
(2009) 02 AHC CK 0096

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52766 of 2006

Keshav Prasad Sen and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 02 AHC CK 0096

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the parties.

2. Petitioner nos. 2 to 17 are Class IV employees of Madhyamik Shiksha Parishad, Allahabad. Petitioner no.1 claims to be President of Union of Class IV employees of Madhyamik Shiksha Parishad, Allahabad. In the writ petition as well as in the counter affidavit petitioners have been termed as regular labourers/employees.

3. It appears that due to increasing workload of Madhyamik Shiksha Parishad it was felt necessary to increase the number of employees accordingly through Government Order dated 17.06.1974 copy of which is Annexure 1 to the writ petition 95 posts of Class IV employees were sanctioned in the pay scale which was admissible to Class IV employees at that time. The said posts were described in the said G.O. as temporary posts of regular labourers. It was provided in the said G.O. that Governor was pleased to sanction/approve creation of the said posts from the date of appointment till 28.02.1975. Para 2 of the said Government Order is important according to which it was provided that the holders of the said posts apart from pay would be entitled to dearness allowance and other allowances and benefits admissible to other Class IV employees as per orders of the Government from time to time. Under paragraph 3 of the said G.O. it was provided that on the newly created 95 posts only such persons would be appointed who were working for long time as daily wager labourers/workmen.

4. The period prescribed by the aforesaid G.O. was extended later on indefinitely and further posts were added to the said cadre. Details of creation/sanctioning of fresh posts have been given in para 3 A of the counter affidavit. 195 similar posts were created/sanctioned on 29.07.1981, thereafter, 60 posts on 28.04.1995, again 60 posts on 08.04.1997 and lastly 52 posts on 09.06.1998 were created/sanctioned. Meanwhile from 1980 to 1981, 9 more posts had been created/sanctioned through three Government Orders. In this manner total number of newly created post became 471.

5. The petitioners were appointed on different dates from 1989 to 1992. However, one of them Uma Nath petitioner no.8 was appointed on 24.06.1980. The persons appointed as above got all the monetary benefits payable to other permanent Class IV employees including increment promotion, promotional grade, Selection grade and time pay scale etc. It has been stated in the writ petition that some of them were promoted to Class III posts also.

6. The Government on 30.03.2001 issued a Government Order copy of which is Annexure 2 to the writ petition through which regular labourers (i.e. Class IV employees appointed as above) were held entitled to time pay scale also as they were entitled to all other monetary benefits admissible to permanent employees. After the said Government Orders time pay scale was paid to those regular employees who fulfilled the criterion in accordance with the said G.O. Consequent specific order was passed on 09.05.2001 by Deputy Secretary of Education Board U.P. Allahabad giving a list of 11 employees who were entitled to the time pay scale copy of which is Annexure 2 A. Another order was issued by Madhyamik Shiksha Parishad, Allahabad on 10.07.2001 granting time pay scale to 7 more regular labourers. Thereafter, through order dated 18.05.2002 passed by Madhyamik Shiksha Parishad, Allahabad one more increment in the time pay scale was granted to Uma Nath, petitioner no.8 as he had completed more than 10 years at that time.

7. Thereafter, on 22.03.2006 a Government Order was passed cancelling earlier Government Order dated 30.03.2001. In the said Government Order it was mentioned that regular labourers working in Madhyamik Shiksha Parishad were according to the rules not entitled to time pay scale. It was further directed that additional amount paid under the time pay scale should be recovered from them. The said Government Order has been challenged through this writ petition. Consequent order of recovery was passed on 24.04.2006 by Madhyamik Shiksha Parishad, Allahabad which has also been challenged.

8. However, Secretary Madhyamik Shiksha Parishad, Allahabad wrote to the Government for reconsidering the Government Order dated 22.03.2006 on 01.05.2006. However, the Government through order dated 31.05.2006 (Annexure 8 to the writ petition) reiterated its stand of cancellation of order of 30.03.2001. The said order has also been challenged.

