

**(2000) 11 AHC CK 0111**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 29097 of 1998**

Mohammad Fuzail Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 30-11-2000

**Acts Referred:**

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 9

Uttar Pradesh Intermediate Education Act, 1921 — Section 7A

**Citation :** (2001) 1 AWC 465 : (2001) 2 UPLBEC 1117

**Hon'ble Judges :** V.M. Sahai, J

**Bench :** Single Bench

**Advocate :** K.M. Sinha, P.K. Ganguly and P.A. Ansari, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

V. M. Sahai, J.—The only question in this petition is whether the petitioner who has been appointed by the management on 7.7.1997 on the post of Lecturer Urdu, in absence of any creation or sanction of post of Lecturer Urdu is entitled to continue as Lecturer and payment of salary as he is teaching Urdu in intermediate classes since his appointment?

2. The controversy stands squarely covered by a Full Bench decision of this Court in Gopal Dubey v. District Inspector of Schools 1999 (1) UPLBEC 145 It was held that recognition of a subject did not amount to presumed creation of post. The Bench, held that in absence of sanction or creation of post, the State Government was not liable to pay the salary nor the management could claim reimbursement of it. But Sri P. K. Ganguli the learned counsel for the petitioner vehemently argued that once the District Inspector of Schools, Azamgarh (in brief DIOS) granted permission to start intermediate class in Urdu, it shall be deemed that the post was created and the petitioner who was appointed by the management was entitled to salary. He relied on the judgment of Apex Court in The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others,

3. To decide whether the ratio laid down by the Apex Court is helpful to the petitioner, it is necessary to narrate facts in brief. Muslim Inter College, Mau (in brief institution) was granted recognition in 1956 under the U. P. Intermediate Education Act. 1921 (in brief Act 1921). The institution was taken in grant-in-aid list, in April 1971, under the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act. 1971 (in brief Salaries Act). The DIOS by its order dated 13.7.1976 on the request of the institution, granted permission to run Urdu classes. By order dated 24.2.1977, it was made effective from 1977 examination. Till 1993, there was no difficulty as Sri Abdul Ali, the Principal of the institution taught Urdu to intermediate classes. He retired on 30.6.1993. On 26.10.1994 the State Government recognised it as minority institution. This order was set aside in Civil Misc. Writ Petition No. 37414 of 1994 decided on 22.8.1997. Special Appeal is pending against this order. The Bench directed status quo to be maintained. During the pendency of Special Appeal, the management appointed petitioner on 7.7.1997 as Urdu Lecturer. His appointment was approved by the DIOS. The Deputy Director of Education appears to have initiated inquiry in the matter of approval granted to petitioner's appointment and by his order dated 17.12.1997, payment of salary to petitioner was stopped. This order dated 17.12.1997 was challenged by petitioner in Civil Misc. Writ Petition No. 12477 of 1998. This Court disposed of the writ petition on 9.4.1998 and directed the Joint Director of Education, Azamgarh, to decide the representation of the petitioner. By his order dated 14.7.1998, the representation has been rejected by Joint Director of Education on the ground that eleven posts of Lecturer in different subjects had been sanctioned in the institution but no post of Lecturer Urdu was created or sanctioned. Therefore, the management could not appoint the petitioner on the post of Lecturer Urdu. Approval of DIOS was obtained by concealment of material facts. It is this order dated 14.7.1998 which has been challenged by the petitioner in the present writ petition. Petitioner has filed documents to show that Urdu was recognised by authorities since long but he has failed to produce any document to show that sanction for creation of post was granted.

4. The argument of the learned counsel for the petitioner is that the decision of Apex Court in Chandigarh Administration (supra) squarely applies to the petitioner's case. Since permission to run Urdu classes in intermediate was granted by the competent authority and he is the only teacher appointed in the institution who is not being paid salary and his other counterparts in the institution are being paid salary from the grant-in-aid received from the State Government, therefore, on the ratio of this decision, nonpayment of salary to him is discriminatory.

