
(1998) 11 AHC CK 0088
In the Allahabad High Court
Case No : C.M.W.P. No. 33704 of 1996

Gopal Dubey

APPELLANT

Vs

District Inspector of Schools, Maharajgani and another

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 10(1), 3, 3(1), 3(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 2, 7, 7AA(2), 7AA(5), 7AA(6)

Citation : (1999) 2 AWC 962 : (1999) 1 UPLBEC 1

Hon'ble Judges : D.P. Mohapatra, C.J.;Sudhir Narain, J;R.R.K. Trivedi, J

Bench : Full Bench

Advocate : I.P. Srivastava and S.K. Verma, for the Appellant; S.C. and Ashok Mehta, for the Respondent

Final Decision : Disposed Of

Judgement

D.P. Mohapatra, C.J.—Faced with two Division Bench cases of this Court giving conflicting decisions, the learned single Judge by an order dated 16.10.1996 referred the case for decision by a larger Bench so that the difference can be resolved and the question settled by an authoritative pronouncement of the Court.

2. In Karunapati Misra v. District Inspector of Schools, Jaunpur and others 1986 UPLBEC 172, it has been held that the Board of High School and Intermediate Education. U. P. (hereinafter referred to as the Board) has granted recognition for a particular subject, it has to be assumed that the College can appoint a Lecturer in that subject. On the other hand, in Mahipal Singh Pawar v. State of U. P. (1992) 2 UPLBEC 1497, it has been held that it is the sole domain of the Director of Education to sanction and create posts of teachers and other staff as provided u/s 9 of the U. P. High Schools and intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act. 1971 (U. P. Act No. 24 of 1971) (hereinafter referred to as the Payment of Salaries Act).

3. On perusal of the aforementioned decisions, the question that arises for determination may be formulated thus :

Whether on recognition being granted by the Board in respect of a subject in an Institution u/s 7A of the U. P. Intermediate Education Act. 1921 (U. P. Act No. II of 1921) (hereinafter referred to as the Intermediate Education Act), it will be presumed that the post of Lecturer in such subject stands sanctioned by the Director of Education u/s 9 of the Payment of Salaries Act?

The answer to this question depends on interpretation of certain provisions of the Payment of Salaries Act and its interaction with the relevant provisions of the Intermediate Education Act.

4. The factual position of the case relevant for the present purposes may be stated thus :

Janta Intermediate College, Purandarpur, Maharajganj is a recognised Intermediate College. It was permitted by the Board to impart education in Intermediate classes in six subjects including Sociology vide letter dated 24.6.1980 of the Education Secretary of the Board (Annexure-1). The Institution is in receipt of grant-in-aid from the State Government. Feeling the necessity of a Lecturer in Sociology, the Committee of Management of the Institution wrote to the District Inspector of Schools, Maharajganj in 1980 to notify the post and to appoint a suitable person. Since the Inspector did not take the necessary steps in the matter, the Committee of Management took a decision to promote the petitioner Gopal Dubey, who was an Assistant Teacher L.T. grade in the Institution as Lecturer in Sociology by its resolution dated 30.12.1990. The requisite papers were sent to the Inspector to enable him to take necessary steps for payment of salary to the petitioner vide letter dated 15.1.1991 (Annexure-2). The Inspector did not take any step in the matter. The reminders sent by the Committee of Management and the representations submitted by the petitioner fell on deaf ears. As the petitioner has alleged in the writ petition, the Inspector verbally informed him that since the post of Lecturer in Sociology has not been created in the manner prescribed, therefore, he would not sanction the salary of Lecturer to the petitioner. It is asserted in paragraph 17 of the writ petition that the Board has granted recognition for teaching 6 subjects including Sociology in the Institution as early as in the year 1990, therefore, it has to be assumed that it was open to the Committee of Management of the Institution to appoint Lecturer in that subject. The petitioner contends that the post shall be deemed to have been created from the date of accord of recognition. He claims payment of salary of Lecturer right from 30th of December, 1990. Since the Inspector failed to carry out the statutory duty cast on him to pay his salary as envisaged under the Payment of Salaries Act, which is evident from the recalcitrance on his part to take any action on the request made by the Committee of Management and also the representations submitted by the petitioner, he filed the writ petition seeking a writ of mandamus directing the respondents to pay his salary in Lecturer's grade forthwith and also to pay his

arrear salary from 30.12.1990, citing the District Inspector of Schools Maharajganj and the Managing Committee of Janta Intermediate College through its Manager Bhupendra Nath Misra as respondents in the writ petition.

