

(2013) 03 AHC CK 0231

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1035 of 2011

Dr. Arvind Kumar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 5 ADJ 275

Hon'ble Judges : Zaki Ullah Khan, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Savita Jain and I.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioner and the learned standing counsel.

1. This is a writ petition under Article 226 of the Constitution of India, against the impugned order dated 25.3.2011 passed by Director of Higher Education, U.P. Allahabad, declining to sanction post of the subject namely Physics, Chemistry and Mathematics on the ground that the State Government vide Government order dated 21.8.2000, provided that the State shall not provide any financial grant with regard to the new posts or sanction posts for appointment of teacher and staffs. Brief facts of the present controversy is that the opposite party No. 5, Ranvir Ranvijay Post Graduate College, Amethi, District-Sultanpur was granted temporary recognition for three subjects namely Physics, Chemistry and Mathematics in Bachelor of Science (B.Sc.) course from 1.7.1993 for the period of three years. By an order dated 8.8.1996, the State Government granted permanent sanction to impart education in the three subjects (supra). Admittedly, the respondents Post Graduate College is a Government aided college and against the posts sanctioned by the State Government, the salary is paid by the Government itself. All the teachers and staff of the respondents Post Graduate College are paid salary from the public exchequer by the State Government.

2. While passing the impugned order the shelter has been taken of the Government order dated 21.8.2000. While adjudicating the similar controversy, considering the Government Order dated 21.8.2000, the Division Bench of this Court of which one of us (Hon"ble Mr. Justice Devi Prasad Singh) was a Member, had settled the controversy at rest and held that the Government Order dated 21.8.2000 is prospective in nature. It has been further held after considering the catena of judgment of Supreme Court that the Government cannot compromise with regard on the schedule of education on account of paucity of fund. In case the Government sanction the post then it shall be incumbent upon the Government to pay the salary. The relevant portion of the judgment of this Court in the case of Dr. Suresh Kumar Pandey (supra) is reproduced as under:

38. In the case in State of Maharashtra Vs. Manubhai Pragaji Vashi and others, , their lordships of Hon"ble Supreme Court ruled that State have got no right to discriminate on the ground of paucity of fund while providing grant-in-aid. No hostile treatment can be imparted while dealing with educational institutions for any reason whatsoever. To quote relevant portion of para 9 of the said judgment:

9.... One facet of education cannot be selected for hostile discriminatory treatment, whatever may be the other laudable activities pursued by the Government in the matter of education or its discretion to assign the order of priorities in different spheres of education.

39. In a case in The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, , their lordships of Hon"ble Supreme Court held that purpose of grant-in-aid is to ensure smooth running of institution and the standard of teaching should not suffer on account of paucity of fund. To quote relevant portion:

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 educational institution.

40. In another case in State of Orissa and another v. Mamta Mohanty, 2011 AIR SCW 1332, their lordships of Hon"ble Supreme Court reiterated the aforesaid proposition holding that paucity of fund cannot be a ground for State to compromise the quality of its education. Relevant portion from the case of Mamta Mohanty (supra), is reproduced as under:

17.... Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private

schools to ensure the smooth running of the institutions so that the standard of teaching may not suffer for want of funds.

3. Admittedly, the State Government is making payment of salary to other teachers and staffs who were appointed prior to year 2000 against the sanctioned posts. There appears to be no reason on the part of the Government to decline to pay the salary to the teachers and staffs under the garb of Government order issued in the year 2000. While concluding the controversy in the case of Dr. Suresh Kumar Pandey a mandamus was issued by the Division Bench of this Court with certain observations. The relevant portion from the judgment and the finding recorded is reproduced as under:

53. We have noticed that not only in the respondent's college, but in other colleges of the State of U.P., the students are admitted without following the norms prescribed by the Statute as well as the UGC. Accordingly, we are of the view that the Government should look into it and appropriate orders/circulars should be issued immediately commanding different universities and colleges aided as well as non-aided, containing following directions:

(i) No student shall be admitted in the college and universities beyond the sanctioned strength.

