
(2014) 05 AHC CK 0041
In the Allahabad High Court
Case No : C.M. W.P. No. 61522 of 2012

Meena Manral

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Citation : (2014) 6 ADJ 132 : (2014) 105 ALR 104 : (2014) 5 AWC 4648 :
(2014) 3 ESC 1750

Hon'ble Judges : Rajan Roy, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : L.C. Srivastava and Neeraj Srivastava, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

Amreshwar Pratap Sahi and Rajan Roy, JJ.—The petitioners were engaged under a non-formal education scheme on temporary basis against newly created post of Project Officer in the pay-scale of Rs. 770/- to Rs. 1600/-. In the year 2001, the Government of India took a decision to abolish the said scheme of non-formal education and initiated another scheme in the name of E.G.S./A.I.A. Consequent to the abolition of the scheme, the petitioners were faced with a situation of termination of their services. In these circumstances, a writ petition being Civil Misc. Writ Petition No. 42806 of 2000 was filed by Pradeshiya Pariyojna Adhikdari, Anopcharik Shiksha Sangh, U.P., which was disposed of on 9.10.2000 with a direction to the State Government to consider the representations of the petitioners. The said representations came to be dismissed by the State Government on 23.3.2001. However, the State Government taking a lenient view passed an order on 24.3.2001, by which the petitioners, i.e., the Project Officers, who were not having any lien anywhere, their services were decided to be absorbed as Assistant Teachers in L.T. Grade instead of terminating their services and in pursuance of the said decision, the petitioners were adjusted against the said post in Government Inter Colleges in the pay-scale of Rs. 4,500-7,000/-. Not being satisfied with the aforesaid orders dated 23.3.2001 and 24.3.2001, the

petitioners approached this Court by filing various writ petitions, which were clubbed together and decided on 5.4.2002. The order dated 23.3.2001 was quashed. This Court was of the view that as the Government had not addressed itself to factors relevant to the question as to protection of pay and status, the same should be remitted to the State Government for reconsideration. Accordingly, the order dated 23.3.2001 was quashed. The matter was remitted to reconsider the feasibility of protection of pay and status of the petitioners after taking into reckoning of the relevant factors stated in the judgment and, if necessary, to modify its order dated 24.3.2001 accordingly. Thus, essentially the Court was of the view that while absorbing the petitioners as assistant teachers in L.T. Grade, the State Government had not considered the pay and status commensurate with the post of Project Officer, which was being held by them earlier and accordingly, the aforesaid directions were given.

2. A perusal of the aforesaid judgment makes it amply clear that the order dated 23.3.2001 was quashed and the matter was remanded to the State Government to reconsider the feasibility of "protection of pay and status of the petitioners after taking into reckoning all the relevant factors stated in the said judgment and if necessary to modify its order dated 24.3.2001, accordingly."

3. The said judgment was challenged by the State Government before the Supreme Court by means of Civil Appeal No. 8658 of 2002 and connected appeals, which were dismissed on 1.12.2011. The order passed by the Supreme Court is being quoted hereinbelow:

Having heard learned Counsel for the parties and perused the impugned judgment, we are of the opinion that the direction by the High Court to the Government to consider the question of protection of pay and status of the writ petitioners in the light of the observations made in the impugned judgment, does not warrant our interference with the impugned judgment. Accordingly, the appeal is dismissed.

However, having regard to the fact that the issue is hanging fire for over 10 years, we would request the authorities concerned to take a final decision in the matter, as expeditiously as practicable and in any case, not later than 6 months from the date of receipt of a copy of this order.

In view of the order passed in the appeal, all applications for impleadment and intervention are rendered infructuous and are disposed of accordingly.

CIVIL APPEAL NO. 631 of 2007

In light of the order passed in Civil Appeal No. 8658 of 2002 arising out of SLP(C) No. 12422 of 2002 [@ C.M. W.P. No. 18619 of 2001], this appeal also merits dismissal. We order accordingly. However, in so far as the enforcement of order dated 5th September, 2002 passed by the High Court of Uttarakhand at Nainital in terms of the subsequent order dated 8th June, 2004 passed in Civil Contempt Petition No. 96 of 2003 is concerned, it will be open to the parties to pursue

appropriate remedy as may be available to them in this behalf.

4. After the aforesaid matter attained finality, the opposite parties considered the matter and passed an order on 27.9.2012, whereby the petitioners were granted the revised pay scale corresponding to the pay scale of post of Project Officer/ Assistant Project Officer after seeking approval of the finance department. The relevant extract of the order dated 27.9.2012 is being quoted hereinbelow:

5. Still not being satisfied, the petitioners filed instant writ petition challenging the aforesaid order dated 27.9.2012 on the ground that the State Government has not properly considered their cases in the light of the earlier judgment of this Court dated 5.4.2002. It has been contended on behalf of the petitioners that while passing the impugned order, the State Government has failed to apply its mind to the aspect of grant of status equivalent to the post of Project Officer/ Assistant Project Officer and has erroneously granted pay scale of the said post assuming that by doing so, the equivalent status has also been automatically confirmed.