5. Repudiating the claim of the petitioner for payment of salary, the Inspector has taken the stand that the petitioner is not entitled to claim salary from the State Government since the post of Lecturer in Sociology said to have been held by the petitioner has not been created with the previous approval of the Director as required u/s 9 of the Payment of Salaries Act. It is the further case of the Inspector that creation of the post in the manner prescribed in Section 9 is sine qua non for fixing liability on the State Government for payment of salary to the petitioner and this precondition having not been fulfilled in the case, the Management of the Institution cannot claim reimbursement of the salary of the petitioner from the State Government.

6. On the case of the parties, as discussed above, the question formulated earlier arises for determination.

7. Before proceeding to consider the merits of the contentions raised on behalf of the contesting parties, it will be convenient to note some relevant provisions of the Payment of Salaries Act.

8. Section 2 (b) defines the term "Institution" to mean a recognised institution for the time being receiving maintenance grant from the State Government. "Maintenance Grant" is defined in Section 2 (c) to mean such grant-in-aid of the institution, as the State Government by general or special order in that behalf directs to be treated as maintenance grant appropriate to the level of the institution. Section 2 (e) defines "teacher" of an institution to mean a principal, headmaster or other teacher in respect of whose employment maintenance grant is paid by the State Government to the institution and includes any other teacher employed in fulfillment of the conditions of recognition of the institution or its recognition in a new subject or for a higher class or as a result of the opening with the approval of the inspector of a new section in an existing class. In Section 2 (g) "salary" of teacher or employee means the aggregate of the emoluments including dearness or any other allowance for the time being payable to him at the rate approved for the purpose of payment of maintenance grant. In Section 2 (h), it is provided that other words and expressions in the intermediate Education Act, 1921 (U. P. Act II of 1921) and not herein defined shall have the meaning assigned to them in that Act.

9. Section 3, which contains the provisions for payment of salary to a teacher or other employees of an Institution, provides, inter alia, (1) notwithstanding any contract to the contrary, the salary of a teacher or other employee of an institution in respect of any period after the thirty-first day of March, 1971, shall be paid to him before the expiry of the twentieth day, or such earlier day as the State Government may by general or special order in that behalf appoint, of the month next following the month in respect of which or any part of which, it is

payable. In subsection (2) it is laid down that salary shall, subject to the provisions of sub-section (3), be paid without deduction of any kind except those authorised by the Regulations or by any rules made under the Act or by any other law for the time being in force. Under sub-section (3) the Inspector is empowered, in case of default on the part of the management, to pay the same or cause it to be paid within ten days from the date mentioned in subsection (i) from the moneys credited to the account mentioned in subsection (1) of Section 4.

10. In sub-section (3) of Section 5 it is laid down that the entire amount of the maintenance grant and the amount of eighty per cent or such higher percentage as the State Government or an officer authorised by the State Government may by genera] or special order in that behalf determine, of the grants for reimbursement of freeships and other similar concessions shall also be paid by the State Government into the said account. In Section 9. It Is expressly provided that 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 to that behalf by the Director. Section 10 of the Act, which makes provision regarding liability in respect of salary, provides, inter alia, that the State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after March 31- 1971 and that the State Government may recover any amount in respect of which any liability is incurred by it under subsection (1) by attachment of the income from the property belonging to or vested in the institution as if It were an arrear of land revenue due from the institution. It is further provided in the said section that nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee.

11. Next, certain provisions of the Intermediate Education Act may be noticed.

12. Section 2 (a) defines "Board" to mean Board of High School and intermediate Education. In Section 2 (aaa) the term "Director" is defined to mean the Director of Education, Uttar Pradesh and except for purposes of Section 3, includes an Additional Director of Education.

13. Section 3, which makes provision regarding constitution of the Board provides, infer alia, that the Board shall consist of a Chairman which office shall be held by the Director, ex officio.

14. Section 7 of the said Act, enumerates power of the Board. In sub-section. (4) thereof one of the powers vested in the Board is to recognise institutions for the purposes of its examinations.

15. In Section 7A, which was substituted in the statute by amendment with effect from 14.10.1986 by U. P. Act No. XVIII of 1987, it is laid down that notwithstanding anything contained In clause (4) of Section 7, (a) the Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of subjects or for a higher class ; (b) the Inspector

may permit an Institution to open a new section in an existing class.

