

(2002) 01 AHC CK 0178
In the Allahabad High Court
Case No : C.M.W.P. No. 14369 of 1995

Mohd. Ayub and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2002) 2 AWC 887 : (2002) 2 UPLBEC 1104

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : V.K. Shukla, for the Appellant;

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard learned counsel for the petitioners and learned standing counsel for the respondents.

2. By this writ petition, the petitioners have prayed for full salary admissible under the Rules along with other emoluments including dearness allowance and house rent allowance, etc. to be provided to them. The petitioners have further prayed that the letter dated 3.5.1994 (Annexure-5 to the writ petition) passed by the Additional. Director of Education (Basic) Region I, Meerut addressed to the Director Urdu. U. P. at Lucknow be complied with.

3. The Anjuman Islamiya Education Society, Kerana, district Muzaffarnagar, is a Society, registered under the Societies Registration Act. 1860. The said Society established a Primary School, known as "Maktab Islamiya (Junior Basic Vidyalaya), Kerana, district Muzaffarnagar, which is engaged in imparting education in Urdu Medium up to Primary Level. This Society has also established a Junior High School, which was known as Jakir Memorial Junior High School" and the said institution has been upgraded from Junior High School to High School and the teachers and employees of the said institution are getting their salary in accordance with the procedure enumerated under U. P. Junior High

School Payment of Salary (Teachers and other Employees) Act, 1978. The institution concerned was receiving its grant by Nagar Palika, Kerana, district Muzaffarnagar and when the Institutions were vested in Zila Parishad after establishment of Zila Parishad petitioner's institution was left over.

4. The teaching staff and other employees of the institution at relevant time made representation to the State Government. The State Government by its letter dated 9.7.1973 (Annexure-1 to the writ petition) allowed the contribution of one third of total salary. The petitioner No. 1 was appointed on 20.10.1982 as Head Master of Primary Section duly approved by the District Basic Education Officer, Muzaffarnagar and it was mentioned therein that they were getting basic pay of Rs. 400 along with all other emoluments, including Dearness Allowance also. The petitioner Nos. 2 and 3 were appointed on 25.2.1992 (Annexure-3 to the writ petition) as Assistant Teachers after approval by the District Basic Education Officer, Muzaffarnagar. It appears that the petitioners are not being paid their full salary since their initial appointments. They were being paid three fourth of their basic salary plus the annual increments, etc. On representation by the petitioners, the Deputy Secretary, State of U. P. wrote to the Director (Urdu) State of U. P. vide its letter dated 1.7.1991 to take decision in reference to the letter dated 30.10.1990 of Management of the Institution in accordance with law. The Assistant Director Education (Basic) Meerut Division I, wrote to the Director (Urdu) Education, U. P., Lucknow, by letter dated 3.5.1994 (Annexure-5 to the writ petition) for taking immediate steps for granting and ensuring payment of full salary to the petitioners along with all the emoluments, dearness as well as house rent allowance, etc. Despite the repeated request made by different relevant authorities of State Government, the Director (Urdu) Education, U. P., Lucknow, did not take any decision to ensure providing the grant-in-aid or in respect of granting the full salary to the teachers employed in the above college. It has been submitted by learned counsel for the petitioner Sri V.K. Shukla that all the teachers, imparting education in Urdu in Primary Section, run and maintained by Basic Shiksha Parishad, are getting full salary along with Dearness and Housing Allowance, etc. whereas the petitioners discharging full duties are being discriminated and are not being given full salary admissible under the rules and are being paid only 3/4th amount of their full payable salary.

5. In para 5 of the counter-affidavit, it has been stated that the responsibility of payment of salary to the teachers and other employees in a recognised Junior Basic School is over the management, however, a nominal grant in accordance with the manager's return is provided by the Government as per prescribed norms since the institution is quite old and has been running through the time of District Board/Zila Parishad/ Municipal Board and had been getting grant equivalent to 3/4th of salary of the teachers in Junior Basic School (Urdu), i.e.. the Makhtab. In view of the award of previous grant, the same was continued after the promulgation of Basic Education Act. 1972. The award of this grant had been endorsed by the then Director of Education as is quite clear by the Annexure-1 in the writ petition. There is nothing on record to show that these

teachers have ever raised any grievance against the management for non-payment of full salary.

6. In respect of the above contentions of para 5 of the counter-affidavit, it has been submitted on behalf of the petitioners that they are being discriminated deliberately without any cogent reason. The petitioners have repeatedly been raising their grievances since beginning before the concerned authorities. However, on the slackness on the part of the Director (Urdu) Education, U. P., their grievance could not be redressed.

