

(2001) 04 AHC CK 0006
In the Allahabad High Court
Case No : Special Appeal No. 876 of 1999

Committee of Management, Ashrfia Intermediate College and Another APPELLANT

Vs

Deputy Director of Education, Azamgarh Region and Others RESPONDENT

Date of Decision : 25-04-2001

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3, 4, 6
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7), 30

Citation : (2001) 2 UPLBEC 1646

Hon'ble Judges : Palok Basu, J; Janardan Sahai, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; A.S. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—This Special Appeal is directed against the judgment and order of the learned Single Judge dated 19.8.1999, by which the writ petition of the appellant-committee of management of a minority institution challenging the order of the Deputy Director of Education, Azamgarh dated 20/22.7.1996 (Annexure-15) stands dismissed. The Committee of Management, the appellant manages an institution known as Ashrafia Intermediate College, Mahal, District Azamgarh, which is admittedly a minority Institution. The respondent No. 4 claimed to have been appointed in the institution in the year 1972. The case of the respondent No. 4 is that he was working continuously but he was not paid salary. This stand has been consistently denied by the appellant. It may be pertinent to mention here that the respondent No. 4 had earlier filed another writ petition being writ petition No. 615 of 1985 in which he prayed for a writ of mandamus commanding committee of management to treat him as a teacher in the Institution and to pay his salary. He alleged that he was continuously working in the Institution since it was a Junior High School and that in the year 1978,

Junior High School was upgraded to High School, that he complained to the Basic Shiksha Adhikari regarding payment of salary, that the Basic Shiksha Adhikari passed an order dated 25.11.1978 ordering the Manager of the Institution to make payment to him, that thereafter he approached the Principal and the Manager of the Institution several times but his salary was not paid, that he then approached the District Inspector of Schools, Azamgarh who by order dated 2.12.1980 held that the order of the Basic Shiksha Adhikari was correct and directed the Manager to permit him to resume duty. It was further alleged that the District Inspector of Schools by its order dated 7.8.1991 ordered the Manager to comply with its, previous order dated 2.12.1980 as well as the order of the Basic Shiksha Adhikari dated 25.11.1978. In para 11 of that writ petition, it was stated that the Institution came under grants-in-aid in the month of March, 1984 and since then the salary of teachers and other employees is being paid under the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, hereinafter called as the "Payment of Salaries Act" for the sake of brevity.

2. Counter affidavit by the appellant Committee of Management was filed in the earlier Writ Petition No. 615 of 1985 in which it was specifically averred that the petitioner therein (present respondent No. 4) was first appointed in the institution as untrained teacher in the year 1972. He remained in this capacity only upto 14.10.1974 and left the institution and again came on 1.8.1975 as trained teacher. It was denied that the petitioner continuously worked in the institution. That writ petition was "not pressed" by Respondent No. 4 and on request on his behalf was disposed of by an order dated 9.1.1996 in the following terms :-

"After some argument, Shri G. N. Singh, learned Counsel for the petitioner prays to withdraw this writ petition with liberty to the petitioner to move the Dy. Director of Education, Azamgarh for the redressal of his grievances. Shri C. K. Rai, the learned Standing Counsel for the respondent No. 1, District Inspector of Schools, Azamgarh and Shri K. K. Pandey, the learned Counsel for the respondent No. 2, the Committee of Management, Ashrafia Uchhatar Madhyamik Vidyalaya, Mahul, Azamgarh have got no objection to the prayer of withdrawal and liberty. Accordingly this writ petition is dismissed as withdrawn with liberty aforementioned. No cost.

Sd/-Judge... 9.1.1996."

3. After the order of this Court dated 9.1.1996, the respondent No. 4 filed a representation dated 27.1.1996 before the Deputy Director of Education for payment of salary. The Deputy Director of Education after hearing the petitioner; Committee of Management and the respondent No. 4 passed an order dated 20/22.7.1996 (Annexure-15 to the writ petition.) The Deputy Director of Education relied upon the order of the District Basic Shiksha Adhikari, Azamgarh dated 25.11.1978 and letter of the District Inspector of Schools dated 2.12.1980, 7.8.1981, and 24.10.1994 and held that the respondent No. 4 was working in the

institution continuously since the year 1972. However, the Deputy Director of Education did not record any finding as regards the date from which the respondent No. 4's salary was stopped. Against the order of the Deputy Director of Education, the present writ petition was filed by the Committee of Management.

