
(2010) 04 AHC CK 0284
In the Allahabad High Court
Case No : C.M.W.P. No. 14773 of 2010

Dr. Ali Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 9

Citation : (2010) 4 AWC 3854 : (2010) 126 FLR 456

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—On record it is an order of the Regional Inspectress of Girls School, Varanasi Region, Varanasi dated 1.5.1989, sanctioning two additional sections for classes 4 and 5 (primary section attached to Sajida Girls Inter College). There is no order of the competent authority sanctioning any additional posts of teachers for the new sections so permitted.

2. Counsel for the petitioner submits that in view of the Full Bench of this Court in the case of Gopal Dubey Vs. District Inspector of Schools, Maharajgani and another, and in absence of any order of the competent authority, i.e., Director under the provisions of Section 9 of Act No. 24 of 1971, creating any new posts after permission to start of new section the payment of salary could not be made to appointees working against non-sanctioned posts through State Exchequer.

3. The Regional Joint Director of Education, Varanasi who is present in the Court with the original records contends that with reference to a letter and the Regional Inspectress of Girls School dated 1.5.1989, which records that in view of the permission to start new sections in classes 4 and 5, the total number of primary sections in the institution will increase to 15 read with the Manak as provided under the Government order dated 21.5.1979 (which according to him provides that for each section, there shall be a separate teacher) it has to be presumed

that 15 posts were duly created for primary teachers.

4. Such ignorance on the part of the Regional Director of Education to the legal position as explained by Full Bench of this Court in the case of Gopal Dubey (supra) speaks volumes about the manner in which public money is being utilized. The Full Bench of this Court in the case of Gopal Dubey (supra) has held as follows:

In Section 9 of the Act it is mandated that no institution shall create a new post of teacher or other employee except with the prior approval of the Director or such other officer as may be empowered in that behalf by the Director.

The result is that for the purpose of creating a new post of teacher or other employee for/in connection with a new subject, which it has been permitted to open, the management has to obtain prior approval of the Director as required u/s 9 of the Payment of Salaries Act. This statutory mandate cannot be said to have been satisfied by raising a presumption on the basis of recognition granted for that subject.

5. This Court has no hesitation to record that the stand taken by the Regional Director of Education, Varanasi is nothing but an eye wash for illegal payments/approval granted against non-sanctioned posts. No posts can be said to be created for the institution merely because additional sections are permitted to open or merely because under the Manak two additional posts of teachers can be said to be permissible. Manak is only a prescription of the minimum required for teaching but the same cannot tantamount to creation of posts. The Full Bench in the case of Gopal Dubey (supra) has held that a separate order u/s 9 has to be passed by the competent authority creating the post before payment can be released through State Exchequer. It appears that the Joint Director is unaware of the statutory provisions and the law as explained by the Full Bench or either he has deliberately created a situation wherein unauthorised payment is sought to be made to the persons appointed against non-existing posts.

6. Since the Joint Director is insisting upon payment of salary of such appointees even in absence of sanctioned posts, the Court directs that the salary of the appointees, i.e., respondents No. 8 and 9 shall be paid by Regional Director of Education from his own salary. For this purpose he shall transmit the necessary amount through Bank Draft from his own salary account by 7th of each month for payment to respondents No. 8 and 9.

Parties are at liberty to exchange further affidavits by the next date.

List on 10.5.2010.

Copy of this order be forwarded to the Secretary, Secondary Education, Government of U.P., Lucknow for necessary action against the Joint Director of Education, Varanasi.