

(2004) 07 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 33619 of 1999 and 48290 of 2002

Committee of Management, V.K. Higher Secondary School
and Another

APPELLANT

Vs

State U.P. and Others
Rama Shankar Shukla and
Another Vs Director of Education and Others

RESPONDENT

Date of Decision : 13-07-2004

Acts Referred:

Citation : (2004) 3 UPLBEC 2892

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Amit Saxena, for the Appellant; R.K. Awasthi and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Both these writ petitioners are based on same facts and raise similar questions and hence they have been heard together and, with the consent of the learned Counsel for the parties, they are being decided finally at the admission stage.

2. The Writ Petition No. 33619 of 1999 has been filed by the Committee of Management, V.K. Higher Secondary School, Kanpur Dehat with a prayer for quashing the order dated 1.7.1999 passed by the District Inspector of Schools, Kanpur Dehat and also for a direction to the respondents to approve the appointments of the two teachers made by the Committee of Management for the additional sections of Classes 1 and 2 in the Primary Section of the institution. The other Writ Petition No. 48290 of 2002 has been filed by the two teachers who have been appointed on such posts with a prayer for a direction to the respondents to pay salary to the petitioners with arrears.

3. The brief facts of this case are that the institution, namely, V.K. Higher

Secondary School, Kurshi Khera, District Kanpur Dehat is a duly recognized High School and is included in the grant-in-aid list of the State U.P. The said institution is also running a primary section since long, which was earlier not under the grant-in-aid scheme. On 6.9.1989, the State Government issued an order for payment of salaries to teachers of Primary Section attached to High Schools and in the list of institutions specified by the State Government, the name of the institution in question was also included. Thus thereafter, the State Government was also making the payment of salary to teachers of the primary section of the said institution in question, Clarifying an earlier Government Order dated 21.10.1985, the Director of Education on 12.11.1989 clearly stated that the salary for the teachers of the primary sections would be paid on the basis of one teacher per class and further payment of salary to one teacher in every additional section should also be ensured. In response to a specific query that if a new section is opened according to the fixed standards, then whether the teachers appointed in such newly created section would be entitled for payment of salary under the Payment of Salaries Act, Director of Education on 19.7.1990 clarified that the payment of salary to such teacher of the Primary Section for additional recognized sections shall be determined on the basis of the Notification dated 12.11.1989.

4. In the year 1997 considering the strength of the students, it was determined that an additional section in Class 1 was required. Accordingly, vide order dated 30.3.1997, the District Inspector of Schools approved one such additional section in the institution in question. Thereafter on 9.3.1998, the District Inspector of Schools again approved one additional section in Class 2. Thus two sections each in Classes I and 2 and one section-each in Classes 3, 4 and 5 having been duly recognized/sanctioned, the total number of recognized classes in the primary section of the institution became seven. Since the District Inspector of Schools had approved the additional sections in the institution, the Committee of Management, on 25.4.1999, published an advertisement in three newspapers for filling up the posts of teachers for the two newly created sections. In response thereto the Committee of Management, which passed a resolution to that effect in its meeting held on 30.4.1999, duly selected the two petitioners of Writ Petition No. 48290 of 2002. The Committee of Management communicated the said decision and also forwarded the papers to the District Inspector of Schools on 6.5.1999 for its approval and for payment of their salary. The said two teachers admittedly joined as Assistant Teachers in the institution in question on 1.7.1999. However, the District Inspector of Schools vide his order dated 1.7.1999 refused to accord approval on the ground that necessary guidance had been sought for from the Director of Education with regard to sanction of posts which had not been received. It was also stated that mere permission to open new sections would not amount to sanctioning of posts. The Committee of Management of the Institution thus filed Writ Petition No. 33619 of 1999 for quashing the order dated 1.7.1999 and also for approval of the appointments made for the two additional sections. In the said writ petition, on 31.8.2000, this

Court had passed an order issuing the following directions :-

"In the meantime the Director of Secondary Education either himself or through an officer nominated by him may take a reasoned decision within six weeks with regard to the additional sections of classes I and II which were permitted by the District Inspector of Schools. The decision will also be taken with regard to consequent increase in strength of the teachers according to the standards fixed by the Director indicated by the order dated 12.11.1989."

