
(2005) 12 AHC CK 0123
In the Allahabad High Court
Case No : Writ Petition No. 8558 of 2001

Mangla Prasad Mishra

APPELLANT

Vs

D.I.O.S., Jaunpur & Ors.

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Citation : (2005) 12 AHC CK 0123

Hon'ble Judges : V.C.Misra, J

Final Decision : Allowed

Judgement

V.C. Misra, J.—Heard Sri B.S. Pandey, learned Counsel for the petitioner, learned standing Counsel for the State of U.P. and perused the record.

2. This writ petition has been filed challenging the impugned order dated 2022001 passed by respondent No. 1 (Annexure No. 9 to the writ petition) with prayer to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 2022001 (Annexure No. 9 to the writ petition) and further to issue a mandamus commanding the respondents to pay the arrears of salary admissible with other consequential benefits for the post of Principal. The petitioner has been working as officiating principal with effect from 171999 the date he took over the charge of the post of Principal. In spite of all the representation and several requests made by him, the salary for the post of officiating principal was not paid to the petitioner.

3. No counteraffidavit has been filed on behalf of the respondents inspite of several opportunities having been granted to the respondents by this Court. Lastly, vide order dated 2272005, the respondents were again granted three weeks" time and no more to file counteraffidavit, but no counteraffidavit has been filed till date.

4. It is settled law as laid down in AIR 1966 Alld. page 156; AIR 1962 Alld. page 407 AIR 1987 SC page 479 1993 Supp. (4) SCC page 46 and 1999 (82) Factory Law Report page 709, that if no affidavit in rebuttal is filed and the averments

made in the affidavit are not controverted then the said averments must be accepted as true and correct drawing the presumption in favour of the petitioner in terms of Section 114 Illustration (g) of the Evidence Act, 1872 and Order VIII, Rule 5 of the Code of Civil Procedure, 1908. In the absence of counteraffidavit, this Court is left with no option but to accept the averments made in the petition to be correct and true.

5. Learned Counsel for the petitioner has submitted that it is settled law that the teacher officiating on the post of principal is entitled to receive salary for the post of principal by the judgment/Order dated 1811982 passed by this Court. Learned Counsel for the petitioner has relied upon the judgments of the Division Bench of this Court in the cases of Narbadeshwar Misra v. The District Inspector of Schools, Deoria & Ors., reported in 1982 UPLBEC 171 and Dhaneshwar Singh Chauhan v. District Inspector of Schools, Badaun, reported in 1980 UPLBEC 286, followed by subsequent authorities consistently holding the same.

6. In view of the aforesaid facts and circumstances of the case, the writ petition is allowed with cost. The impugned order dated 2022001 (Annexure No. 9 to the writ petition) is hereby quashed. The respondents are directed to release the salary of the petitioner on the post of officiating principal with effect from 171999 till 2092001 within a period of two months alongwith interest at the rate of 6% per annum from the date of production of a certified copy of this order.

7. It is open for the State of U.P. to recover the amount of interest and cost from the concerned official due to whom the exchequer has been burdened by the same.