4. The learned Single Judge has held that the respondent No. 4 was appointed and worked for some time. The learned Single Judge also noticed the submission of the management that the respondent No. 4, thereafter did not come for joining duties, while the respondent No. 4 claimed that he was not allowed to join his duties. The learned Single Judge held that as the management does not dispute the existence of the orders of the educational authorities in favour of the respondent No. 4, the management ought to have challenged the said order of the District Inspector of Schools and the Basic Shiksha Adhikari but did not do so. The learned Single Judge held that the Deputy Director of Education had considered the relevant aspects and dismissed the writ petition filed by the Committee of Management.

5. The first contention of Dr. R. G. Padia Counsel for the appellant is that the Deputy Director of Education had no jurisdiction to pass the impugned order dated 20/22.7.1996. He contends that under the Payment of Salaries Act, it is the District Inspector of Schools alone who is authorised to decide the question of payment of salary. The second contention of Dr. Padia is that the order of the District Basic Shiksha Adhikari dated 25.11.1978 and the subsequent orders of the District Inspector of Schools dated 2.12.1980, 7.8.1981 and 25.1.1985 are ex parte orders and the committee is not bound by the said order. Thirdly, it is contended that the appointment of the respondent No. 4 was made without following the prescribed procedure and without obtaining the approval of the Basic Shiksha Adhikari or the District Inspector of Schools.

6. On the other hand, Mr. A. S. Srivastava, learned Counsel for Respondent No. 4 has contended that the order of the Deputy Director of Education was perfectly valid and that this Court had granted liberty to respondent No. 4 to file representation before him. It was also contended that no such objection regarding the jurisdiction of the Deputy Director of Education was raised by the appellant -Committee of Management before the Deputy Director of Education. As regards the contention that the orders of Basic Shiksha Adhikari and the District Inspector of Schools are ex parte, it was contended by Shri Srivastava that the said order was not ex parte and that the report on the basis of which the order dated 25.11.1978 was passed by the Basic Shiksha Adhikari itself showed that the Committee of Management had been given opportunity. Mr. A. S. Srivastava also contended that the Special Appeal itself was not maintainable inasmuch as the Deputy Director of Education has exercised jurisdiction as a Tribunal.

7. The Court has considered the submissions made by the Counsel for the parties. As regards the maintainability of the Special Appeal Mr. Srivastava's

contention is that the Deputy Director of Education has passed the order as a Tribunal and as such the Special Appeal is not maintainable. He relies upon Section 6 of the Payment of Salaries Act and upon the observations made in the Full Bench decision of this Court in (1996) 3 UPLBEC 1617 Committee of Mangement Kashi Raj Mahavidyalaya v. Deputy Director of Education, regarding the essential attributes and function of a Tribunal. In para 8 of the case cited reliance was placed upon the decision of the Supreme Court in Engineering Mazdoor Sabha v. Hind Cycles and Durga Shankar Mehta v. Raghnraj Singh, with reference to the functions performed by Courts and tribunals and it was held that they are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. Applying this test to the present case it is clear that u/s 6 of the Act the Deputy Director is not entrusted with any power to finally determine disputes between the parties. That provision is merely to enforce certain orders. The decision relied upon by Sri A. S. Srivastava does not advance his contention. Rather it was held in that decision that the Deputy Director of Education does not act as a Tribunal while exercising powers u/s 16-A(7) of the Intermediate Education Act. The Court is of the view that the Deputy Director of Education has not passed the impugned order as Tribunal and that the Special Appeal is maintainable.

8. The jurisdiction of the Deputy Director of Education to pass the impugned order was challenged by Sri Dr. Padia on the ground that u/s 3(3) and Section 4 of Payment of Salaries Act, it is the District Inspector of Schools who is entitled to give director with regard to payment of salary to teacher. On the other hand Sri A. S. Srivastava relied upon Section 6 of aforesaid Act in support of his contention that the Deputy Director of Education did have powers to pass the impugned order. The contention of Shri Srivastava is not acceptable. u/s 6 of the Act, the Deputy Director of Education exercises powers only for the purpose of enforcement of order already passed by the District Inspector of Schools. Under this provision, the Deputy Director of Education can supersede the management and appoint authorised controller. However, there is no power vested in the Deputy Director of Education himself to adjudicate regarding entitlement of salary of teacher. Shri Srivastava then contended that liberty had been granted by the order of this Court dated 9.1.1996 to respondent No. 4, which amounted to a direction to the Deputy Director of Education to decide the dispute. The interpretation placed by Shri Srivastava of order dated 9.1.1996 is not correct. By that order the Court had merely permitted the present respondent No. 4, who was the petitioner in that writ petition, to withdraw the writ petition with the liberty to move the Deputy Director of Education. The request for moving the Deputy Director of Education was made by respondent No. 4 himself and there was no direction by the Court that the Deputy Director of Education will decide the matter.

