purported signature of the then Basic Shiksha Adhikari, Gorakhpur of the same date, i.e. 12.02.1973.

9. Annexure3 to the writ petition has been found to be forged by the Secretary in the impugned order. In any case G.O. dated 06.09.1989 states that salary to the teachers of primary section of those 393 specified schools would be paid under U.P. Payment of Salary Act, 1971, which were attached with Higher Secondary Schools prior to 1973. The alleged attachment order is of 12.02.1973, hence it cannot be said to be of before 1973. Moreover, the attachment is with

Presecondary School (Purva Madhaymik, i.e. Junior High School) and not with Secondary School.

10. In the counter affidavit, it has been stated that through Government Order dated 21.06.1973, it was intimated that after establishment of Basic Shiksha Parishad, no permission could be given for attaching primary sections with Higher Secondary Schools. It has further been stated that the Junior High School was granted recognition for High School Class through order dated 10.03.1980. It is also stated that no record of alleged attachment order is available in the office of D.I.O.S. In 1973, the institution with which attachment was alleged to have been granted to the primary section was only Junior High School, hence there was absolutely no question of passing attachment order by B.S.A. on 12.02.1973. Moreover, the order of attachment on the face of it appears to be manipulated as on the same date on which application was given, one line order passed by B.S.A. was wholly unwarranted. Attachment order could be passed only on fulfilment of certain conditions. There is absolutely no mention regarding fulfilment of any condition or any reason for granting attachment. Moreover grant of attachment recognition etc. has got farreaching consequences, hence such types of orders are necessarily required to be maintained in the files of D.I.O.S. or BSA. On the application for attachment itself, such an order could never be passed. There is no corresponding record, regarding attachment is available in the office of B.S.A. concerned. The nature of order contained on the application, copy of which is Annexure3 is such that it could not be available in the office of B.S.A. It is unbelievable that on the application given by the Manager, one line order was passed by the B.S.A. and application was allowed to be kept by Manager. This is absolutely no way of passing such type of important orders. I fully agree with the view of Secretary that it was fully forged order.

11. Apart from it, the order of attachment states that primary section is permitted to be attached with the Junior High School. Even if such an order was passed, the primary school did not satisfy the conditions laid down in the G.O. dated 06.09.1989 as according to the said G.O. attachment was required to be with Secondary School and not Junior High School. G.O. dated 06.09.1989 directs payment of salary under U.P. Payment of Salary Act, 1971, which relates to High School and Intermediate Colleges. The said Act has got no concern with payment of salary to Junior High Schools. If primary section was attached to Junior High School, there was no question of bringing the teachers either of the primary sections or of Junior High Schools under Payment of Salary Act, 1971 (Act for payment of salary to teachers of Junior High Schools was passed in the year 1978).

12. Even the recognition order dated 10.01.1973 contained in Annexure2 to the writ petition has been found to be forged.

13. Accordingly, I do not find least error in the impugned order. It is amply proved on record that petitioners forged the documents in order to claim benefits. However, even if it is held that documents are genuine, petitioners are

not entitled to any relief.

14. Accordingly, there is absolutely no merit in the writ petition, hence it is dismissed with cost of Rs.1, 50, 000/. Each petitioner shall pay cost of Rs.10, 000/.