

(2019) 11 UK CK 0189

In the Uttarakhand High Court

Case No : Writ Petition No. 501 Of 2019 (S/S)

Krishan Kumar And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 26-11-2019

Acts Referred:

Citation : (2019) 11 UK CK 0189

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, Xitij Kaushik, N.P. Sah, Sachin Mohan Mehta

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1. By means of present writ petition, following prayer has been made by the petitioners:

(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to forthwith disburse the arrear of salary and other benefits from the year March 2010 till date, alongwith interest payable at the rate of 18% per annum on arrears.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to disturb the working of the petitioners and not to put any hindrance on the functioning of the petitioners in the institute which is admittedly a grant in aid institution.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to continue to pay the salary to the petitioners in future as well.

2. Brief facts of the case are that the petitioners are working as Head Master, Assistant Teachers, clerk and peon in the education department in different posts in the Gramin Vidhya Niketan, Junior High School, Mannakhedi, District Haridwar,

which is a Grant-in-Aid School. The Government of Uttarakhand on 04.03.2014 took a decision to grant a total 11 numbers of schools the status of grant-in-aid institutes. The name of the petitioners' institute was placed at serial no.3 in the list of schools which came under the purview of the Grant-in-Aid. After being accorded the sanction and status of grant in aid institution by the State Government some unknown persons made complaint to the Director, Elementary Education with regards to anomalies in school and raised objections on granting status of grant-in-aid. After receiving the said complaint, the Chief Education Officer submits a 13 point report in regard to brining of Gramin Vidya Niketan within purview of Grant in aid. In pursuance of the order of the Director, the Chief Education Officer appointed the District Education Officer to submit the 13 pointer report, who after making a field visit in the school premises and after checking of the records submitted its detailed report to the Chief Education Officer on 13.08.2014, who in turn forwarded the same alongwith its letter to the Director Elementary Education on 21.01.2015.

3. It is contended that in the report dated 13.8.2014 submitted by the District Education Officer, it is made clear that no anomalies were found by the District Education Officer on all of the 13 points upon which the enquiry was ordered by the Director. In point 2(1) of the report it was specifically clarified that prior to taking of the school in purview of Grant in Aid the present petitioners were appointed against the sanctioned post as name of the petitioners have been mentioned in the said report. It is alleged that the said report was submitted by the District Education Officer and there is no reason to disbelief the same as it was never challenged at any forum. Thus, it is clear that the petitioners were working against the sanctioned post and on these sanctioned posts the petitioners were brought under the purview of Grant-in-Aid and, as such, the institute fulfilled all the regulations which were needed to get such status.

4. Learned counsel for the petitioner would submit that the school was being run by the Committee of Management wherein some dispute arose between two fractions of the Committee Members and also the term of earlier Committee of Management had come to an end, therefore, the Additional Director (Primary Education) Garhwal Mandal vide its order dated 27.01.2015 appointed the District Education Officer, Haridwar as an Authorized Controller to manage the affairs of the school and the District Education Officer took charge as Authorized Controller on 06.02.2015. He also submits that the Director (Intermediary & Basic) Education Department, Dehradun vide Government Order dated 01.02.2016 informed that the process of creation of the post and thereafter to grant salary to the employees has been kept pending with the consent of the Hon'ble Governor as there are several deficiencies. The process was kept pending with the certain restrictions. The process in respect of the institute where the petitioners are working has been kept pending due to some complaints which was being enquired by the District Magistrate, as the deficiency pointed out in the Institute is only that there are some complaints which are enquired by the District Magistrate, Haridwar.

5. Learned counsel for the petitioners would further submit that the Joint Magistrate, Roorkee was appointed as Enquiry Officer on the complaint of one Mr. Avnish Kaushik to enquire the matter and after due enquiry the Joint Magistrate, Roorkee submitted its report vide letter dated 9.03.2016 observing that complaint made by Mr. Avnish Kaushik is prima facie false and baseless. Thereafter, another complaint was made by one Mr. Vijay Pal Singh and Mr. Avnish Kaushik along with other persons and this complaint was made to the Chief Education Officer, who thereafter directed the Block Education Officer, Narsan, Haridwar to conduct enquiry on such complaint. The Block Education Officer after completion of inquiry submitted his detailed report on each and every allegation raised by the complainants and found that the complaint is totally false and baseless and recommended that there is no need of any further process. Thereafter, once again Mr. Vijay Pal Singh make a complaint before the State Government and the State Government further forwarded the matter to the competent authority to do the needful and inquire into the matter. Thereafter, on 12.09.2016, the Chief Education Officer Haridwar submitted its report to the Director, Basic Education, Uttarakhand Dehradun stating therein that the complaints are false and baseless. The Director, Basic Education, Uttarakhand sent the said report to the Secretary, School Education, Uttarakhand vide its letter dated 21.09.2016. Thereafter, on 30.11.2016 without considering all the records and reports of enquiry, the Additional Secretary without any authority raised an objections asking for details and once again wrote to the Director, Elementary Education giving the reference of letter of Director dated 21.09.2016 and in continuation to the same letter, the office of respondent no.1 without any authority, raised an objection to give details in the light of Government Order dated 01.06.2016.

