

(1992) 11 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 21091 of 1991

Gaya Prasad Singh

APPELLANT

Vs

Director of Education, Secondary, U.P. and Others

RESPONDENT

Date of Decision : 27-11-1992

Acts Referred:

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

Citation : (1993) 1 AWC 598 : (1993) 2 UPLBEC 886

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : Yogesh Agarwal, for the Appellant;

Final Decision : Disposed Of

Judgement

M.L. Bhat. J.

1. The Petitioner seeks a writ of mandamus commanding the opposite parties to designate the Petitioner as a Lecturer in Sociology in the Institution in question from 1978 or 4-1-1982 and to pay him the salary of the post of Lecturer from the said dates and to continue to pay him salary in future also. Further writ of mandamus is sought for creation of a post of Lecturer in Sociology in the Institution in question w.e.f. 1978 or from 1982.

2. The facts relevant for the decision of this petition are that the Petitioner was appointed as an Assistant Teacher for teaching in National Inter College. Pindari, Varanasi (hereinafter called the Institution in question) in the year 1959. In the year 1978, College was recognised for teaching Sociology. The Petitioner was assigned the job of teaching in Sociology since 1978. In 1979, the first batch of students in the subject of Sociology appeared in the Intermediate Examination held in the subject and since then, the students of the College are continuously studying and appearing in the Intermediate Examination in the subject of Sociology which is being taught by the Petitioner.

3. The recognition for teaching Sociology in the College was cancelled in the year 1980. The Petitioner was not informed about the cancellation and he continued to teach Sociology as required by the Management of the College. Subsequently, in the year 1982 the recognition was again granted to the College for teaching Sociology. Copy of letter dated 4-1-1982, which is Annexure "3" is annexed to the writ petition in this regard.

4. The Petitioner who is teaching in the subject of Sociology in the College is not being paid his salary as a Lecturer. He is said to have made several representations to the Collector Authorities and to the State of U.P. and Education Department which have not been considered. He has appended copies of representations made by him on 20-1-1984, 20-9-1986 and 4-8-1987. The Petitioner was not given salary which is payable to the Lecturer in Sociology. The Petitioner is discharging the functions of a Lecturer by teaching the subject of Sociology at Intermediate level. Therefore, he is entitled to get the salary of Lecturer's grade. The Petitioner is fully qualified to be appointed as Lecturer in Sociology and he in fact has been working as Lecturer. Management of the College has also written to the Authorities that the recognition for teaching the Sociology had been granted, therefore, the post of Lecturer in Sociology be created otherwise recognition for teaching Sociology in the College would become meaningless. The Petitioner seems to have approached the State Government through some member of the Legislative Assembly who was assured that necessary directions have been made to accede to the Petitioner's request. Under the provisions of law the Respondents can create a post of Lecturer for teaching Sociology and the Petitioner claims that the Respondents are duty-bound to make adequate arrangements for the students and are bound to create a post of Lecturer to enable the students to study the subject of Sociology which is a recognised subject in the College, w.e.f. the date of recognition of the subject of Sociology, the Petitioner is entitled to be treated as Lecturer. He claims equal pay for equal work because he is actually discharging the functions of a Lecturer.

5. The counter affidavit has been filed by the Respondents. It is submitted that the recognition for teaching the Sociology was granted to the College on the condition that no financial burden would be thrown on the State and that till further orders no post of Lecturer will be created nor will be any Lecturer appointed in the subject of Sociology. Therefore, the Petitioner can't be treated as a Lecturer because that involves payment of additional salary and would burden the State with extra expenditure which it could not undertake on account of the condition imposed in the order whereby recognition in the subject of Sociology was Initially granted.

6. In the order dated 4-1-1982 by which recognition to teach Sociology was again granted a condition has been incorporated which says that the State Government will not undertake any extra expenditure for paying higher salary to the Lecturer which posts can neither be created nor can anybody be appointed as

Lecturer. The teaching of Sociology was to be managed by the College itself through the members of staff who are already serving in the College.

7. The learned Counsel for the Petitioner has submitted that once the recognition to teach the subject was granted, State was bound to create a post of Lecturer w.e.f. the date of creation of the subject. The recognition to teach Sociology would become meaningless unless the subject is taught by a Lecturer and salary is paid to the said Lecturer in accordance with the rules. It is stated that since the Petitioner is discharging the functions of Lecturer by teaching Sociology subject to the Intermediate students, therefore he is entitled to draw lecturer's salary and is to be treated as a Lecturer for Sociology. It is submitted that recognition of subject of Sociology would impose an obligation on the State Government to treat the Petitioner as Lecturer in Sociology and they are obliged to create a post from 1978 or 1982 and from the date Petitioner started teaching Sociology he is entitled to draw the salary of Lecturer of Sociology.

