

(1997) 05 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16085 of 1997

Kali Prasad Singh and Ors.

APPELLANT

Vs

State of U.P.,Ministry of Education) Basic,through its
Secretary & Ors.,

RESPONDENT

Date of Decision : 20-05-1997

Acts Referred:

Citation : (1997) 05 AHC CK 0085

Hon'ble Judges : S.K.Phaujdar, J

Final Decision : Dismissed

Judgement

S. K. Phaujdar, J.—A Scheme under the name ANAUPCHARIK SHIKSHA YOJNA (Nonformal Education Scheme) was adopted by the State Government to provide education to every citizen. The Government Order was issued for the appointment of Supervisors and Instructors to carry out the purpose of the Scheme in different villages. Applications were invited to fill in the post. The petitioners claimed that they were selected and were appointed as Instructors on different dates. There was nothing in the appointment letters to indicate any specific period for which such appointment was made. The only condition was that in case the doors of the centres are found closed during any inspection, then the appointment could be open to termination without any notice. The petitioners had been continuously discharging their duties as Instructors in their respective centres but there was no security of job. The respondents have asked them morally not to come after 30/4/1997. There had been no written order in this regard. The Nonformal Education Centres have not been wound up nor has the Scheme been abandoned. Accordingly, the petitioners claimed that the respondents be directed not to interfere in the functioning of the petitioners as Instructors in the respective centres where they are presently working.

2. An objection was taken by Sri Pushpendra Singh the Additional Chief Standing Counsel with reference to two judgments touching similar points. The judgments are not reported. One was recorded in W.P. 1117 (S/S) of 1993 decided by the

Lucknow Bench of this Court. The other is also a decision of the same Bench in W.P. No. 3497 (S/S) of 1994. In both these cases it was held that the persons who were working as Instructors had no legally enforceable right to continue on the post of Instructor under the aforesaid scheme and, accordingly, no writ of mandamus could be issued. On behalf of the petitioners, it was contended that the State Government could not discriminate on the question of renewal of the terms of appointment of the petitioners and reliance was placed on the case reported in AIR 1996 SC 864 in which it was held that when it was a professional engagement and not appointment in government service, incumbent was not entitled to continue in service till attaining the age of superannuation. But in considering the question of renewal of appointment the State Government acted arbitrarily when it had refused renewal on nonexistent grounds.

3. The appointment letter, as per Annexure1 to the petition, indicates that the selection of petitioner No. 1 as an Instructor was made and he was directed to report at the Nonformal Educational Centre at Bankat. The second annexure indicates that the petitioner No. 1 was called upon to join the scheme again in July, 1991 as the Scheme was to be started again. He was to report at Bankat and he was to be paid an honorarium of Rs. 105/ per month. He was not to get any other sum and it was clearly mentioned that he was not entitled to claim regular appointment on the basis of this invitation. Annexure3 is in respect of the petitioner No. 2. It is dated 2581995 and is again an invitation to this petitioner whose name was in the panel and he was directed to join the said centre at Katahi. It was clearly indicated that this invitation could entitled him to work upto 3041997 only. Annexure4 relates to the third petitioner. It is dated 1081993. It also indicates that she was to get an honorarium of Rs. 105/ and nothing more and would not be entitled to claim regular appointment. Through annexure5, Kali Prasad (Petitioner No. 1) was again invited to work upto 3041997 and similar was the Annexure6 whereby Shakuntala Singh was invited again to join her centre for a period till 3041997.

4. From the very nature of repeated calls to join as Instructors it appears that the Scheme is not a continuous one. Whenever there is a sanction for the Scheme, the persons from the selected panel are invited to work for certain period against an honorarium with clear indication that they would not get any lien against the post to claim permanency in those posts in terms of engagements as those were more in the nature of honorary service against honorarium and less or not in the nature of service under the government ad hoc, temporary or permanent. The question of arbitrariness has only been argued but nothing has been averred in the petition as to how the actions are arbitrary. In past also invitations were given for a definite period and such engagements ended with that period. Further invitations were given again for another period. There is nothing to indicate that the petitioners are being discriminated against and they are not being given invitation while others are so offered. I do agree with the decision of this Court in the two cases quoted above and hold that there is no legally enforceable right in the petitioners to claim

continuity of service. However, in case the Scheme continues and the respondents consider inviting persons for working as Instructors, the respondents must not act arbitrarily or in a discriminatory manner. This is the only direction that could be granted. But continuity of service may not be directed in terms of the averments made in the petition.

5. In the result, this writ petition stands dismissed with the aforesaid observations.