

(2000) 10 AHC CK 0003
In the Allahabad High Court
Case No : C.M.W.P. No. 46009 of 2000

Committee of Management, Saheed Bhawani Dutt Joshi
(Ashok Chakra) Higher Secondary School

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 24-10-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3, 4, 5

Citation : (2000) 4 AWC 3413 : (2001) 1 UPLBEC 213

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

Bench : Single Bench

Advocate : A. M. Tripathi, for the Appellant; U. K. Pandey and S. C., for the Respondent

Judgement

A. K. Yog, J.—All the respondents are represented by the standing counsel and the petition is being disposed of in accordance with Rules of Court.

2. Committee of Management, Shaheed Bhawanl Dutt Joshi (Ashok Chakra) Higher Secondary School, Chaprun Tharali. Chamoli through it s Manager (for short called the "College") by means of this petition under Article 226. Constitution of India prays for issuing a writ of mandamus commanding the respondents to pay salary to its teaching and non-teaching staff with effect from March. 2000 (i.e.. entire arrears of salary) and further continue to pay their salary month by month in accordance with law.

3. Petitioner manages the college, which was initially a Junior High School governed by the provisions of U. P. Baste Education Act which was on the grant-in-aid list to ensure regular payment of salary to the staff of the said college at the Junior High School level. The college was upgraded on January 28. 1999 (Annexure 9 to the writ petition). In the petition, details have been given to indicate that the staff of the college (teaching and non-teaching) was duly

recognised and was getting salary, while the college was up to Junior High School level.

4. The grievance of the Petitioner/Committee of Management is that its staff is being denied grant-in-aid ever since, it has been recognised up to High School level apparently on the ground that the said college up to High School level has not been brought on grant-in-aid list and consequently, the State is denying its liability to reimburse the salary.

5. This question has crept several times. In the case of Deo Murti Shukla v. State of U. P. and others. Writ Petition No. 21602 of 1987, a Division Bench of this Court, considering request of the petitioner under similar circumstances. observed that there was no dispute about duly appointed teachers and other staff of the college and further that the only controversy raised in that case was that since the grant-in-aid was not being given to the said college as it was not brought on grant-in-aid list of High School and Intermediate Colleges and hence no salary was payable to the staff of the said college under the provisions of U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act. 1971. After considering respective contentions of the parties in the case of Deo Murti Shukla (supra), the Division Bench directed the concerned authorities to pay salary and other emoluments to the duly appointed staff of the college within specified period. The operative portion of the said judgment reads :

"We direct the respondent Nos. 1 to 5 to pay to each of the petitioners, their salary and other emoluments with effect from 1.6.1988. this shall be done within a period of two months from today. The payment shall include the salary till November 30, 1989. The respondents shall pay to each of the petitioners their salary and other emoluments regularly with effect from 1.12.1989 and onwards. The payments shall be made under the provisions of the Act. We also make it clear that if and when the Institution is given the grants-in-aid applicable to a High School, it will be open to the petitioners, if the situation, so calls for, to claim the arrears of salary on the footing that they were the employees in a High School and the provisions of the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, were applicable to them."

6. The aforesaid decision in the case of Deo Murti Shukla again came up for consideration before another Division Bench of this Court in the case of Ramesh Chandra Yadav v. State of U. P. and others, C.M.W.P. No. 9412 of 1989 : 1998 (1) LBESR 471 and their Lordships, agreeing with the decision of Deo Murti Shukla (supra), issued a similar direction for payment of salary against the State Government and concerned authorities. Paras 5 and 6 of the said Judgment read :

"5. After hearing the learned counsel for the parties and upon examination of the averments made in the petition, the Court is of the opinion that the facts and

circumstances of the Instant case are almost identical to the facts and circumstances of the case of *Sri Deo Murti Shukla v. State of U. P.*, (supra). Sri O. P. Singh, learned standing counsel representing respondent Nos. 1 to 5 also very fairly concedes this position. Therefore, he does not dispute that this petition has got to be allowed and the petitioners ought to be granted reliefs claimed by them.

6. Accordingly, the petition succeeds and is allowed. The impugned order dated April 12, 1989 (Annexure-3 to the petition) is quashed and the respondent Nos. 1 to 5 are directed to pay to each of the petitioners their salary and other emoluments with effect from March 1, 1989 with a period of two months, to be computed from today. The payment shall also include the salary till December 31, 1997. The respondents shall pay to each of the petitioners their salary and other emoluments regularly with effect from January 1, 1998 and onwards. The payment shall be made under the provisions of the Act (U. P. Act No. 6 of 1979). There is no order as to costs."

