

(1978) 03 AHC CK 0080
In the Allahabad High Court
Case No : Civil Misc. Writ No. 172 of 1977

Mahanand Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 28-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 2, 3
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A

Citation : (1978) AWC 446

Hon'ble Judges : S.D. Agarwala, J;K.N. Singh, J

Bench : Division Bench

Advocate : G.C. Dwivedi, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Singh, J.—Petitioners 1 to 9 are teachers while Petitioners Nos. 10 to 14 are peons employed in the Kisan Higher Secondary School, Sarpatipur, district Allahabad. These Petitioners have invoked the jurisdiction of this Court under Article 226 of the Constitution for the issue of a writ of mandamus directing the State of Uttar Pradesh, Director of Education and the District Inspector of Schools, Allahabad, and also the Manager of the institution to make payment of their salary according to the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 24 of 1971, and also to quash the order of the State Government dated 8th October, 1976, challenging its earlier order sanctioning grant-in-aid to the institution.

2. In 1966 the institution concerned was a Junior High School, it was receiving grant-in-aid from the State Government. In 1972, the institution was raised to the Higher Secondary standard and was given recognition by the Board of High School and Intermediate Education in accordance with the provisions of Intermediate Education Act, 1921. But no grant-in-aid was sanctioned by the

State Government in respect of the High School classes. It appears that there was some complaint against the institution as a result of which grant-in-aid for the Junior High School classes was suspended under the orders of the State Government dated 13th November, 1975. On a recommendation made, by the Director of Education, the State Government by its order dated 29th November, 1975, sanctioned the grant-in-aid to the said institution in respect of the High School Classes. Lateron, it was discovered that the order of the State Government was passed in ignorance of the fact that the institution's grant-in-aid in respect of the Junior High School had been suspended. The State Government has taken a policy decision in its order dated 10th December, 1969, that no institution whose grant-in-aid for Junior High School was suspended shall be entitled to grant-in-aid for Higher Secondary School. It appears that the Director of Education was unaware of the order of the State Government dated 13th November, 1975 when he made recommendation for the sanction of the grant-in-aid for the Higher Secondary School, When this mistake was detected the Director of Education wrote a letter to the Government pointing out the error. The State Government by its order dated 8th October, 1976, cancelled its earlier order dated 13th November, 1975, sanctioning grant-in-aid to the institution in respect of High School classes. The order of the State Government has been challenged not by the Committee of Management but by the employees who are not being paid their salary.

3. The Petitioners who are in the employment of the institution contend that they are not being paid their salary even though they have been working in this institution. They have further asserted that in view of the provisions of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, (hereinafter referred to as the 1971 Act) the liability of payment of salary to the Petitioners is on the State Government and since it has not bees paid to them since along, the State Government has failed to act in accordance with Section 3 of the 1971 Act, hence, they are entitled to a mandamus. On behalf of the State Government and the District Inspector of Schools counter-affidavits have been filed and it has been asserted that since the institution is not receiving maintenance grant from the State Government in respect of High School classes the 1971 Act is not applicable and the State Government is not liable under section, 3 of the said Act to pay salary to the Petitioners. The Respondents have further contended that no teacher of an institution employed for the purpose of teaching students upto Junior High School classes is entitled to salary under the 1971 Act and the State has no liability to pay salary to such teachers.

4. Section 3 of the 1971 Act lays down that salary of a teacher or other employees of the institution in respect of any period after 31st day of March, 1971, shall be paid to him within the period prescribed by the State Government. Section 10 further provides 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. These provisions make it amply clear that

the State Government is liable for payment of salary after 31st March, 1971, in relation to the employment of a teacher or other employees of an institution covered by the said Act. The expression "institution" as defined by Section 2(b) of 1971 Act means a recognised institution for the time being receiving grant-in-aid from the State Government. The expression "maintenance grant" as defined in Clause (c) means such grant-in-aid of an institution as the State Government may by general or special order in that behalf direct to be treated as maintenance grant appropriate to the level of the institution. Liability of the State Government is confined only in respect of those institutions which are recognised by the Board of High School and Intermediate Education and which receive maintenance grant from the State Government. If either of these two conditions are not satisfied the liability of the State Government to pay salary of the employees of such institutions would not be there. There is no dispute that in the instant case, the institution is not receiving any maintenance grant from the State Government. In the circumstances the institution is not covered by the definition of the said expression. Consequently the State Government is not liable to pay salary of teachers of the institution.