9. On the question regarding validity of the appointment of respondent No. 4 and his continuance in service, the respondent No. 4 has relied upon the letter of the Manager of the Institution dated 30.6.1973 to establish that the appointment of

respondent No. 4 was temporary. Reliance was placed upon the admission made by the Committee of Management in para 28 of the writ petition that respondent No. 4 never worked after 14.8.1978. Shri Srivastava argues that the Committee of Management would be deemed to have admitted the continuance of service of respondent No. 4 till 14.8.1978. The Court has considered the letter of Manager dated 30.6.1973. The said letter is not an appointment letter. Respondent No. 4 has not filed any appointment letter. However, it is not in dispute in the present case that respondent No. 4 was appointed as Assistant Teacher but the case of Committee of Management is that his appointment was for fixed term and that he had himself abandoned service. The burden lay upon respondent No. 4 to establish the validity of his appointment and right to continue and further to establish as a fact that he was continuing in service. The respondent No. 4 has claimed payment of salary but has failed to establish or even plead the date of entitlement. Shri Srivastava was unable to point out any averment in the earlier Writ Petition No. 615 of 1985 filed by respondent No. 4 or in the counter affidavit of respondent No. 4 in the present writ petition regarding the precise date, upto which his salary was paid and when it was discontinued. In absence of specific pleadings on this point it is not possible to grant relief to respondent No. 4. The learned Single Judge has merely held that respondent No. 4 had worked for some time. On the basis of averments made in para 28 of the writ petition that respondent No. 4 never worked after 14.8.1978 Mr. Srivastava argued that it had impliedly admitted that respondent was continuing in service until 14.8.1998 and in such circumstances, the approval of the Basic Shiksha Adhikari under Rule 15 of the U.P. Recognised Basic Schools (Junior High School Recruitment and Condition of Service) Rules, 1978, which had come into force was necessary before termination of service and there being no such approval the Respondent No. 4 was entitled to be continued and be paid salary. This contention has no force. Admittedly the institution in question is minority institution. In Yunus Ali Sha Vs. Mohamed Abdul Kalam and Others, which it was held by the Hon''ble Supreme Court that in the case of minority institution, the termination services of a teacher lies within the authority of the managing committee of the minority institution and prior approval of the Director is not necessary. The date of recognition of the institution as a minority institution is not material. The date on which the institution was recognised as a minority institution will not affect the decision of the case. Dr. Padia has relied upon the judgment of the Apex Court in the case of N. Ahmad v. Manager, Emjayu High School and Ors., in which the Apex Court has held that when the Government declared the schools as a minority school it recognised a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character, which should necessarily have existed antecedent to such declaration. Therefore, it cannot be said that the school can claim protection only after the Government declared it as a minority school.

10. The only other ground upon which the judgement of the learned Single Judge is based is that the Management has not challenged the orders of the Basic

Shiksha Adhikari and of the District Inspector of Schools. The contention of Dr. R. G. Padia is that these orders were ex parte and without giving opportunity of hearing to the committee. There is no recital in the order of the Basic Shiksha Adhikari dated 25.11.1978 upon which the respondent No. 4 has mainly based his case that the committee of management was Heard. The orders passed by the District Inspector of Schools are non-speaking. Mr.Srivastava has failed to produce material to show that the orders passed by the Basic Shiksha Adhikari and the Distirct Inspector of Schools were passed after giving opportunity to the management.

11. A question arose before this Court in respect of the reimbursement of salary, which the respondent No. 4 has drawn in pursuance of this Court's interim order. Since no counter affidavit has been filed by the State and none of the officers of the State has contested the case by filing even counter affidavit, and, taking due note of the arguments of Sri A.S. Srivastava that respondent No. 4 is a poor litigant and the litigation was fought with bona fides, it does not appear proper to issue direction for recovery of amount of salary from the respondent No. 4. In the interest of justice, the salary amount may now be treated as an expenditure in the misc. account.

12. In the result, the Special Appeal is allowed. The order of the learned Single Judge dated 19.8.19,99 is set aside and the order of the Deputy Director of Education dated 20/22.7.1,996 is quashed. In the circumstances of the case, we direct that the parties will bear their own costs.