

(2002) 07 AHC CK 0106
In the Allahabad High Court
Case No : C.M.W.P. No. 22643 of 2000

Misri Lal and Others

APPELLANT

Vs

District Basic Education Officer and Others

RESPONDENT

Date of Decision : 19-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 AWC 2625 : (2003) 1 UPLBEC 287

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Suman Jaiswal, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—This petition under Article 226, Constitution of India, has been filed by three Class IV employees (Bechu Lal petitioner No. 6, Keshlal petitioner No. 7, Indrajeet petitioner No. 8), three Assistant teachers (Misri Lal petitioner No. 1, Kamla Kant petitioner No. 3 and Jabar Singh petitioner No. 4) and Devendra Kumar Singh petitioner No. 2 Head Master of recognised privately managed/ Government aided "Sohan Lal Junior High School, Roopnaraipur (hereinafter called "the School") governed by the provisions of U. P. Basic Education Act and Rules framed thereunder.

2. Petitioners contended, inter alia amongst other, that petitioners were appointed by the Management on their respective posts, working continuously therein and paid salary under law. The college was brought on grant-in-aid list w.e.f. March, 1996 ; the concerned District Basic Education Officer,, Kaushambi, fixed their salaries refusing to accord benefit of annual increments by giving credit of annual increments on the basis of their length of services.

3. Being aggrieved, the petitioners filed Writ Petition No. 32137 of 1999 and this Court, vide judgment and order dated 3.8.1999, directed the Zila Basic Shiksha Adhikari to decide the representation preferably within two months in accordance

with law.

4. The petitioners filed representation before respondent No. 1 on 28.8.1999 (Annexure-1 to the writ petition) ; the Zila Basic Shiksha Adhikari vide impugned order dated 23.2.2000 (Annexure-2 to the writ petition) decided aforementioned representation ignoring relevant rules and without considering documents produced by the petitioners.

5. At the outset, it may be noted that petitioners have not given full particulars in the petition ; namely, date of their appointment, approval, etc. even the date chart filed in the writ petition is complete eyewash and cryptic. Petitioner also did not implead Committee of Management of the school in spite of the petitioners'' Impleadment Application No. Nil of 2002 having been rejected with liberty to file proper application, if so advised vide this Court order dated 17.7.2002.

6. In fact, the petition can be dismissed summarily on the above score. Considering that matter relates to teaching and non-teaching staff of Junior High School who claim proper fixation for their salary, and this Court does not propose to adjudicate the question itself, it is deemed appropriate that matter be sent back to the concerned authority to decide the matter afresh.

7. Respondent Nos. 1 and 2 claim to have filed a short counter-affidavit instead of filing regular parawise reply to the counter-affidavit. This practice is to be deprecated. There is no procedure/provision contemplating filing of short counter-affidavit or in piece-meal. This is not a healthy practice but developed in the recent past and used many times to delay the hearing of the case must be stopped.

8. A party who files a short counter-affidavit, why he cannot file a regular counter-affidavit? Short counter-affidavits do not help in deciding the case expeditiously, rather proved an obstacle. The respondents in such cases invariably plead that they have not filed their complete pleadings by way of regular counter-affidavit. Such practice, therefore, must be abandoned, particularly when there is no order of Court for filing short counter-affidavit. Moreover, it should not be taken that by filing short counter-affidavit, concerned party is not required to file regular counter-affidavit until Courts direct for filing it. Filing of short counter-affidavit cannot be an excuse for delaying the proceedings.

9. Short counter-affidavit of respondent Nos. 1 and 2 is not on record and a carbon copy of it has been placed before the Court for perusal. Court proceeds to decide the petition finally on its basis as counsel for other side has no objection to it. Office to trace/locate and restore the same to the file.

10. Learned counsel for the petitioner states that no rejoinder-affidavit is required to be filed and case may be decided on the basis of the record as such.

11. Further, it is shocking that respondent No. 1 did not care to file regular counter-affidavit in spite of receiving notice about two years back and just came

with a short counter-affidavit which is absolutely perfunctory and contains no material/ pleadings worth the name except extending an excuse that papers are not available to him inasmuch as they have not been supplied by the management. This cannot be appreciated. Office of Zila Basic Shiksha Adhikari is not dependent or subject to the mercy of a Management of Junior High School.