5. Learned Counsel for the Petitioners contended that since the institution receiving grant-in-aid in respect of Junior High School classes, the State Government is liable under the 1971 Act to pay salary to the Petitioners. In this connection it is urged that the institution concerned is a recognised High School Institution, although it is receiving grant-in-aid only upto the level of Junior High School classes. The argument appears plausible, but on a careful scrutiny of the provisions of the Intermediate Education Act, 1921, and the 1971 Act, we are unable to accept the contention. The Intermediate Education Act, 1921 does not regulate or supervise Junior High School classes, instead the Act was enacted to regulate and supervise the High School and Intermediate Education in the State, Section 16-A of the 1921 Act lays down that for every recognised institution, there shall be a scheme of administration which shall provide among other things for the constitution of the Committee of Management. All the provisions contained in the said Act seek to relate to High School and Intermediate Colleges. There is no provision in the said Act for regulating the administration or teaching of students of Junior High School standard. The contention that since the Basic and Junior High School classes are supervised by the same committee of management as constituted u/s 16-A of 1921 Act, therefore the Junior High School classes are included within the definition of High School cannot be accepted in view of the law laid down by the Supreme Court in *Commissioner Lucknow Division v. Kumari Prem Lata Misra* AIR 1977 SC 334. In *Prem Lata Misra*'s case the Supreme Court held that the provisions of the U.P. Intermediate Education Act, 1921 relate to recognised institutions and recognition by the Board is for the purpose of preparing candidates for the Board's examinations which means the Board of High School and Intermediate Education. The basic Section of a High School was not, held to be part of recognised institution. Similarly, Junior High School which may be part of a High School cannot be a

part of a recognised institution. In the circumstances the 1971 Act does not create a legal liability on the State Government for the payment of salary to the teachers of Junior High School. The Petitioners are therefore not entitled to any mandamus.

6. Learned Counsel for the Petitioners then referred to our judgment in Civil Misc. Writ No. 448 of 1977 (Ram Surat Singh v. State) decided on 10-1-1978, and urged that since this Court had directed the District Inspector of Schools to pay salary to the employees of the institution who were employed in the Junior High School section, the Petitioners are also entitled to the same relief. It is noteworthy that in Ram Surat Singh's case, the Standing Counsel appearing for the State Government and the District Inspector of Schools conceded that the Petitioners in that case were entitled to their salary. In fact the Standing Counsel appearing in that case gave an undertaking on behalf of the District Inspector of Schools that the salary of the Petitioners in that case shall be paid to them. It was on the basis of the undertaking that the order was passed. However, in the instant case, the learned Standing Counsel has not given any such undertaking, instead he has disputed the Petitioners' claim for salary. The Petitioners cannot derive any assistance from our judgment in Ram Surat Singh's case.

7. The challenge to the Government Order dated 8-10-1976 at the instance of the Petitioners is misconceived. As already noted, the Committee of Management has not challenged the order of the State Government cancelling its earlier order sanctioning the grant-in-aid to the institution. The Petitioners who are employees of the institution have no locus standi to challenge the order of the Government. Moreover, the grant-in-aid is given to an institution by the State Government in accordance with the instructions contained in the U.P. Education Code. The provisions contained in the Education Code are not statutory, instead the Code consists of administrative instructions issued by the Government from time to time which have been compiled in the Code for the purpose of departmental guidance. Since the grant-in-aid to the Junior High School was suspended the Respondents were justified in refusing to sanction grant-in-aid to the Junior High School classes. We find no illegality in the order of the State Government dated 8-10-1976.

8. In the result the petition fails and is accordingly dismissed, but there will be no order as to costs.