

**(2006) 07 AHC CK 0113**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 49142 of 2002

Harendra Pratap Singh and Rajendra Prasad Mishra

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

**Date of Decision :** 21-07-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 47

Constitution of India, 1950 — Article 226, 43

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

Uttar Pradesh Intermediate Education Act, 1921 — Section 7AA, 7BB

**Citation :** (2006) 7 ADJ 129 : (2006) 4 AWC 3652 : (2006) 3 UPLBEC 2480

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Advocate :** Anil Kumar Misra, Indra Raj Singh and Om Prakash Singh, for the Appellant; C.M. Shukla and S.C., for the Respondent

## Judgement

Arun Tandon, J.—Heard Sri Indra Raj Singh, Advocate on behalf of petitioner, and learned Standing Counsel on behalf of respondent Nos. 1, 2, 4 and 5. Respondent No. 3 is represented by Sri C.M. Shukla, Advocate,

2. This writ petition was listed before this Court on 19th July, 2006. In the revised reading of the cause list, learned Counsel for the petitioner was present. However, learned Counsel for the respondent No. 3 was not present. In such circumstances this Court passed an order directing that the matter may come up on Friday i.e. 21st July, 2006 as unlisted with a further direction to the learned Counsel for the petitioner to inform Sri C.M. Shukla, Advocate about the case being placed in the unlisted cause list on Friday i.e. 21st July, 2006.

3. Today Sri Indra Raj Singh, learned Counsel for the petitioner has produced a copy of the notice forwarded to Sri C.M. Shukla, Advocate in writing informing that the case is being placed before this Court as unlisted matter today. On the notice so forwarded an endorsement has been made by Sri C.M. Shukla, Advocate to the effect that he has no instruction in the matter. The notice has

been kept on record. The writ petition is, therefore, being decided in absence of respondent No. 3.

4. This writ petition was initially allowed under the judgment and order of the Hon'ble High Court dated 25th April, 2003. However, the State not being satisfied with the judgment and order of the Hon'ble High Court dated 25th April, 2003, filed Special Leave to Appeal (Civil) 15464 of 2004, which was subsequently converted into Civil Appeal No. 301 of 2006 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, by means of the judgment and order dated 6th January, 2006 allowed the Civil Appeal filed by the State and set aside the judgment and order of the Hon'ble High Court. It has been further directed that the writ petition be decided afresh, expeditiously by the High Court.

5. In compliance of the judgment and order of the Hon'ble Supreme Court of India, the matter is accordingly being decided finally.

6. Petitioners, who are two in number filed original suit No. 583 of 1992 for a declaration that they were lawful teachers of L.T. Grade in Sri Narottam Brahm Intermediate College, Sundar Pur, Azamgarh and for a further direction commanding the defendants to ensure payment of salary to the petitioners from the date of appointment i.e. 25th July, 1990. The District Inspector of Schools, Azamgarh, the State of U.P. through Collector, Azamgarh and the management of the institution were impleaded as defendants in the said suit.

7. The suit was decreed by the trial court vide judgment and order dated 30th July, 1997. Against the said judgment and decree of the trial court, an appeal was filed on behalf of the management of institution, which was numbered as Misc. Appeal No. 184 of 1998, before the District Judge, Azamgarh. The State respondents did not challenge the judgment and decree of the trial.

8. The appeal of the management was dismissed and therefore, the management did not question the judgment and decree of the trial court any further by way of second appeal. Therefore, the judgment and decree passed by the Trial Court dated 30th July, 1997 has become final between the parties.

9. The said judgment and decree was put to execution being Execution Case No. 9 of 1998. In the Execution Case an application was filed on behalf of the State respondents u/s 47 of the CPC stating therein that the decree was in executable, inasmuch as there was no sanctioned post in the institution against which the petitioners could have been appointed and therefore, no liability of payment of salary can be fastened upon the State respondents, in view of the provisions of U.P. High School & Intermediate College (Payment of Salaries of Teacher and Other Employees) Act, 1971 (hereinafter referred to as the Act of 1971).

10. The objection so filed has been allowed by the Trial Court vide order dated 24th September, 2001, and it has been held that the decree passed by the trial court is not executable, inasmuch as no posts had been created in the institution

against which the petitioners can claim appointment.

11. Feeling aggrieved by the said order of the executing court, the plaintiff-petitioners filed revisions being Civil Revision No. 101 of 2001 and Civil Revision No. 102 of 2001. The revisions so filed by the petitioners have also been dismissed under order of the Additional District Judge (Court No. 8), Azamgarh vide order dated 23rd October, 2002. It is against the order of the Executing Court as well as against the order of the Revisional Court holding that the decree passed by the trial court earlier is inexecutable, that the present writ petition has been filed.