9. In the counter affidavit no plausible reason has been given for not extending

the benefit of time pay scale to the regular labourers appointed under G.O. dated 17.06.1974. Rather it has been stated in this regard as follows:

"But when the senior regular labourers working in the Parishad have been absorbed in IV class posts the selection pay scale was to be given on the basis of 10 years service and as such they can not be given the selection pay scale that the pay scale of senior and juniors are the same and juniors have been given Selection pay scale and as such problems have been created in the Parishad and office hence order dated 27.03.2001 was passed granting benefit of time scale".

10. The counter affidavit at the top of it states to be on behalf of respondent nos. 2 and 4 i.e. Secretary and Regional Secretary Madhyamik Shiksha Parishad, Allahabad. Counter affidavit has been filed by Santosh Kumar Mishra, Deputy Secretary (Samadesh) in the office of Madhyamik Shiksha Parishad, Allahabad. In para 1 of the counter affidavit it is mentioned that deponent has been authorised to file the present counter affidavit on behalf of respondent nos. 1, 2, 3 and 4. The figures 2 and 4 are typed and figures 1 and 3 have been added thereafter by pen and signed by the deponent.

11. First half portion of para 3C is quoted below :

"That it is relevant to mention here that thereafter a new Government Order no.3805/1520128(24)/94 dated 01.02.2003 has been issued directing therein that the regular Shramik are not entitled for time pay scale and in whose favour orders have already been passed, kindly cancel the same and recover the said amount from the said employees and in pursuance of the same letters dated 08.09.2003, 01.12.2003, 29.03.2004, 20.05.204 and 23.10.2004 have been written from the office of the answering respondents to the Government requesting to cancel the Government Order dated 01.02.2003 and also requested to sanction the time pay scale to the regular Shramiks in view of the Government Order dated 30.03.2001 and several times the officials of Board office contacted the Government alongwith all relevant records thereafter vide government Order no.412/1520628(24)/94 dated 22.03.2006 direction has been issued that the regular labourers working in the Madhyamik Shiksha Parishad, Allahabad are not entitled for time pay scale".

12. Thereafter, it is mentioned in the aforesaid para that Madhyamik Shiksha Parishad, Allahabad through letter dated 01.05.2006 requested the Government to reconsider the matter but Government refused to cancel the GO dated 22.03.2006.

13. Similarly in para 14 of the counter affidavit it has been stated that petitioners are entitled to time pay scale but in view of Government Order it cannot be granted.

14. The Government order dated 01.02.2003 mentioned in para 3C of the counter affidavit has not been annexed.

15. State of U.P. is respondent no.1 in the writ petition. Counter affidavit has

been filed by learned Chief Standing counsel for the State. Learned standing counsel for the State argued the matter. It is very strange that in the counter affidavit absolutely nothing has been stated on behalf of State in justification of Government Order dated 22.03.2006. Respondents nos. 2 and 4 being Secretary and Regional Secretary of Madhyamik Shiksha Parishad, Allahabad have fully supported the case of the petitioners. In para 1 of the counter affidavit it is stated that deponent i.e. Deputy Secretary of Madhyamik Shiksha Parishad, Allahabad was authorised to file counter affidavit on behalf of State also.

16. There does not appear to be absolutely any reason for not extending the benefit of time pay scale to the regular labourers appointed under the G.O. of 1974 and to withdraw the same after 5 years. In the Government Order of 1974 it was mentioned that IV class employees appointed under the said Government Order would be entitled to all the monetary benefits like other Class IV employees. In fact all other monetary benefits are being extended to them. In this view of the matter the G.O. dated 22.03.2006 and consequent orders denying benefit of time pay scale and withdrawing the said benefit already granted through G.O. dated 22.03.2001 is wholly arbitrary, discriminatory, unjustified and not supportable by any provision of law.

17. Accordingly writ petition is allowed. Government Order dated 22.03.2006 and the consequent orders are quashed. No amount paid under time pay scale to the regular employees appointed under G.O. dated 17.06.1974 and subsequent similar G.Os. shall be recovered and they shall be paid time pay scale after becoming entitled for the same depending upon the length of service. The arrears shall positively be paid within six months failing which 1.5% per month interest on the arrears shall be payable since after six months till actual payment.