7. The petitioner referred and relied on the order dated 12.1.2000 passed in Civil Appeal No. 12921 of 1996, The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, where Dev Samaj Girls Senior Secondary School, Chandigarh, a private educational institution duly recognised and receiving grant-in-aid from the Union Territory of Chandigarh Administration was granted permission to the management for starting 11th and 12th classes in Humanities and Commerce, with a condition that no grant-in-aid will be provided for any additional staff. The classes were started on the recommendation of the Director of Public Instructions, the institution was granted affiliation by the Board of Secondary Education, New Delhi, with effect from 1.5.1998. The corresponding classes in Dev Samaj Degree College, Chandigarh, were closed on the decision of the Chandigarh Administration that education in such classes would be given in schools. Therefore, the lecturers who were teaching different subjects in 11th and 12th classes of the school requested for grant of salary and allowances at par with their counterparts working in privately managed recognised aided schools in Chandigarh on the Writ Petition 14612 of 1993 filed by the aggrieved teachers. The High Court of Punjab and Haryana by its order dated 1.12.1995 directed the authorities to pay the teachers the same pay and salary which was being paid to the counterparts working in private recognised aided schools in Chandigarh and in the civil appeal preferred by Chandigarh Administration against the order dated 1.12.1995. Supreme Court in the above case held that :

"The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted Statutes and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private Schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. The State Administration cannot shirk its responsibility of ensuring proper education in schools and colleges on the plea of lack of resources. It is for the Authorities running the administration to find out the ways and means of securing funds for the purpose.

There is no justification for denying the claim of the respondents for parity of pay scale and to accept the contention of the appellants will amount to confirming

the discriminatory treatment against the respondents. Therefore, the High Court rightly rejected the case of the appellants. The directions issued in the impugned judgment to pay the respondents 1 to 12 the same salary as is being paid to their counterparts in the privately managed Government aided schools in Chandigarh in the circumstances is unassailable."

8. Sri V.K. Shukla, learned counsel for the petitioner has also referred and relied on the judgment dated 6.3.1997 passed in Writ Petition No. 19258 of 1991, Ram Ji Tiwari and others v. D.I.O.S., Azamgarh and others 1997 (1) ACJ 636, where the writ petition was preferred for directing the State Government to pay the salaries to the teachers and other employees of the Primary Section of the D.A.V. Inter College, Azamgarh under the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. the institution in question was imparting education from lower K.G. to Intermediate Classes but the State Government had allocated grant-in-aid to the teachers and other employees from Class 6 to Class 12 only. Whereas the Primary Section of College i.e., from lower K.G. to Class 5, were allowed to run in the same campus of the college and was under the same Committee of Management and Principal. It appears that the State Government issued a G.O. dated 6.9.1989 taking over the primary sections attached to 393 institutions in U. P. and since then the teachers and employees in these primary sections have been paid by the State Government under the Payment of Salaries Act, 1971. The above G.O. was restricted to the primary sections of the 393 Institutions which had been attached to these colleges before 1973 whereas the primary section attached to the D.A.V. College, Azamgarh, was not included in the list contained in the aforesaid G.O., and hence its teachers and employees continued to be paid by the management from its own resources. On filing the writ petition this Court has held that denial of paying salary to the primary teachers was in violation of not only Article 21 but also violative of Articles 14 and 19(1) a of Constitution. This Court has held that non-payment of same salaries and allowances at par to the teachers of primary section of Junior High Schools and to those primary teachers of institution (attached prior to 1973 and taken over by the State Government by G.O. dated 6.9.1989) were discriminatory. This Court has also directed to pay the same salary to all the teachers and other employees of recognised Primary Schools.

9. Learned counsel for the petitioner have also placed reliance on the judgment dated 3.2.1993 passed in Special Appeal No. 32 of 1993, State of U. P. and Ors. v. Kumari Renu Tiwari and 29 others, (1993) 2 UPLBEC 1325, where the question came for consideration regarding the payment of same salary to the part lime lecturers and to the regularly appointed lecturers where, it was held that part time lecturers were also entitled to same pay scale and salary which the regularly employed lecturers were entitled to.

10. On analysis of the aforesaid cases, I find that the case of the petitioners are being protected by the above referred cases.

11. In view of the fact and submissions made by the petitioners, I find that the genuine grievances of the petitioners have been overlooked, which should have been redressed much earlier, for which no justification is forthcoming from the counter-affidavit in these circumstances, the writ petition is liable to be allowed. The writ petition is allowed accordingly and direction is being given to the Secretary, State of U. P. Department of Basic Education to entrust the concerned Director (Urdu) Education or any other Director, Education to consider the grievances of the petitioners sympathetically in the light of the above observations and dispose of their grievance within 8 weeks from receipt of this order.