12. Learned Counsel for the petitioners submits that even assuming without admitting that there were no sanctioned post in the institution against which the petitioner could be appointed, even then the management of the institution, having appointed and having taken work, cannot evade the responsibility of making payment of salary for duties discharged by the petitioners. It is submitted that even if it is held that there are no sanctioned posts, and no appointment in accordance with the Statutory Rules, which regulate appointment on such sanctioned post, it cannot be said that the management had no authority to take work on its own by appointing such teachers or staffs like the petitioners. If such teachers or staffs are appointed by the management of the institution, the management becomes responsible for payment of salary to such teachers or staffs, out of its own resources inasmuch as "Begari" has been prohibited under the Constitution of India. It is submitted that the Executing Court as well as the Revisional Court failed to appreciate the aforesaid aspect of the matter while holding that the decree in question is inexecutable.

13. Learned Standing Counsel on the other hand submits that so far as the State respondents are concerned, no liability for making payment of salary can be fastened in absence of the sanctioned posts against which the petitioners can claim appointment. Therefore, the order passed by the Executing Court as well as by the Revisional Court holding that the decree passed by the trial court is inexecutable, in so far as it pertains to state defendants, cannot be said to be illegal so as to warrant any interference under Article 226 of the Constitution of India.

14. I have heard counsel for the parties and have gone through the records of the writ petition.

15. It is no doubt true that liability for making payment of salary to teachers and staffs of recognised and aided intermediate college under the provisions of U.P. High School & Intermediate College (Payment of Salaries of Teacher and Other Employees) Act, 1971 (U.P. Act No. 24 of 1971) can be fastened upon the State Government only in respect of appointments which are made against duly sanctioned/created posts (Reference Section-9 of the U.P. High School & Intermediate College (Payment of Salaries of Teacher and Other Employees) Act, 1971 ). It is necessary that the appointment should be made, strictly in

accordance with the statutory rules, which regulate such appointment in respect of recognised High Schools and Intermediate Colleges, governed by the U.P. Intermediate Education Act, 1921 as well as other enactments applicable to such institutions,

16. In view of the aforesaid statutory provisions, this Court has no hesitation to record that the order passed by the Executing Court as well as the order passed by the Revisional Court holding that the decree in question is inexecutable against the State-respondents for want of sanctioned posts being available in the institution against which the petitioner can claim appointment, cannot be faulted with and the order passed to that extent is affirmed and declared that the decree against State-respondents the decree is inexecutable.

17. However, this leads us to the issue as to whether the management of the institution (private respondent), which had challenged the decree of the trial court by way of first appeal and had lost, could also deny the fruits of the decree, which has been granted in favour of the plaintiffs-petitioners in the facts and circumstances of the case.

18. So far as the sanctioned posts in Intermediate College are concerned, appointments thereto can be made by the management of the institution only in accordance with law, which regulate such appointments for example U.P. Secondary Selection Commission Board Act (U.P. Act No. 5 of 1982) (in respect of the minority institutions in accordance with the provisions of U.P. Intermediate Education Act).

19. However, in respect of appointments, which are not against duly created by the State, it is always open to the management of the institution to engage such persons for discharging the duties, as they may like. If the management makes such appointments outside the posts, which have been created under the Statutory provisions, the provisions of U.P. High School & Intermediate College (Payment of Salaries of Teacher and Other Employees) Act, 1971, cease to be applicable and such appointments are necessarily to be regulated in accordance with the terms of contract between the management of the institution and the persons so appointed.

20. Reference in that regard may also be had to Section 7-AA & 7-BB of the U.P. Intermediate Education Act, which provide for appointment for part time teachers in recognised Intermediate Colleges to whom the provisions of U.P. Act No. 24 of 1971 i.e. and that of U.P. Act No. 5 of 1982 are not attracted and Management is obliged to make payment for the services obtained from such appointees from its own resources.

21. In this legal back ground the execution of the decree against the private defendant (management) has to be examined.

22. In the facts of the present case from the judgment and decree passed by the trial court is apparent that the plaintiff-petitioners were appointed in the

institution and had in fact worked in the institution. The management of the institution had taken work from the plaintiff-petitioners and therefore, management is under legal obligation to make payment for the work so obtained from the plaintiff-petitioner. "Begari" has specifically been prohibited under the Constitution of India (Reference Article 43 of the Constitution of India). In such circumstances the plaintiff-petitioners cannot be denied fruits of the decree, which has been passed against the management of the institution and to that extent the order passed by the Executing Court as well as by the Revisional Court cannot be legally sustained in eyes of law.

23. Accordingly it is held that so far as the judgment and decree passed against the management of the institution is concerned, the same is executable against the management of the institution only.

24. The writ petition is partly allowed. It is held that the decree may be executed in accordance with law against the management only. Accordingly the Execution Case No. 09 of 1998 is restored to its original number. The trial court may proceed against the management of the institution alone for execution of the decree, strictly in accordance with law. The said exercise may be completed within six months from the date a certified copy of this order is filed before the trial Court.