(ii) Director of Higher Education or the State Government as the case may be, shall sanction the teachers keeping in view the sanctioned strength of the students in the recognised courses of the universities, colleges receiving grant-in-aid and pay salary.

(iii) All those courses which are open under self-financing scheme, the universities as well as colleges shall at least pay minimum pay-scale admissible to teachers in accordance with Rules. The services of teachers appointed under the self-financing scheme, should be permitted to continue till continuance of course or satisfactory discharge of duty.

(iv) Since 2000 and onward, the Government has stopped the grant-in-aid and sanction of new course, even then Government shall ensure that Committee of Managements do not exploit the teachers and pay reasonable salary in contractual and ad hoc appointments in the recognised and affiliated colleges.

(v) Keeping in view the strength of students sanctioned prior to August, 2000, by the State Government, the Committee of management of Government aided colleges receiving grant-in-aid, be informed to send their proposal keeping in view the teacher-student ratio within specified period for sanctioning of posts for respective course by the Government.

4. Subject to the aforesaid observations the Division Bench (Supra) had further issued a mandamus directing the State Government to provide the teacher and staffs against the post sanctioned prior to the year 2000, the operative portion of the judgment is reproduce hereinbelow:

57. In view of the above, the writ petition deserves to be allowed. We allow the writ petition with following directions:

(I) Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 6.2.2012 passed by the Vice-Chancellor of the University, as contained in Annexure 1 to the writ petition, with all consequential benefits. The Vice-Chancellor of the University is directed to pass a fresh order keeping in view the observations made in the body of the judgment with regard to petitioner's service career expeditiously say, within a period of one month from the date of receipt of a certified copy of this judgment and till then, status quo shall be maintained in terms of the interim orders passed by this Court.

(II) A writ in the nature of mandamus is issued commanding the Government of U.P. to provide teachers keeping in view the sanctioned strength of students as done prior to August, 2000 (*supra*), after taking into account the Statutes of various universities, UGC guidelines, Government circulars laying down teacher-student ratio. The State Government shall also ensure that number of teachers should be such that every section of every subject possesses teachers to impart education in different years of the discipline to meet out the requirement.

(III) Respondent college shall engage part time teachers to meet out the requirement of 1556 students within a month to impart education for the session 2012-2013. However, henceforth the number of students in B. Com. and other courses shall be confined to the extent of sanctioned strength. The State Government shall also ensure that in each and every college of U.P., students are admitted only in terms of sanctioned strength and not beyond that. The colleges admitting students beyond sanctioned strength from the session 2013-2014 be de-affiliated by the Universities and the Government and recognition be withdrawn.

(IV) The Government of U.P. shall issue a Government order or circular communicating to all the universities and affiliated colleges as well as related Government Departments in terms of observations made in the body of the present judgment (para 53 and others) for maintenance of standard of education keeping in view the teacher-student ratio expeditiously say, within two months.

5. Sri Indu Prakash Singh, learned counsel for the petitioners has placed reliance in the case of *A. Manoharan and Others Vs. Union of India (UOI) and Others*, , whereby in the identical situation, the Hon"ble Supreme Court held that an order issued dealing with the matter having prospective effect, cannot be applied retrospectively. The relevant portion of the judgment reproduce hereinbelow:

Furthermore, the Regulations have been amended only with effect from 1.8.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto.

In view of the settled proposition of law the Director of Higher Education seems to be not justified in rejecting the payment of the salary. The impugned order at the face of record, seems to be passed incorrectly interpreting the Government Order dated 21.8.2000. Moreover, since the controversy has been settled by this Court (supra) the impugned order seems to not sustainable. In view of the above, the impugned order suffers from substantial illegality and is not sustainable. The writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 25.3.2011 passed by the Director of Higher Education, opposite party No. 2 with consequential benefits. A writ in the nature of mandamus is issued commanding the respondents to reconsider petitioners' claim with regard to payment of the regular salary in the light of observations made hereinabove and pass a speaking and reasoned order expeditiously say, within a period of three months from the date of production of certified copy of this order and communicate decision.

With the aforesaid direction, the writ petition allowed.