
(1999) 10 AHC CK 0130
In the Allahabad High Court
Case No : C.M.W.P. No. 32180 of 1995

Chandrika Prasad Gupta and others

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Companies Act, 1956 — Section 16H
Constitution of India, 1950 — Article 12, 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 13
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16B, 16C, 16D(10), 16D(11)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 46

Citation : (2000) 2 AWC 960

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Ashok Khare and K.M. Asthana, for the Appellant; Dilip Gupta and S.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

A. K. Yog, J.—Chandrika Prasad Gupta and ten others have filed this writ petition under Article 226, Constitution of India. Being aggrieved against Circular Letter dated October 19, 1989 (Annexure-10 to the writ petition) whereby Director of Education, U. P. (Secondary) vide Paragraph 3 of the said letter informed educational authorities that earlier Government Order dated October 4, 1989 granting revised pay scale to the teachers and other employees of recognised institution under the U. P. Intermediate Education Act, 1921 (as amended up-to-date) shall not be applicable in the case of those institutions, which were exempted u/s 13 of the Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (for short called "Act, 1971").

2. Petitioners claim to be the lecturers duly appointed and working in the

recognised institution, called "Cement Factory Inter College. Churk", District Sonebhadra (called "College"), Petitioner No. 1 claimed to be working as Assistant Teacher in L. T. Grade. Petitioners claimed that the college was getting grant-in-aid and was a duly recognized institution under the Act, 1921. Petitioners have referred to various Government Orders prescribing pay-scales for respective posts of Lecturers and Assistant Teachers in the recognised institution In the State of U. P.

3. It is stated that General Manager, Churk Cement Factory is the Manager of the College and discharges all functions of the management of the institution. It is also averred that in making payment of salary to the teachers, management withholds certain amount from the amount of salary sanctioned by the Government and received by the management by way of grant, which is wholly unauthorized deduction. Petitioners claim to have made several representations containing their specific objections In this respect vide (Annexures-6A to 6E to the Writ Petition). According to the petitioners, management was guilty of deduction of amount and responsible for not utilizing the amount for the purpose for which It was sanctioned. In Paragraph 32 of the writ petition, It is mentioned that a sum of Rs. 12.34,339 was received towards grant-in-aid payable for the years 1988-89 to 1992-93 by the District Inspector of Schools and effort is being made by the Manager to receive the same. The petitioners apprehended that the Manager shall not utilize whole of it for payment to the teachers of the college.

4. The petitioners claimed following reliefs :

"(i) A writ, order or direction in the nature of certiorari quashing the circular letter dated 19.10.89 issued by the Director of Education. U. P., Allahabad 1 (Annexure-11 to the writ petition) ;

(ii) A writ, order or direction of suitable nature commanding the respondent Nos. 1, 2, 3 and 14 to determine the grant payable towards salary of employees of Cement Factory Inter College. Churk, Sonebhadra in accordance with the pay scale revised w.e.f. 1.1.86 under the Government Order dated 4.10.89 (Annexure-9 to the writ petition) ; to disburse the same actually and also to disburse the arrears of grant arising for the period 1.1.86 till date within a period to be specified by this Hon"ble Court ;

(iii) A writ, order or direction of suitable nature commanding the respondents to pay the petitioners their regular monthly salary in accordance with the pay scale specified by the State Government for their respective posts regularly every month including the arrears of salary in the aforesaid pay scale within a period to be specified by this Hon"ble Court ;

(iv) A writ, order or direction of suitable nature commanding the respondent Nos. 5 and 16 to forthwith disburse to the petitioners arrears of grant disbursement for payment of salary to the petitioners for the period 1986-87 till date which has been unauthorisedly withheld by the respondent Nos. 5 and 6 within a period to be specified by this Hon"ble Court :

(v) A writ, order or direction of suitable nature commanding the respondents to declare Section 13 of the U. P. High School and Intermediate College (Payment of Salary to Teachers and Other Employees) Act. 1971 as not applicable to the Cement Factory Inter College. Churk. Sonebhadra and/or to declare the said provision to be ultra vires and inoperative ;

(vi) A writ, order or direction of suitable nature commanding the respondents to enforce the provisions of the U. P. High School and Intermediate Colleges (Payment of Salary to Teachers and Other Employees) Act 1971 as also the provisions of the U. P. State Aided Education Institution Employees Contribution Provident Fund and Insurance Rules, 1964 to the Cement Factory Inter College, Churk, Sonebhadra ;

(vii) Any other writ, order or direction as the petitioners be entitled in law ;

(viii) Costs may be awarded in favour of the petitioners."