8. Reliance is placed by the Petitioner on *Sita Ram Yadav v. District Inspector of Schools* 1990 ALR 144. In this Authority, an adhoc Lecturer was denied wages and till the said ad hoc Lecturer was replaced by a regularly selected candidate, the adhoc Lecturer was held to be entitled to get salary on the post against which he was appointed and he was also entitled to continue in the service till the regular selection for the post was made. Therefore, principle laid down in this Authority would not apply in the case of the Petitioner.

9. Reliance is also placed on *Karunapatl Mishra v. District Inspector of Schools, Jaunpur* 1986 UP LB EC 172. In this case, post itself was sanctioned by the Director in December 1976 for the subject. The recognition for teaching the subject was granted in 1974. The appointment was made for teaching the subject though the post was not sanctioned. Subsequently, post was sanctioned. The High Court held that sanctioning of post will be deemed from the date of recognition. In this Authority, High Court was mainly concerned as to whether the Petitioner in this case would be entitled to the payment of salary from the date of recognition when he was appointed as a Lecturer though the post was created latter in point of time. Creation of post was related back to the date of recognition. Therefore, this Authority also is on different account and would not help the Petitioner.

10. Mr. Agrawal, the learned Counsel for the Petitioner also produced for my perusal an unreported Authority in Writ Petition No. 7002 of 1989, *Committee of Management, Krishak Intermediate College Gaur Basti and Anr. v. Director of Education, U.P and Ors.* decided on 31-1-1991. In this case Management was authorised to appoint qualified teacher for teaching work. There was no need for obtaining sanction of post from the Authorities. However, payment of salary was not made to the person who was appointed in terms of the order Court held that the teacher should make a representation and his salary was held to be payable w.e.f. his date of appointment i. e. 12-9-1985. In this case authority was given to the Management for making appointment on the post of a teacher

appointment against which had become necessary because the subject was recognised. This judgment would not apply in the present case because of the embargo placed on the authority of the Management to get the post of Lecturer sanctioned from the state. The recognition was on the condition that teaching of the subject will be arranged through local teachers and no extra burden would be thrown on the State Ex-chequer by way of paying higher salary to the Lecturer. Therefore, this judgment is also distinguishable.

11. We are concerned with a case in which no post of Lecturer has been created but recognition to the subject is granted. Creation of post is opposed by the order of recognition of the subject. Therefore, unless a post is in existence or is created, the Petitioner can't seek writ of mandamus for being treated as Lecturer and again claim salary attached to the post of Lecturer in this writ petition.

12. Section 9 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 reads as under:

"Approval for post-No institution shall create a new post of teacher or other employee except with the previous approval of the Director, or such other officer as may be empowered in that behalf by the Director."

13. From the careful reading of this Section, it is manifestly clear that new post of teacher can be created only with the previous approval of the Director or such other officer as may be empowered in that behalf by the Director. For creation of a post, the Petitioner or the Institution i.e. the Respondent No. 4 has to make out a case before the Respondents No. 1 to 3 or before the Director as the case may be. Only after creation of the post of Lecturer, the Petitioner can claim consideration for appointment against such post. It is true that the Petitioner is discharging the functions of Lecturer by teaching in the subject of Sociology to the Intermediate students but that alone will not be ground for treating him as a Lecturer in the subject. There must be a post against which he can be treated to be working and therefore he will be entitled to get the salary which is attached to the post and if he is discharging the functions of a Lecturer, he can claim equal pay for equal work. In the absence of post, the Petitioner can't be given higher salary which is attached to the post of Lecturer which is still born.

14. For the reasons stated above, this Court cannot grant any mandamus to the Petitioner as prayed for. However, if the Respondent No. 4 or the Petitioner makes a representation for creation of the post, the said representation shall be considered by the Authorities concerned and thereafter Petitioner can claim the post of Lecturer if the same is approved in accordance with the provisions of law and he can claim equal pay for equal work and in this case that will be salary which is payable to a Lecturer in the subject of Sociology.

15. Accordingly it is directed that if the representation is made by the Petitioner or by the Management of the Institution for creation of a post in the subject of Sociology, said representation shall be considered by the concerned Authorities in

accordance with Section 9 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. If the creation of the post of Lecturer in Sociology is approved by the competent Authorities, the Petitioner shall be considered for being appointed against the said post and shall claim salary against the said post w.e.f. the date of his appointment against the said post.

16. There will be no order as to costs. The writ petition is finally disposed of with the aforesaid directions.