

(2003) 09 AHC CK 0212
In the Allahabad High Court
Case No : C.M.W.P. No. 6342 of 1989

Nanku Prasad Tripathi

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 4 AWC 3452

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : G.N. Verma, Krishna Murari, Amit Kumar Srivastava and M.C. Dwiwedi, for the Appellant; A.R. Dwivedi and Awasthi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was appointed as an Assistant Teacher on 15.8.1976 in the institution of respondent No. 4. The appointment of the petitioner as Assistant Teacher was approved by the Inspector, Sanskrit Pathshala, U. P., Allahabad, respondent No. 2 vide order dated 24.3.1977, initially as a temporary teacher till the end of the session, which was subsequently corrected by order dated 15.12.1977 clarifying that the approval granted for appointment of the petitioner was as a permanent teacher. The petitioner was being paid salary as an Assistant Teacher till February, 1979. Thereafter on 1.3.1979 the institution of respondent No. 4 was upgraded by the respondent No. 1 and placed in Category II. The petitioner continued to work as an Assistant Teacher but since after March, 1979, the salary of the petitioner was not paid to him despite the petitioner approaching the respondents by way of filing representations, copies of which have been filed as Annexures-4 to 16 to the writ petition, the petitioner filed this writ petition with a prayer for a direction to the respondents to pay the salary of the petitioner from 1.3.1979 onwards and to continue to pay the future salary also.

2. I have heard Sri Krishna Murari, learned counsel appearing for the petitioner

as well as Sri Awasthi, learned standing counsel appearing for the State respondents at length and perused the record.

3. The main contention of Sri Krishna Murari, learned counsel for the petitioner, is that the appointment of the petitioner as Assistant Teacher as well as the approval granted by the respondent No. 2 vide orders dated 24.3.1977/15.12.1977 is still continuing and without the same having been cancelled or withdrawn, the petitioner cannot be deprived of payment of salary specially when the petitioner is continuing to serve as Assistant Teacher in the institution, which fact has not been disputed by the respondents.

4. The fact that the approval granted for the appointment of the petitioner as Assistant Teacher is still in force has not been disputed by the respondents. The only ground which has now been raised by the learned standing counsel for non-payment of the salary to the petitioner in the counter-affidavit is that after the institution had been upgraded and placed in Category-II, the post was not sanctioned as the petitioner did not have the requisite qualifications. In paragraph 6 of the counter-affidavit it has been stated that the minimum qualification for the post of Assistant Teacher in an institution placed in Category-II was a degree of "Shashtri" which, according to the respondents, the petitioner did not possess. The said assertion has been denied in the rejoinder-affidavit wherein it has been stated that the petitioner not only had the requisite qualifications, as the petitioner had obtained "Shashtri" degree in the year 1979, but also a higher degree of "Acharya" ; copies of the aforesaid certificates have been filed as Annexures-R.A. 2 and R.A. 3 to the rejoinder-affidavit.

5. In view of the aforesaid circumstances and also the fact that the approval of the petitioner continued and had neither been cancelled nor withdrawn, in my view the petitioner could not have been deprived of payment of his salary without there being any order passed against him and merely on the basis that the institution had been placed in Category II, which stand has now, for the first time, been taken in the counter-affidavit. Admittedly, no notice withdrawing the approval or cancelling the post of the petitioner had ever been issued by the respondents. The petitioner, having been appointed as an Assistant Teacher, for which due approval was granted by the respondent-authorities, had acquired a right in his favour which could not have been withdrawn without affording an opportunity to the petitioner. The action of the respondents in refusing to pay the salary to the petitioner with effect from 1.3.1979 without issuing any notice or affording an opportunity to the petitioner, is in violation of the principles of natural justice and thus, cannot be sustained. Even otherwise, the stand taken by the respondents, though for the first time in the counter-affidavit to the writ petition, that the petitioner did not have the requisite qualification also does not have force as the copy of the requisite "Shashtri" degree has been filed by the petitioner along with the rejoinder-affidavit. Such being the position, in my view, the denial of salary to the petitioner with effect from March, 1979 was not justified. He is thus, entitled to the same.

6. The writ petition is, thus, allowed and the respondents are directed to pay the salary to the petitioner as an Assistant Teacher from March, 1979 onwards. On the strength of the interim order initially granted by this Court on 26.7.1990, which was later on confirmed and made absolute by order dated 13.2.1991, it has been stated that the petitioner has been paid his salary from February, 1991 onwards. Thus, the petitioner shall only be entitled to payment of salary from March, 1979 to January, 1991, which shall be paid to him within six months from the date of filing of a certified copy of this order before Inspector. Sanskrit Pathshala, U. P., Allahabad, respondent No. 2. Further the respondents shall continue to pay current salary to the petitioner month by month till he remain in service.

7. The writ petition stands allowed. There shall be no order as to costs.