16. Section 7AA, which was inserted by U. P. Act XVIII of 1987 makes provision for employment of part time teachers or part time instructors. It provides, *inter alia*, that notwithstanding anything contained in this Act the management of an institution may from its own resources employ : (i) as an interim measure part time teachers for Imparting instructions in any subject or group of subjects or for a higher class for which recognition is given or in any section of an existing class for which permission is granted u/s 7A ; (ii) part time instructors to impart instructions in moral education or any trade or craft under socially or useful productive work or vocational course. Sub-sections (2) to (5) lay down preconditions for appointment of a part time teacher. In sub-section (6) of Section 7AA it is provided that nothing in the Act shall preclude a person already serving as a teacher in an institution from being employed as a part time teacher or a part time instructor u/s 7AA. In this connection a provision in the Regulations framed under the Intermediate Education Act is relevant. In Regulation 19 under Chapter II of the Regulations, it is laid down that where any person is appointed as, or any promotion is made on any post of head of Institution or teacher in contravention of the provisions of this Chapter or against any post other than a sanctioned post, the Inspector shall decline to pay salary and other allowances, if any, to such person where the Institution is covered by the provisions of the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 and in other case shall decline to give grant for the salary and allowance in respect of such person. At this stage it is relevant to note that as the statement of the object of the Act states the statute was enacted to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education in the United Provinces, and to prescribe courses therefore.

17. From the provisions of the two Acts and the Regulations noted above, the scheme of things that emerges is that the Board constituted under the U. P. Intermediate Education Act is the competent authority to accord recognition to an institution for the purposes of its examinations in subjects specified in the sanction order as provided in Section 7. The Board is also empowered u/s 7A to accord recognition to an institution in any new subject or group of subjects or of a higher class with prior approval of the State Government.

18. The Payment of Salaries Act, on the other hand, is an Act to regulate the payment of salaries of teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the State funds and to provide for matters connected therewith. An Institution under the said Act means a recognised institution for the time being receiving maintenance grant/grant-in-aid from the State Government. In respect of such an institution, the State Government takes the liability to pay salary to the teachers and the other employees of the institution. A teacher or employee, in order to claim the benefit

of payment of salary under the said Act has to fulfill certain conditions prescribed under the statute. The Management of the Institution, in order to claim reimbursement of salary of its teachers and employees, is also to fulfill the conditions prescribed under the Act. 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. In the present case the distinction between a new post and an existing post is not relevant because it is not disputed that the post of Lecturer to which the petitioner claims to be promoted/ appointed is a new post created in the year 1990. No dispute was raised before us regarding applicability of Section 9 to the case.

19. The argument of Sri S. K. Verma, learned Senior Advocate appearing for the petitioner, was that since the Director of Education is ex officio Chairman of the Board under the Intermediate Education Act and the Board has accorded recognition to the Institution with Sociology as one of the subjects, it is to be presumed that he (the Director) has sanctioned the post of Lecturer for the subject. This contention does not commend acceptance. Section 9 of the Payment of Salaries Act expressly mandates that 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. Since the statute requires the thing to be done in a particular manner, then it has to be done in that manner or not at all. It follows, therefore, that prior approval of the Director in writing must be obtained before the management creates a new post of teacher in the recognised Institution. The requirement of the statute cannot be presumed because the Director happens to be the authority or one of the authorities concerned in the matter of accord of recognition for opening a new subject in a College. It is relevant to note here that recognition for opening a subject in a College is accorded by the Director under the provisions of the intermediate Education Act, which is a statute to establish a Board to regulate and supervise the system of High School and Intermediate Education in Uttar Pradesh, prescribe courses therefore and oversee related activities ; whereas the Payment of Salaries Act is enacted to regulate the payment of salaries to teachers and other employees of the High Schools and intermediate Colleges and to provide for matters connected therewith. The two statutes, in our considered view, operate in different fields. While dealing with matters like recognition and payment of salary of teachers and other employees relevant matters to be taken into consideration are different. Regarding recognition, the authority has to satisfy itself about necessary infrastructure, the facilities available in the Educational Institution, the benefit to the students of the locality in opening the new subject in the Institution, the potentiality of the Institution to cater to the needs of the students of the locality, etc. While dealing with the question of granting approval for creation of a post of a teacher or other employee in an Institution, the primary consideration is the preparedness of the State Government to bear the financial

liability of the new post proposed to be created. It follows, therefore, that the contention that since the Director is associated with the matter regarding grant of permission/ recognition for opening new subject in the Institution, it is presumed that he has given his consent for creating new posts of teachers and other employees for that subject is not correct. This contention, if accepted, may lead to situation that the management creates posts of teachers and other employees in connection with the new subject and the State Government is compelled to bear the financial liability without any further involvement in the matter. Such a situation, as we read the provisions of the two enactments, is not contemplated. It also does not appeal to common logic. 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.