6. While entertaining this writ petition, an interim order was passed on 27.11.2012, by which the operation of the impugned order dated 27.9.2012 was stayed leaving it open for the State Government to pass appropriate orders dealing with the issue. However, no such decision has been taken by the State Government during the pendency of the writ petition.

7. On 9.3.2014, after hearing the matter at length, this Court had passed the following order:

By means of this writ petition the petitioners have challenged the order dated 27.9.2012 passed by the State Government in-purported compliance of the earlier judgment of the Apex Court dated 1.12.2011 passed in Civil Appeal No. 8658 of 2002 and connected matters.

By means of the impugned order as per the State Government the claim of pay and status of the post of Project Officer/Assistant Project Officer have been granted to the petitioners who have been absorbed as L.T. Grade Assistant Teachers. However, the grievance of the petitioners is that under the judgment dated 1.12.2011 their case for grant of status equivalent to the post of Project Officer was required to be considered which has not been done by the State Government.

The contention is that in view of the said judgment they are entitled to be considered for being absorbed on the post equivalent to the post of Project Officer, namely, D.I./A.D.I./D.I.G.S. and to be given salary in the pay scale corresponding to the said post which has not been done in the instant case.

Sri Sashi Nandan, learned Senior Counsel appearing for the petitioners in one of the matters has invited the attention of the Court to certain recommendations made by Under Secretary, Education Department, Government of U.P. to the State Government by which he has proposed that the post of Deputy Basic

Education Officers in the pay-scale of Rs. 6000-10500/- which are vacant should be kept vacant and the absorption of the petitioners should be considered against the said post which are equivalent to the earlier post of Project Officer.

The contention is that this recommendation has not been considered and the impugned order has been passed in a mechanical manner.

Put up this matter on Tuesday next, i.e., 13.5.2014.

Learned Counsel for the respective parties shall address the Court on the issue that what would be the modality for absorbing the petitioners on a post equivalent to the post of Project Officer as also the feasibility by such an exercise keeping in view the relevant service rules applicable to the said post and the promotional opportunities etc. of the Feeder Cadres as also the nature of duties to be performed.

8. Today, the matter has been heard again on the issue of according status equivalent to the post of Project Officer/Assistant Project Officer.

9. After hearing learned Counsel for the petitioners as also the learned standing Counsel for State and after perusing the material on record including the affidavits filed, we are of the view that the State has not considered the matter strictly in accordance with the observations of this Court made in the earlier judgment dated 5.4.2002. Under some misconception, it has arrived at the conclusion that by absorbing the petitioners in L.T. Grade as Assistant Teachers and granting the revised pay-scale in respect of the pay-scale of the erstwhile post of Project Officer, status of Project Officer/Assistant Project Officer also stood conferred. Learned Counsel for the petitioners have contended that under the non-formal education scheme, they were not performing a teaching job but were exercising supervisory functions, whereas their absorption has been made on the post of Assistant Teachers in L.T. Grade, which is a teaching post. Learned Counsel for the petitioners have also invited the attention of the Court to a recommendation dated 23.6.2010 made by the Under Secretary, Department of Education to the State Government, a copy of which is annexed as Annexure-6 to the writ petition. The relevant extracts of the said recommendation are as under:

10. On an overall consideration of the facts and circumstances of the case, we find that the impugned order does not show any consideration of the observations made in the report of the Under Secretary as quoted hereinabove. The relevant aspects noted by us in the order dated 9.5.2014 have also not been adverted to by the State Government while taking the impugned decision.

11. The reasons given in the impugned order for granting of status of Assistant Teacher in L.T. Grade does not appear to be sound. The State has not considered the relevant aspects of the matter, as directed by this Court on 5.4.2002 and as has been noticed by us in the order dated 9.5.2014.

12. In the aforesaid circumstances, the impugned order, in so far as it relates to the grant of status of Assistant Teacher in L.T. Grade to the petitioners is

concerned, is not sustainable and the same is quashed, and so far as the grant of status equivalent to the post of Project Officer/Assistant Project Officer was concerned, the same requires no interference at this stage.

13. Consequently, we direct the State Government to reconsider the matter pertaining to the issue of grant of equivalent status to the petitioners as ordered by this Court in its judgment dated 5.4.2002 by considering all the relevant aspects of the matter including the recommendation dated 23.6.2010 against existing post or any other equivalent post. It shall be open for the petitioners also to file appropriate representation stating therein their version before the State Government. The State Government shall take a decision in this regard within a period of three months from the date of production of a certified copy of this order before it and in the event, the claim of the petitioners is accepted then all consequential benefits flowing therefrom shall also be granted to them. The pay protection granted under the order dated 27.9.2012 shall be subject to the fresh decision to be taken as aforesaid.

14. The existing status of the petitioner shall continue till the aforesaid decision is taken by the State Government. The writ petition is partly allowed.