5. When this petition was filed, an Interim order was passed on November 14, 1995, which reads as follows :

"Standing counsel appearing for respondent Nos. 1 to 4 and Sri Dilip Gupta appearing for respondent Nos. 5 and 6 pray for and are granted six week"s time to file counter-affidavit.

List for admission thereafter.

Meanwhile, the amount sanctioned by the Director of Education for payment of arrears of salary of teachers if released in favour of the respondent-management by the District Inspector of Schools shall not be utilised for a purpose other than disbursement of arrears of salary to the teachers.

Sd. S.R. Singh, J.

14.11.95"

6. A counter-affidavit has been filed on behalf of respondent Nos. 5 and 6. No counter-affidavit has been filed on behalf of respondent Nos. 1 to 4.

7. In view of the above, writ petition is being finally heard and decided as contemplated by the Rules of Court. 1952 at this stage.

8. It is not disputed that U. P. State Cement Corporation Limited (called the "Corporation") is a Government Company registered under the Indian Companies Appellate Court, All the shares are held by the State Government.

9. The Corporation established two educational institutions and one of them is "the College". As mentioned above, it is recognised by U. P. Board under Intermediate Education Act, 1921.

10. On behalf of the petitioners, at the outset, it is submitted that the college cannot be said to be owned and controlled by the State Government and,

therefore, Section 13, The Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 is not attracted in the facts of the present case and contrary stand taken by the petitioners in the writ petition may be Ignored for the reason that true status of the College was not within the knowledge of the petitioners when the present writ petition was filed. Learned counsel for the respondents has not disputed or objected to the above.

11. Learned counsel for the petitioner drew notice of this Court to the judgment and order dated May 8. 1995 rendered by a Division Bench of this Court in Special Appeal No. 282 of 1995, General Manager, V. P. State Cement Corporation Limited, Churk, Sonebhadra and others v. Bhagwati Prasad Srivastava, copy of which has been filed as (Annexure-3 to the rejoinder-affidavit). Relevant extract of the said judgment is reproduced below :

".....There is no dispute that the Intermediate College established and run by the Cement Corporation Is governed by the provisions of U. P. Intermediate Education Act. 1921 and the Rules and Regulations framed thereunder. There is also no dispute that in so far as the respondent herein is concerned, the said Act and the Rules and Regulations framed thereunder are applicable to him, in his performing the functions as the Principal of an Intermediate College established and run by the Cement Corporation. In these circumstances, when a statutory provision which governs the Intermediate College established by the Cement Corporation fixes the age of superannuation of the Principal, such a statutory provision will prevail over the Rules, If any, framed by the Cement Corporation which Is a company Incorporated under the Companies Act..... Section 16H is applicable only in respect of an institution maintained either by the State Government or the Central Government. The U. P. State Cement Corporation which is incorporated as a Company under the Companies Act, though it is fully owned and controlled by the State Government cannot be said to be the State Government. Therefore Section 16H has no application In the instant case."

12. To appreciate the bone of contention amongst rival parties. It is useful to reproduce Section 16G (1), 16H (1), Regulation 46 of Chapter III of Act. 1921 and Section 13 of Act. 1971, which read as follows :

Section 16G.--"Condition of service of Heads of Institution, teachers and other employees :

(1) Every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by regulations and any agreement between the management and such employee in so far as it is consistent with the provisions of this Act or with the regulations shall be void".

Section 16H (1).--"Exemption of certain classes of institutions from the operation of certain sections :

(1) The provisions of Sections 16A, 16B, 16C ; subsections (2) to sub-section

(13) of Section 16D and Sections 16E or 16F and 16G shall not apply to recognised institutions maintained by the State Government or the Central Government.

Chapter 111 Regulation 46 of Act, 1921 :

"46. Employees shall be allowed the scale of pay sanctioned by the State Government from time to time."

Section 13 of Act, 1971 :

"13. Exemption in relation to institutions maintained by local authorities, etc.-- Nothing in this Act, shall apply to institutions maintained by a railway administration or any industrial undertaking owned or controlled by the Government of India or the State Government."

13. Section 16H (1) of Act. 1921 and Section 13 of Act. 1971 contemplate that "recognised institutions maintained by the State Government....." and "Institutions owned or controlled by.... State Government" Indicate that It do not embrace Schools maintained by a company even if it is owned by State Government.

14. Article 12. Constitution of India defines "State" for limited purpose i.e.. for the purpose of Part III of the Constitution. Specific exclusion of the absence of expression "Instrumentality of the State" or "other authority", while Legislatures enacted Section 16H (1) and Section 13 of Act 1971 (quoted above), shows that "the College" cannot be said to be owned or controlled by State. Any institution maintained or controlled by a Government company or a Corporation, which is creation of a statute, is not an institution, which belongs to and/or maintained or controlled by the State as such. Such a "legal entity" cannot be at par with State Government.