20. Coming to the decisions of this Court taking conflicting views on the point, as noticed earlier in *Karnnapati Mishra v. District Inspector of Schools, Jaunpur* and other 1986 UPLBEC 172, it was held that since the Board had admittedly granted recognition for teaching Hindi in the College in 1974, it has to be assumed, therefore, that it empowered the College to appoint Lecturer in that subject. In that case, this Court held that since the appointment in question was made in pursuance of the order of recognition and it was clear from the appointment letter of the petitioner that he was appointed against a clear vacancy, therefore, the contention that the appointment was made against a post which was not sanctioned was rejected. The Court further held that the post shall be deemed to have been created from the date of recognition. With respect, we do not agree with the decision.

21. On the other hand, the decision of this Court In the case of *Mahipal Singh Pawar and others v. State of U. P. and others* , has our approval. In that case, it was held, inter alia, that a perusal of Section 7A of the U. P. Intermediate Education Act, 1921 and Section 9 of the U. P. Act XXIV of 1971 would clearly go to show "that the fact that the Institution is approved and recognised by the Board for the first time or any new subject or group or for a higher class or addition of selection to an existing class shall have no effect unless it is approved by the State Government", that is. Director of Education. It was further observed in that decision that Section 3 of the Payment of Salaries Act provides that the Committee of Management is also equally responsible for payment of salary to the teachers/employees in their Institutions. It is relevant to point out in this connection that Section 7AA of the Intermediate Education Act enables the management to engage teachers for imparting instructions in any subject or group of subjects for a higher class for which recognition is given or any section of an existing class for which permission is granted u/s 7A notwithstanding anything contained in that Act and also in the Payment of Salaries Act (See Section 7AB). We must not be understood to say that a teacher or other

employee appointed by the management for teaching a new class or section or a new subject for which recognition has been granted is not entitled to receive salary. What we have held is that before saddling the State Government with financial liability in respect of such posts the approval of the Director has to be obtained. In the absence of such approval, the State Government cannot be said to be under any obligation to pay salary to such staff. The view taken by us gains support from the decision of the Supreme Court , in the case of Director of Education and others Vs. Gajadhar Prasad Verma, , in which the Apex Court, interpreting the provisions of the Payment of Salaries Act, ruled that prior approval of competent officer for creation of post is a condition precedent for getting reimbursement of the salary of teacher/employee of High School. The relevant observation in paragraph 4 of the judgment is quoted hereunder :

"Be that as it may, the crucial question is whether the school of the respondent can claim reimbursement of the salary of such Clerk from the Government? The U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act XXIV of 1971 (for short "the Act"), regulates the payment of the salary by the Government. Section 9 is relevant in that behalf. It provides that no institution shall create a new post of teacher or other employee except with the previous approval of the Director or such officer as may be empowered in that behalf by the Director. Admittedly, no steps have been taken by the Management to have obtained prior approval of the Director or any other authorised officer for creation of the additional post of Clerk. The prior approval of the Director or the empowered officer is a condition precedent and mandatory for creation of an additional post (sic) the Government had before it the relevant date of the posts for which the grant of aid was sanctioned.

..... Therefore, the failure to obtain prior approval disentitles the Management to obtain reimbursement of the salary of such teacher or other employee."

22. In view of the above discussion, the answer to the question formulated by us is that on recognition being granted by the Board in respect of a subject in an Institution u/s 7A of the U. P. Intermediate Education Act. 1921, it will not be presumed that the post of Lecturer in such subject stands sanctioned by the Director of Education u/s 9 of the Payment of Salaries Act.

23. In the case in hand indisputably, no prior approval of the Director was obtained before appointment of the petitioner as Lecturer in Sociology. Therefore, his claim for payment of salary by the State Government is unsustainable. The management of the Institution also is not entitled to reimbursement of the salary paid to the petitioner from the State Government in the absence of approval of the post. However, it will be open to the management to send a proposal to the Director for the grant of approval to the post held by the petitioner and if such proposal has already been received by the Director, he will consider the same in accordance with the provisions of the Act, the Rules and the law and pass appropriate orders expeditiously within three months.

24. The writ petition is disposed of with the above direction. There will be no order for costs.