
(1995) 03 AHC CK 0090

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No, 6154 of 1982, Connected with
C.M.W.P. Nos. 5347, 5349, 9396 of 1983

Chandra Shekhar and Others

APPELLANT

Vs

D.I.O.S.Basti and Another

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 5

Citation : (1995) 03 AHC CK 0090

Hon'ble Judges : S.R.Singh, J

Final Decision : Allowed

Judgement

S. R. Singh, J.—The above noted writ petition being passed on a common cause of action, the counsel for the parties agreed to these petitions being disposed of by a common order. In fact disposal of these writ petitions by a common order would lead to an effective and binding adjudication of the controversy involved in between the parties. The controversy is whether is S/Sri Chandra Shekhar Rajendra Singh, Baij Nath Yadav, Nagina Singh and Sri Ram Pandey, the petitioners in writ petition Nos. 16639 of 1994 and 377 of 1995 (hereinafter called as first party) or S/Sri Daya Ram Singh, Ram Briksha Singh, Ram Karan Singh, Bhagwat Singh and Raj Dso Chaudhary (petitioners 2 to 6 of the Writ Petition No. 18656 of 1994) in short the second party were validly appointed and approved Assistant Teachers in the primary section attached to the College namely, Adarsh Krishak Inter College, Sihtikar, Basti or as held by the District Inspector of Schools vide impugned order dated 12/13th April, 1994 none of them was validly appointed and approved ?

2. The facts giving rise to these petitions may be briefly set out as thus : Adarsh Krishak Inter College, Sihtikar Basti is a recognised Intermediate College and an "Institution" within the meaning of the U. P. Secondary Education Services Commission Act 5 of 1982. Each set of the parties aforesaid is claiming itself to have been validly appointed in the primary section of the college in abnegation of

the claim of the other. The college was brought on the grants in aid list of the State Government i.e. within the purview of the U. P. High Schools and intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act 24 of 1971 in the year 1989. The case of the first party is that Chandra Shekhar, Rajendra Singh Baij Nath Yadav and Nagina Singh were appointed Assistant Teachers on 981992 while Sri Ram Pandey on 2271985 and the District Inspector of Schools, Basti confirmed and regularised their appointment vide order dated 20121988 with effect from the dates indicated therein. The case of the second party, on the other hand, is that S/Sri Ram Briksha Singh, and Ram Karan Singh were appointed on 97J. 988 and S/Sri Daya Ram Singh, Bhagwat Singh and Raj Deo Chaudhary on 971989 (vide para 4 of the Writ Petition No. 18656 of 1994).

3. It transpires from the record that initially when the institution was brought within the purview of the Payment of Salary Act 24 of 1971, the Manager Sri Ram Dularey Singh wrote to the District Inspector of Schools on 11121989 for payment of salary to S/Sri Chandra Shekhar, Rajendra Singh, Baij Nath Yadav, Nagina Singh and Raj Deo Chaudhary but later on he represented to the District Inspector of Schools that the second party namely, S/Sri Daya Ram Singh, Ram Briksha Singh, Ram Karan Singh, Bhagwat Singh and Raj Deo Chaudhary were entitled to get salary and not the first party and since the District Inspector of Schools, as stated hereinabove, had already approved the appointments of the first party for the purposes of payment of salary vide order dated 20121988, the second party filed a writ petition being writ petition No. 2704 of 1990 : Sri Daya Ram Singh v. State of U. P. and others. The said writ petition was contested by state authorities and it was dismissed on 3041992 on the ground of alternative remedy, available to the petitioners therein by way. of suit. The first party, namely Chandra Shekhar and others represented their case to the District Inspector of Schools for payment of salary. The District Inspector of Schools accepted and upheld their claim vide order dated 2361992. The Committee of Management of the College filed a writ petition against the order of the District Inspector of Schools dated 2361992. The said writ petition was disposed of by order dated 2071992 with a direction to the District inspector of Schools to dispose of representations. Thereafter the District Inspector of Schools passed a detailed order on 1781992 affirming the earlier decision taken on 2361992, and held that Daya Ram Singh and others, second party were neither appointed nor approved teachers in the institution. The claim of first party namely, Chandra Shekhar and others as recognised by the District Inspector of Schools vide order dated 2361992 was reaffirmed and on the Management committing default in payment of salary to them the District Inspector of Schools passed an order for single handed operation of the salary account under Section 5 of the U. P. Act 24 of 1971 with a view to making payment of salary to the first party but the management filed a petition, being writ petition No. 24924 of 1992 wherein the following order was passed on 2071992:

"List this petition for admission in the month of September, 1992.