6. Learned counsel for the petitioner would further submit that The Director, Basic Education requested the Secretary vide letter dated 29.12.2016 wherein he enclosed all the enquiries reports categorically stating that the complaints were false and baseless, therefore, the respondent department once again requested the Government to take the decision in the matter with regards to payments of salary to the employees of the said institute. He would further submit that the petitioners under Right to information Act procured information from the Finance Department and the information was furnished to the petitioners by supply of noting in Departmental Diary dated 4.01.2017, which bring to light that in pursuance of the aforesaid complaint of Mr. Avnish Kaushik, the same has been found to be false and baseless. It is contended that at the bottom right corner of the noting approval grating funds for 2016-17 is written. He would further submit that after approval to disburse the funds to the institute vide noting dated 04.01.2017, the authority sat over the matter and no salary was paid to the petitioners. He would further submit that the petitioners have been continuously working in the institute without any payment of salary since 2014. He would further submit that despite the noting in the order dated 04.01.2017 in regard to disbursement of funds or salaries, no funds have been disbursed as yet.

7. On the other hand, learned Standing Counsel would submit that the since the school was to be granted only token grant and not the full grant under the scheme, the salary with interest being claimed is not admissible. He would further submit that the only temporary posts were sanctioned after the institute was to be taken under the token scheme and the said grant was suspended by the Government Order dated 29.06.2015. He would further submit that the said institute was not under full grant in aid scheme.

7. To this, learned counsel for the petitioners would submit that by the order dated 04.03.2014 the institute was brought under the purview of grant in aid which was full grant in aid and this order itself shows that the same has been sanctioned by the Finance Department. He would further submit that the Secretary vide order dated 19.7.2019 informed the Director, Primary Education that the suspension imposed upon the institute dated 29.06.2015 has now been removed. He would further submit that in said order dated 19.07.2019, the Secretary, nowhere gives reference in respect of any token grant to the institution. Learned counsel for the petitioners placed reliance upon the Government Order dated 19.7.2019, whereby the suspension as imposed upon the petitioners institution has been revoked, however, no whisper has been made by the respondents with regard to the nonpayment of the salaries of the petitioners.

8. Heard learned counsel for the parties and perused the material available on record.

9. Perusal of the Government order dated 04.03.2014 would reveal that the institute, where the petitioners are working, was granted a full status of grant-in-aid institution as the same was sanctioned by the Finance Department. Thereafter, by the order dated 29.06.2015, the order dated 4.02.2014 was kept under suspension due to complaints made by some peoples. The Director, Basic Education, Uttarakhand requested the Secretary vide letter dated 29.12.2016, wherein he enclosed all the enquiry reports making clear that the complaints were false and baseless and the petitioners also got information from the Finance Department by supply of noting in Departmental Diary dated 4.1.2017, which clearly indicates that the complaint of Mr. Avinish Kaushik is found to be false and baseless. The report dated 11.03.2016, which is addressed to Additional Chief Secretary sent by District Magistrate, Haridwar would reveal that the District Magistrate, on the complaint of one Avnish Kaushik has appointed the Joint Magistrate, Roorkee to enquire the matter and the Joint Magistrate, Roorkee in its report clearly stated that the allegations in the complaint against the institute are false and baseless. Further the Government appointed Additional Director, Secondary Education, Garhwal Mandal, Pauri as enquiry officer in the matter and in compliance of the said order the Additional Director submitted his detailed report and on that report the suspension order of the grant was cancelled. Perusal of the report dated 07.11.2017, whereby the Director (Elementary Education) sent letter to Deputy Secretary (Secondary Education) would reveal

that no anomalies were found in the said institution. Perusal of the order dated 19.07.2019 would reveal that the said order has passed only because there is no anomaly or deficiency found within the institute in which the petitioners are imparting education and now when the suspension order, which was earlier imposed upon the petitioners institution has been revoked, then the petitioners are entitled to get the payment of salaries including the arrears since March, 2014.

10. In view of the above discussion, the writ petition is allowed. Respondents/ competent authority is directed to release the salary and other benefits of the petitioners since the day the petitioners' institution has been brought under the purview of Grant-in-Aid i.e. March, 2014 within a period of two months from the date of production of certified copy of this order.

11. No order as to costs.