12. It is alleged by the respondents that management did not furnish certain documents. This is a lame excuse. Office of Zila Basic Shiksha Adhikari must have in his custody relevant information in the papers received by his office regarding grant in aid for the management.

13. Learned counsel for the petitioner referred to the following. Annexure-S.A. 1 purports to be the list of teaching and non-teaching staff of the school duly verified by the Basic Shiksha Adhikari/respondent No. 1. This list contains names of all the petitioners, posts held by them, their qualification, date of initial appointment, pay scales, etc. Annexure-S.A. 2 purports to be the copy of the Government order dated 15th July, 1999, whereby earlier Government order dated 13th July, 1992, was superseded and which clarified that teachers' emolument, which he or she was receiving before institution came into grant-in-aid list, shall not be reduced. In this context, reference may be made to paras 1, 2 and 3 of the said Government order.

14. Learned counsel for the petitioner referred to the impugned order dated 23.2.2000 (Annexure-2 to the writ petition). In para 2 of the said order, it is mentioned that Manager of the School did not produce documents. In para 3, it is mentioned that grant-in-aid was extended to the School on the application of the management accepting departmental terms and conditions/rules. In para 4 of the said order, it is mentioned, that without specifying number, date and other particulars of departmental and Government rules/orders which required fixation of salary at the latest stage of admissible pay scale when a school was brought on grant-in-aid list. Lastly in para 5, it is mentioned that teaching members of the school were not paid salary according to the provisions of Payment of Salaries Act prior to March, 1996.

15. Learned counsel for the petitioner is correct when contends that details of relevant particulars of departmental and Government orders/rules have not been disclosed. Perusal of the impugned order shows that the impugned order in question is conspicuously silent on this aspect. Impugned order is, thus, not speaking order. No one, including the petitioners, can find out as to which is the Government order/rule on the basis of which their salaries have been fixed at initial stage ignoring past service. The officer concerned ought to have disclosed number and date of the Government orders to which he was referring in the impugned order.

16. As far as the question of the management not producing document, in spite of being demanded by the said authority is concerned, there is no doubt that Basic Shiksha Adhikari has ample power to compel the management to comply

with its order, viz., the power to resort to single operation, or to proceed to get authorised controller appointed or withdrawal of recognition and/or stoppage of grant-in-aid etc. Basic Shiksha Adhikari could otherwise make a spot inspection of the institution to gather correct information required for the purpose.

17. In any view of the matter, employees cannot be deprived of their lawful and rightful claim due to non-cooperation on the part of the management.

18. The Basic Shiksha Adhikari in para 5 of the impugned order observes that employees were not paid salaries prior to March, 1996, according to the Payment of Salaries Act. If that be so, this Court fails to appreciate as to how the institution was extended benefit of grant-in-aid even though the management was not following the terms and conditions of receiving recognition. Therefore, that could not be the basis for depriving teachers from their lawful fixation in the pay scale after school is brought on grant-in-aid, i.e., March, 1996.

19. In view of the above, impugned order dated 23.2.2002 is liable to be quashed.

20. In the result, impugned order dated 23.2.2002 is hereby quashed. Consequently, a direction is issued to respondent No. 1 to decide representation afresh after affording opportunity to the petitioner and the management, if he so desires in accordance with law and on the basis of relevant material brought on record by the concerned parties as may be available in its office and the observations/directions contained in this judgment.

21. In case the management fails to co-operate with the Basic Shiksha Adhikari, he shall supersede the management and appoint authorised controller under direction of this Court for the duration during which the representation as directed below, is finally decided.

22. Petitioners are directed to file a certified copy of the judgment along with complete copy of the petition, supplementary-affidavit, short counter-affidavit with all annexures upto date before respondent No. 1 within one month from today and if such a representation, as stipulated above, is filed, the respondent No. 1 shall decide the same within two months by means of a speaking order exercising its unfettered discretion without being influenced by any of the observations made in this order in accordance with law, particularly, keeping in mind the provisions of the Government order dated 15th July, 1999, referred to in the supplementary-affidavit as Annexure-S.A. 2 and such other Government orders as may be relevant.

23. Writ petition stands allowed subject to the observations/directions made above.

24. No order as to costs.