Meanwhile D.I.O.S. is directed to decide the petitioner's representation (Annexure "S" to the writ petition) by a reasoned and speaking order within a month from the date of receipt of the certified copy of this order and the decision to be taken shall be communicated to the petitioner soon thereafter. It goes without saying that in case the decision goes in favour of the petitioner, the D.I.O.S. shall pass appropriate order for payment of salary."

In pursuance of the aforesaid order dated 20/7/1992 the matter was taken up by the District Inspector of Schools who passed a detailed order upholding the claim of Chandra Shekhar and others and abnegating the claim of second party vide order dated 17/8/1992. The order dated 17/8/1992 seems to have attained finality in as much as it was not challenged either by the Committee of Management or by second party. The writ petition No. 24924 of 1992, 28575 of 1992 and 5522 of 1990 were consolidated and decided by a common order dated 14/12/1993, which read as below :

"The dispute in all the three writ petitions pertain to the payment of salary to certain teachers who claim to have been working in the institution. The Committee of Management has challenged the claims of 5 teachers who are respondents in writ petition No. 28575 of 1992. It is not possible for this court to go into the disputed questions, of fact with regard to the validity of the appointments of teachers in the institutions. However, in the interest of justice and equity the concerned District Inspector of Schools is directed to go into this question and after providing an opportunity of hearing to the Committee of Management and the affected parties decide the controversy afresh by a speaking order within a period of 4 months from the date of certified copy of this order is served upon him. The District Inspector of Schools shall ensure that the teachers who are held to have been duly appointed in accordance with Rules are paid salary for the post period. The District Inspector of Schools shall not be influenced by the earlier orders passed by him in this regard.

With the aforesaid directions these petitions are disposed of finally. There shall be no orders as to costs in any of the writ petition."

3. The matter was thereafter taken up again by the District Inspector of Schools who, by his order dated 13/4/1994, held that none of the teachers in the primary section attached to the college was validly appointed. The order dated 13/4/1994 is the subjectmatter of impugment in the first two writ petitions.

4. In Writ Petition No. 18656 of 1994 : Committee of Management and others v. State of U. P. and others, the following interim order was passed by the Court, on 9/6/1994 :

Learned standing counsel is granted six weeks time to file counter affidavit. List for order in August, 1994.

Until further order the operation of the order dated 13/4/1994 passed by respondent No. 3 shall remain stayed, so far as it relates to the petitioners Nos.

2 to 6. The petitioners 2 to 6 shall be paid their entire salaries within a month from the date of filing of certified copy of this order and shall get the salary of future months as and when it falls due."

On 1061994 the order dated 961994 was clarified as below :

Heard learned counsel to the petitioners. Since the management has denied the appointment of rival group who are petitioners in writ petition No. 16639 of 1994 as such it is being made clear that the respondent No. 3 shall not be influenced by order dated 1651994 passed in Writ Petition No. 16639 of 1994 while making payment to the petitioners Nos. 2 to 6 in this petition."

5. It appears that on the basis of the aforesaid interim orders the second party i.e. S/Sri Day a Ram Singh and others, pressed their claim before the District Inspector of Schools for salary and having failed to get any relief they filed a contempt petition in this Court. The District Inspector of Schools thereupon by his order dated 30121994 directed the principal of the college allowed the second party to join their duties in the institution. The principal of the College allowed the second party to join their duties and informed the District Inspector of Schools accordingly vide letter dated 31121994. The orders contained in letter dated 30121994 and 31121994 are the subjectmatter of impugnement in .Writ Petition No. 377 of 1995.