5. It is necessary to examine the decision of Apex Court in Chandigarh Administration (supra). In this case, permission to open classes XI and XII was granted on the condition that no grant-in-aid would be provided for additional staff for teaching the new subjects Humanities and Commerce. New teachers were appointed for teaching Humanities and Commerce by the institution but

they were not being paid salaries from the grant-in-aid. They filed writ petition before the High Court of Punjab and Haryana and claimed equal pay for equal work. They claimed that same salary and allowances be paid to them which were paid to other teachers of the institution who were teaching class X and were paid salary in the sanctioned pay scale from the grant-in-aid. It was also claimed that nonpayment of salary amounted to discrimination. The High Court accepted their claim and directed that same salary be paid to the new teachers which was being paid to other teachers of the institution and held the non-payment of same salary was discriminatory. The Apex Court observed, that classes in Humanities and Commerce was started with the permission of the competent authorities for class XI and XII. Other teachers in the institution were being paid salaries by the Government as it was an aided institution. In the same institution, two classes of teachers were working one who were paid salary from grant-in-aid and the other for whom no grant-in-aid was available for payment of salary. The Apex Court held, that there was no justification for denying parity of pay scale to additional teachers who were appointed for teaching Humanities and Commerce for whom grant-in-aid was not available as it would be discriminatory. It was the responsibility of State administration to find out the ways and means of securing funds for the purpose. The Apex Court did not examine the effect of appointment against a non-sanctioned post. The only dispute was whether the management was justified in paying different pay scales to teachers doing the same duty. And the Court held that payment of two different scales to teachers of same class was discriminatory.

6. But in the instant petition, it is not disputed that the post of Lecturer Urdu was not created or sanctioned in the institution. The question arises as to whether salary could be paid to a teacher who was not working on a sanctioned post. This question has been considered by a Full Bench of this Court in Gopal Dubey (*supra*) and it has been held that Section 9 of the Salaries Act expressly mandates that no new post of teacher or employees shall be created by the institution except with the previous approval of the Director in writing. No doubt the Director under the Act, 1921 grants recognition for opening a subject in the college. But it cannot be presumed that permission to run classes under Act, 1921 amounts to deemed consent of the Director under the Salaries Act. Since there was no written permission of the Director for creating the post of Lecturer Urdu u/s 9 of the Salaries Act, petitioner cannot be paid any salary. The Full Bench considered Section 7A of Act, 1921 which permits the Board to permit an institution to give education in a subject. But it held after examining this section and Section 9 of the Salaries Act that in absence of sanction, no salary could be paid to a teacher teaching a recognised subject. The learned counsel for the petitioner has urged that the decision of the Apex Court is binding on me and if I do not agree with it then the matter should be referred to larger Bench. The decision of the Apex Court in Chandigarh Administration (*supra*) for the reasons stated earlier is not applicable to the facts of this case. On the other hand, the specific question before the Full Bench was whether permission to teach a

subject amounted to creation of a post. It was not accepted by the Full Bench. The reason is obvious. An institution may seek permission to impart education in subjects other than those for which sanction has been given, on the existing staff. For instance Sri Abdul Ali who was Principal taught Urdu till 1993. But granting recognition for teaching would not amount to sanction or creation of post. That could be done as provided in law. There is no scope of deemed sanction. The Full Bench is binding on me. I do not find any reason to disagree with it.

7. Learned counsel for the petitioner has lastly urged that the Director of Education be directed to decide the matter of creation of post of Lecturer Urdu. There is no material on record that the management had applied to the Director for creation of the post. The petitioner is a teacher and he has no focus standi to seek a direction from this Court for creation of the post of Lecturer Urdu by the Director. If the management makes an application for creation of the post the Director may consider it. It is open to the petitioner to claim salary from the management for the period he has worked from the funds other than Government.

8. Subject to the observations made above this writ petition dismissed.

9. Parties shall bear their own costs.