
(2010) 11 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40982 of 2009

Daya Shankar Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0160

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioners have approached this Court, requesting therein that a writ in the nature of mandamus be issued directing Respondent Nos. 3 and 4, i.e. District Basic Education Officer, Maharajganj and the Accounts Officer based at the office of the District Basic Education Officer, Maharajganj, to pay salary and due arrears of salary to the Petitioners.

2. Brief background of the case is that in Petitioner Nos.1 and 5 were appointed as Assistant Teachers by the Committee of Management of Shrawan Kumar Purv Madhyamik Vidyalaya, Katrari, Mahrajganj on 24.06.1977; Petitioner No. 2 was appointed as Assistant Teacher on 26.07.1975. Petitioner Nos.3 and 4 were appointed as Assistant Teachers by the Committee of Management of the said institution on 29.06.1996, whereas Petitioner No. 6 was appointed as peon in the said institution 24.06.1974. Petitioners claim to have been serving the institution. Initially, they were paid salary, and subsequently, the same was illegally withheld; thereafter enquiry was conducted and report has been submitted on 03.07.2006, clearly holding that the Petitioners were entitled to salary, as their appointment had been made against sanctioned posts. Petitioners submit that despite there being no adverse material against them, their salary has been illegally withheld. Supplementary affidavit has been filed and therein document in respect of appointment and approval has been sought to be brought on record in reference to Petitioner Nos.3 and 4, who have been appointed after the

institution in question was brought in the grant-in-aid list of the State Government.

3. Counter affidavit has been filed on behalf of the State Respondents and therein entire emphasis is that the appointments had not been validly made. Rejoinder affidavit has been filed disputing the averments mentioned in the counter affidavit and reiterating that the appointments had been validly made.

Supplementary counter and supplementary rejoinder affidavits have also been filed.

4. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

5. Sri Anil Yadav, learned Counsel for the Petitioners, contended with vehemence that Petitioners have been validly appointed in the institution, and once enquiry had been conducted and favourable report has been submitted on 03.07.2006 at page 47 of the paper book, then there is no reason to withhold the salary, as has been done in the present case.

6. Countering the said submissions, Sri B.P. Singh, Advocate, representing the Respondents, on the other hand, contended that large scale manipulations and manoeuvring have been done in Petitioners' appointment, as such no interference should be made and the writ petition deserves to be dismissed.

7. After respective arguments have been advanced, factual position which emerges in the present case, is that as far as Petitioner Nos. 1 and 5 are concerned, they were appointed as Assistant Teachers by the Committee of Management of the institution in question on 24.06.1977; Petitioner No. 2 was appointed as Assistant Teacher on 26.07.1975; whereas Petitioner No. 6 was appointed as peon in the said institution 24.06.1974. All these appointments were made at the point of time when relevant service Rules, viz. U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 and similarly U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984, were not at all in force. Prior to enforcement of the aforesaid Rules at no point of time any dispute had been raised qua appointments and continuance of Petitioners in service in the institution. In the Manager's return also their names were there. Petitioner Nos. 3 and 4 were appointed as Assistant Teachers by the Committee of Management of the said institution on 29.06.1996, i.e. after enforcement of the aforesaid Rules. Thereafter, dispute arose that the appointment of Petitioners had not been made validly. However, after enquiry, report was submitted on 03.07.2006 to the effect that the appointments had been validly made against sanctioned posts, and there was no reason to withhold the salary of these employees. Salary of these employees, barring Petitioner Nos. 3 and 4, is liable to be released. As far as Petitioner Nos. 3 and 4 are concerned, no relief can be accorded to them, for the simple reason that their appointments have been made after enforcement of

1978 Rules, and after enforcement of U.P. Act No. 6 of 1979 two posts had been sanctioned; terms and conditions as well as mode of recruitment had also been provided clearly mentioning therein that the appointments should be made strictly as per 1978 Rules. Educational qualifications of Petitioner Nos. 3 and 4 has been perused, same clearly reflects that they do not possess the eligibility criteria as provided for under 1978 Rules, inasmuch as they do not have to their credit teachers' training qualification, as such their appointment is nullity in view of Division Bench judgment of this Court in the case of Committee of Management v. State of U.P. 2009(1) ESMC 414, decided on 09.01.2009. Consequently, in the facts of the case, present writ petition is disposed of with direction to the Respondents to release the salary of Petitioner Nos. 1, 2, 5 and 6, but as far as Petitioner Nos. 3 and 4 are concerned, qua them no such direction can be issued.

8. No order as to costs.