7. In the case of *The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others*, . briefly stated, the facts of the case were that Dev Samaj Girls Senior Secondary School, Chandigarh, which was a private educational institution duly recognised and receiving grant-in-aid from the Union Territory of Chandigarh Administration since 1.12.1967, was allowed to start class beyond Tenth Standard (i.e.. upgraded up to Senior Secondary level). This permission to run 11th and 12th classes was with the condition that no grant-in-aid will be provided for additional staff. The Classes of Senior Secondary level, which were run under Dev Samaj Degree College, Chandigarh, were closed down on the direction of the authorities and were allowed to continue as part of Dev Samaj Senior Secondary School. Some of the lecturers, who were teaching different subjects in 11th and 12th classes of the school, claimed salary at par with their counter-parts working in private recognised institution, Chandigarh. No heed was paid by the institution and they approached the High Court by filing writ petition. Claim of such teachers was refuted by the authorities on the ground that permission to open 11th and 12th classes was subject to the condition that no grant-in-aid will be provided for additional staff and, therefore, the claim of such teachers for parity of salary with their counter-part was not acceptable to the authorities. High Court allowed the petition and granted relief to such petitioners (teachers). Administration challenged the same by filing appeal before the Supreme Court. The Apex Court found that continuance of such teachers was essential for running the classes in question. In other words, such petitioners were not surplus in the Institution. In Para 6 of the judgment Supreme Court observed :

"6. The position has to be accepted as well-settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends, in line with this principle, the State has enacted statutes and framed rules and regulations to control/

regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the Institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any education institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions. To notice a few such decisions on the point, we may refer to the case of Haryana- State Adhyapak Sangh v. State of Haryana..... a Bench of three learned Judges of this Court clarifying the judgment in Haryana State Adhyapak Sangh v. State of Haryana issued a direction, inter alia, that the parity in the pay scales and dearness allowance of teachers employed in aided schools and those employed in Government schools shall be maintained and with that end in future the pay scales of teachers employed in Government schools shall be revised and brought on a par with the aided schools and dearness allowance payable to the teachers employed in Government schools with effect from 1.1.1986."

Again in Para 10 the Supreme Court observed :

"Coming to the contention of the appellants that the Chandigarh Administration will find it difficult to bear the additional financial burden, if the claim of respondent Nos. 1 to 12 is accepted, we need only say that such a contention raised in different cases of similar nature has been rejected by this Court. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the authorities running the Administration to find out the ways and means of securing funds for the purpose. We do not deem it necessary to consider this question in further detail. The contention raised by the appellants in this regard is rejected."

8. Heard learned counsel for the petitioner and the learned standing counsel Mr. U.K. Pandey.

9. Upon examination of the contentions made in the petition and hearing learned counsels for the parties, I am of the opinion that the fact and circumstances of the instant case are almost similar to the facts and circumstances of the case of Deo Murti Shukla (supra). The learned standing counsel has fairly conceded this position.

10. The learned standing counsel. however, pointed out with reference to Para 9 of the petition that probably salary has not been paid, because copy of some order being dated January 27, 2000 is not before the concerned authorities. If that be so, this is merely an apology for excuse. Copy of the order must be with the concerned educational authorities. Department of Basic Education and Secondary Education are Departments of State Government. The concerned authorities ought to have obtained copy of that order or in case any factual

position is to be ascertained regarding validity of appointment of the teaching staff of the erstwhile Junior High School (Basic Education), the authority shall collect material and pass order exposing its mind for deciding to pay salary to the validly appointed staff of the petitioner college.

11. In view of the above, the respondents are being Jointly and severally directed to ensure payment of salary to the validly appointed staff of the petitioner's college inasmuch as promotion to upgrade the college was granted by the State Government and its authorities and denial of payment of salary to the validly appointed staff of the college cannot be justified. The concerned authorities are directed to pay to the validly appointed teaching and non-teaching staff of the college with effect from March, 2000. within a period of two months to be computed from the date of filing of a certified copy of this judgment before the concerned authority. The respondents and all other authorities are further directed to make payment to the validly appointed teaching and non-teaching staff of the petitioner's college regularly month by month with effect from December 1, 2000 in accordance with law as contemplated under U. P. Junior High School (Payment of Salaries of the Teachers and Other Employees) Act. 1978 (U. P. Act 6 of 1979) till college is brought on grant-in-aid list under U. P. Intermediate Education Act read with Payment of Salaries Act, 1971.

12. Writ petition is allowed accordingly.