15. Reference may be made to the following decision D.D.A. v. Skipper Construction (P.) Ltd.. 11996) 4 SCC 622 Paragraph 24.

16. Accordingly, I hold that the College is not exempted from the provisions of Act, 1971.

17. It is not disputed at the Bar that Regulation 46 under Chapter 111 (framed under Act. 1921) is applicable to the teachers and employees of the College.

18. On behalf of the respondent Corporation it has been argued that its staff was given higher pay scale and certain privileges (like residential accommodation, etc.) over and above those conferred under Government Order in case of other similar teachers in other recognised Colleges. And. therefore, it is argued that Corporation can legitimately adjust its additional burden from the grant It receives from the Government for the purpose of payment of salary to the teachers and employees from the Government particularly when the Corporation is financially wrecked.

19. Assuming the argument to be correct. Corporation cannot be permitted to make deduction from the account of grant, which is given for specified purpose of payment of salary to the teachers in the College. If Corporation has made or makes additional payments, which involves additional burden, the same cannot be adjusted from the grant. Reason is simple.

20. Corporation having undertaken itself additional burden, over and above regular pay scales prescribed by the Government, and it has to pay under privity of contract or agreement between the two. It must bear the same. Corporation cannot be allowed to reduce the emoluments nor it can seek adjustment, by deducting any amount from the grant. It cannot be permitted to divert amount of grant, which is being extended by the Government on the representation that it is required for making payment of salary to the teachers in the College.

21. Respondent Corporation has failed to bring on record any material to show that it had apprised the Government or the educational authorities of its intention to make alleged adjustments/deduction from the grant.

22. Let the Corporation approach relevant authorities giving grant before making deduction/adjustment from the amount of grant.

23. Now, coming to the relevant claim made by the petitioners, It may be mentioned that learned counsel for the petitioners has conceded that reliefs 1, 2, 3 and 4, claiming writ of certiorari to quash Circular Letter dated October 19, 1989 is rendered infructuous in view of the subsequent Government Order dated January 7, 1998 wherein the Directorate itself instructed concerned authorities to fix revised pay scales with respect to the institution in question as per revised pay scales extended vide Government Order dated October 4, 1989. This position has not been disputed on behalf of the contesting respondents.

24. There is no order of the Government depriving the petitioner from seeking revised pay scale under Government Order dated October 4, 1989, which extends benefit of revised pay scale with effect from January 1, 1986. True copy of Government Order dated October 4, 1989 has been annexed as (Annexure-9 to the Writ Petition). Petitioners are entitled to revised pay scales with effect from January 1, 1986 under the said Government Order and Petitioner will be entitled to receive their arrears as well, if any.

25. Under Government Order dated November 30, 1995 (Annexure-S.A. 1 filed on April 1, 1996 in this Court), Government has clarified that grant-in-aid shall not be denied to an institution like "the College" and Section 13 of Act 1971 is not attracted, therefore, applicability of Act, 1971 is not in dispute.

26. In view of the conclusion that Act, 1971 is applicable to the College, it will be appropriate to give a direction to the State Government and to Director of Secondary Education for ensuring compliance of the said Act and to ensure regular payment of salary to the teachers of the concerned recognised Institutions without unauthorised deductions and also to ensure actual payments

to the teachers, who may be entitled under law.

27. For the interregnum period, I direct the Respondents to maintain separate "Salary Payment Account" in a Nationalized Bank for the College, deposit therein entire amount of grant received from State Government or Educational Authority with immediate effect, continue to deposit the amount of grant-in-aid in the said bank account and pay salary to the eligible teachers in accordance with the provisions of Payment of Salaries Act. 1971.

28. The respondents are further directed to take steps, undertake requisite exercise for fixing salary of the teachers of the College according to the Government Order dated October 4, 1989, calculate arrears of salary with respect to each teacher and pay the same after deducting any amount already paid. This, however, does not permit the Corporation/ Manager of the College to deduct any amount, which has been paid by It over and above regular pay scale prescribed by the Government, but as part of agreement of service. This exercise must be completed and payment may be made within four months of filing of a certified copy of the Judgment before concerned authorities. The District Inspector of Schools and respondent Nos. 2 and 3 are Jointly directed to ensure payment of future salary to the staff of the College out of the grant in the hands uninterruptedly in accordance with law.

29. It may be noted at this Juncture, that the Corporation and the Management of the College has already sent their proposal recommending the Government for taking over the college.

30. Taking pragmatic and practical approach in the matter. Corporation is sick unit and its existence is in jeopardy, it is expected that the Government shall take a prompt and suitable decision within four months of receipt of this Judgment, to save the educational Institution.

31. Writ petition stands allowed subject to the above directions.

32. No order as to costs.