5. By order dated 17.8.2001 the Director of Education rejected the claim regarding payment of salary to the two additional teachers on the ground that for payment of salary under the Payment of Salaries Act, it was necessary that the additional posts of teachers should have been created in accordance with law and without the creation of post, the State could not be saddled with any liability for payment of such salary. By an amendment application filed in October, 2001, the prayer for quashing the order dated 17.8.2001 has also been added in Writ Petition No. 33619 of 1999.

6. The two teachers whose appointments had been made by the Committee of Management, thereafter in November, 2002 filed Writ Petition No. 48290 of 2002 with a prayer for a direction to the respondents to pay them their salary alongwith arrears from the date of their appointment.

7. I have heard Sri Amit Saxena, learned Counsel for the petitioners in both the writ petitions, as well as Sri R.K. Awasthi, learned Standing Counsel appearing for the State-respondents, at length and have also perused the record.

8. Two questions arise for determination by this Court which are as follows :-

(i) Whether the State Government is liable for payment of salary to teachers appointed for additional sections which had been duly recognized and sanctioned by the District Inspector of Schools but additional posts not created by the State Government; and (ii) Whether the selection-of the petitioners of Writ Petition No. 48290 of 2002 as Assistant Teachers in the institution in question had been properly made and whether the State Government would be liable to pay their salary.

9. As regards the first question, the learned Counsel for the petitioners has submitted that there is no provision for creation of posts in the primary section attached to High School and a new section can be opened after the approval of the District Inspector of Schools; and that there is a policy of the State Government to promote primary education and after the 86th Constitution Amendment, whereby primary education has been made compulsory, it is the duty of the State to pay the teachers employed in the primary section of the institutions, specially when the additional sections have been duly approved by the competent authority.

10. Learned Standing Counsel has, however, submitted that although it was not disputed that the primary section was covered under the Payment of Salaries

Act, 1971 with effect from 1.10.1989 but the State Government was not obliged to make the payment of salary to teachers appointed on such posts which was not duly created by the State Government. The permission to open new sections vide orders dated 20.3.1997 and 9.3.1998 passed by the District Inspector of Schools has, however, not been disputed but it has been submitted that mere permission to open new sections would not tantamount to sanction for creation of the posts.

11. Having heard learned Counsel for the parties and on perusal of record, I am of the view that once a competent authority has approved the opening of new sections in the primary section of the institution, which is admittedly under the grant-in-aid list of the State Government, the liability for payment of salary to teacher appointed on such additional posts would be that of the State Government. Admittedly, the approval for opening new sections had been duly accorded by the District Inspector of Schools without any condition that no grant-in-aid would be provided for any additional staff. The Director of Education on 19.7.1990 had already clarified that the payment of salary to such teachers of the primary section for additional recognized classes shall be determined on the basis of the Notification dated 12.11.1989. The said notification provides that the salary of the teachers in the primary sections would be paid on the basis of one teacher per class and that payment of salary to one teacher in every additional section should also be ensured. The State-respondents have not been able to establish from the record that as to under which provision of law, after recognition/sanction of additional sections, new posts of teachers are to be created by the State Government. Once the Director of Education has clarified that the payment of salary on additional post would be made as per the Notification dated 12.11.1989 which provides for payment of salary to one teacher in every section including additional section also, the liability for such payment would certainly be that of the State Government.