6. Having hoard Sri D. K. Singh for the petitioners in Writ Petition No. 16639 of 1994 and Sri K. N. Rai for the petitioners in the remaining two writ petitions and standing counsel for the State Authorities, I am of the view that the orders impugned herein cannot be sustained.

7. A perusal of the order dated 30121994 impugned in Writ Petition No. 377 of 1995 would indicate that it was passed by the District Inspector of Schools with a view to implementing she interim order dated 961994 as clarified by order dated 1061994 passed in Writ Petition No. 18656 of 1994. The facts of this writ petition would depend upon the fate of the two writ petitions. As stated hereinabove District Inspector of Schools by his orders dated 20121988, 2361992 and 1781992 confirmed, upheld and affirmed the claim of first party Chandra Sehkhari and others by subsequent order dated 1341994 the District Inspector of Schools held that none of the teachers of either party was duly appointed Assistant Teacher in primary section of the institution. Both the parties are aggrieved by the order dated 1341994. In my opinion, the District Inspector of Schools has passed the impugned order dated 1341994 without addressing himself to all the relevant questions and factors germane to the controversy between the parties and the matter needs to be decided afresh but by an authority other than the District Inspector of Schools at whose level the matter was decided thrice in the past in favour of the first party as would be evident from the orders dated 20121988, 2361992 and 1781992. That apart, the stand taken in the counteraffidavit filed on behalf of the District Inspector of Schools in the earlier petitions was in favour of the first party and it is for these reasons

that I consider it to be appropriate and proper to get the matter decided by the Regional Deputy Director of Education who, in the context of the powers vested in him under the provisions of U. P. High School and Intermediate Education (Payment of Salaries to Teachers and other Employees) Act, 1971 cannot be regarded as an strangle visavis the nature of controversy involved in the instant case. It may also be pertinent to observe that the decision taken by the District Inspector of Schools earlier vide orders dated 20121988, 2361992 and 1781992 cannot just be ignored for nothing. It is true that this Court in its order dated 14121993 did observe that "the District Inspector of Schools shall not be influenced by the earlier orders passed by him in this regard" but the said observation,, in my opinion, does not obliterate the necessity of going through the grounds on which the earlier orders of the District Inspector of Schools were based. The orders dated 20121988, 2361992 and 1781992 having not been specifically quashed, the order dated 14121993 passed by this court could, at the best, enable the District Inspector of Schools to recall or modify the earlier orders passed in favour of the first party only on a finding that such orders were the result of fraud, misrepresentation and/or misconception of fact or law. No such ground is discernible on the findings recorded by the District Inspector of Schools in the order dated 12/1341994 which has been assailed by both the rival groups of parties. This order has, therefore, to be quashed and the matter for the reasons set out hereinabove, needs to be decided afresh by the Regional Deputy Director of Education. Consequently, the Writ Petition No. 16639 of 1994 filed by the first party and the writ petition No. 18656 of

J 994 filed by the second party impugning the same vary order have to be allowed and since the orders impugned in the third writ petition namely, writ petition No. 377 of 1995 are the consequential orders, this petition too has to be allowed as of logical consequence.

9. In the result, all the three petitions succeed and are allowed in part. The order dated 13121994 impugned in Writ Petition No. 16639 of 1994 and 18656 of 1994 and the orders contained in letter dated 30121994 and 31121994 impugned in the Writ Petition No. 377 of 1995 are quashed. The matter is remitted back to the Deputy Director of Education, Gorakhpur Region, Gorakhpur with a direction to decide the controversy in the case afresh after affording opportunity of hearing to the parties. The payment of salary would depend upon the decision to be taken by the Regional Deputy Director of Education hereafter in pursuance of this order and till then the Committee of Management and the District Inspector of Schools restrained from making payment of salary to any of the rival sets of teachers. The interim orders dated 961994 and 1061994 passed in writ petition No. 18656 of 1994 and the order dated 551994 passed in writ petition No. 377 of 1995 stand discharged.