12. The decision of the Full Bench of this Court rendered in the case of Gopal Dubey v. District Inspector of Schools, Mahrajganj (1999) 1 UPLBEC 1, relied upon by the learned Standing Counsel, would not be of much assistance. In the said case it was held that mere recognition of a subject did not mean assumption of creation of post and in the absence of sanction of creation of post, the State Government would not be liable to pay the salary nor the Management could claim reimbursement of the same. In the said case the Full Bench was dealing with the appointment and payment of salary of a Lecturer in Sociology which was governed by the U.P. Intermediate Education Act, 1921 where the provision of creation of post necessary. In the present case, the respondents have been unable to show any provision for creation of posts after the additional sections had been duly approved/sanctioned by the competent authority. The Government Notification dated 12.11.1989 as clarified by the Direction of Education on 19.7.1990 also does not provide for creation of post and on the contrary specifies that payment of salary should be ensured to every teacher in every section, including additional sections. Thus, in my view, the decision of the Full Bench in

the aforesaid case would not be applicable to the facts of the present case.

13. In a recent decision of the Apex Court rendered in the case of *The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others*, while dealing with a case where initially the school was imparting education up to Class 10 and was duly recognized and receiving grant-in-aid from Chandigarh Administration and was upgraded to 10+1 and 10 classes for which the Director of Public Instructions, Union Territory, Chandigarh had granted permission to the Management for starting 11th and 12th classes with a condition that no grant-in-aid would be provided for any additional staff and where the teachers of 11th and 12th classes approached the High Court for payment of their salary, their writ petition had been allowed, then in appeal the Supreme Court upheld the judgment of the High Court and observed that "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 standard of teaching in an educational institution." While dealing with the contention of the Chandigarh Administration regarding paucity of funds in making payment of salary of the teachers, the Supreme Court observed that "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".

14. In the aforesaid case, the Supreme Court had approved the direction of the High Court for payment of salary to the teachers even when there was a specific condition imposed by the Director for Public Instructions, Chandigarh while granting permission to open new classes that there will be no grant-in-aid provided for any additional staff. In the case in hand, there was no such condition imposed by the District Inspector of Schools while sanctioning or approving the opening of new additional sections in the institution in question. On the contrary the notification of the Government itself provides for ensuring payment of salary to teachers of additional sections also. Thus, in my view, the teachers appointed for the additional sections duly sanctioned by the District Inspector of Schools, would be entitled for payment of salary under the grant-in-aid scheme of the State Government for which the State Government should make necessary arrangements. The orders dated 1.7.1999 and 17.8.2001 passed by the District Inspector of Schools and Director of Education respectively accordingly deserve to be quashed.

15. As regards the second question as to whether additional teachers in the institution had been properly appointed after due selection or not, it is the clear case of the petitioners that two posts of Assistant Teachers for additional section had been duly advertised in three newspapers, namely, Hindustan; Swatantra Bharat and Hindustan Times and the selection was held after assessing the quality point marks of the candidates and the two teachers were duly selected after the resolution was passed by the Committee of Management in its meeting held on 30.4.1999, which was duly communicated and forwarded to .the District Inspector of Schools for approval on 6.5.1999. While refusing to grant approval no specific ground had been taken with regard to any alleged irregularity in the selection process. Even in the counter-affidavit the respondents have not pointed out any specific irregularity alleged to have been committed in the selection of the two teachers. The two teachers have been continuing to work since the year 1999 and are carrying out their duties without any complaint by the Management. In the absence of the respondents having been able to show that the selection of the two teachers had not been made in accordance with law and their selections having been made after proper advertisement and assessment of quality point marks, in my view, their selection cannot be said to have been made improperly. The petitioners of Writ Petition No. 48290 of 2002 having been duly selected by the Committee of Management would thus be entitled for payment of their salary.

16. In the result, both the writ petitions are allowed. The order dated 1.7.1999 passed by the District Inspector of Schools and the order dated 17.8.2001 passed by the Director of Education are thus quashed. The District Inspector of Schools, Kanpur Dehat is directed to ensure payment of salary to the petitioners in Writ Petition No. 48290 of 2002 along with arrears from the date of their appointment. No order as to cost.