
(2011) 12 AHC CK 0186
In the Allahabad High Court
Case No : Writ A No. 42469 of 2011

Naseem Ahmad And Others

APPELLANT

Vs

State of U.P. And Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0186

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Hon"ble Sudhir Agarwal, J.—The petitioners have come up in this writ petition with a prayer for issuance of a writ of mandamus commanding respondent No.3 to consider for promotion on the post of Headmaster.

2. It is averred that in fact the petitioners were already promoted by order dated 14.10.2009 but thereafter, for the reasons best known to respondent No.3, the aforesaid order of promotion was stayed and deferred by order dated 04.11.2009 and it was not given effect at all and since then nothing has been done.

3. This Court initially granted time to the respondents to file counter affidavit vide order dated 29.07.2011. The respondents as usual did not respond at all. Again the matter was taken up on 25.11.2011 when after hearing counsel for the parties, the Court found that respondents on one hand are not only guilty of total inaction but also have the audacity of negligence and carelessness even to this Court by not filing its response despite specific order. It is in these circumstances, the Court directed respondent No.3 to appear and explain as to what has been done after order dated 4.11.2009 and also to produce record to show why matter is lying pending for the last two years.

4. Pursuant thereto a counter affidavit has been filed by respondent No.2 stating therein that in urban area of Allahabad, there were 125 Junior Primary Schools and 32 Senior Primary Schools in the year 2009. In the Junior Primary Schools, there existed 63 posts of Headmasters and in Senior Primary Schools there

existed 64 posts of Assistant Teachers. The said strength of teachers was as on 2008.

5. The State Government issued an order on 20.03.2010 directing District Magistrate, Allahabad to adjust running schools, which are running in one campus and/or have less strength of students. Having given effect to the said Government Order, District Magistrate, Allahabad examined the matter and reduced number of Junior Primary Schools from 125 to 88. As a result of reduction of Junior Primary Schools, District Basic Education Officer sought clarification from higher authorities but having received no response, the matter remained pending. However in January 2011, 9 persons were promoted.

6. In the entire counter affidavit it is not the case of respondents that number of sanctioned post of Headmaster of Junior Primary Schools and Assistant Teachers in Senior Primary Schools, as it stood in 2008, have got reduced or that any post was abolished as a result of reduction of number of Junior Primary Schools from 125 to 88. It also appears that after the order was passed by this Court requiring respondent No.2 to appear in person on 29.11.2011, he issued an order of promotion on 05.12.2011 giving promotion to 27 persons as Headmasters in Junior Primary Schools and 11 persons as Assistant Teachers in Senior Primary Schools which included writ petitioners No.3, 5, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 22, 24, 26, 27, 28, 30 and 31. It is said that no further vacancy is available at the moment and therefore the writ petition has become infructuous.

7. The entire reply does not contain as to what actually happened after the order dated 4.11.2009 was passed by respondent No.2 staying promotion order dated 14.10.2009. In this regard the Court also perused the original record placed before it. It shows that on 22.08.2009 Nagar Shiksha Adhikari, Allahabad prepared a chart as under:

Number of Schools

Number of Sanctioned Post

Number of teachers working

Vacancies

32 (Senior Primary School)

96

61

35

125 (Junior Primary School)

125

55

8. It is pursuant to the aforesaid report submitted by Nagar Shiksha Adhikari, promotion of Assistant Teachers of Junior Primary Schools were considered and thereafter order of promotion was passed on 14.10.2011 by Dr.Brajesh Mishra respondent No.3.

9. The record contains several letters given by various teachers promoted, requesting for change of posting on promoted post. There was some error also at item No.81 Column 5 of order dated 14.10.2009 for which a corrigendum was issued on 27.10.2009.

10. One Jagdamba Prasad, Adhyaksh, Brashtachar Nivaran Samiti, Allahabad made a complaint (undated) stating that 53 primary schools have been abolished as a result whereof instead of 173 only 120 Primary Schools exist and therefore, promotion of 20 teachers beyond existing number of Primary Schools have been made.

11. It is self evident that the order of promotion dated 14.10.2009 contains 82 names of teachers who were promoted. On 29.10.2009 Dr. Brajesh Mishra, holding office of respondent No.3 passed an order directing Nagar Shiksha Adhikari, Allahabad to submit a detailed report about number of Primary Schools (Junior and Senior), how many thereof are closed, and, how many have been included in urban area.

12. On the very next date i.e. 30.10.2009 respondent No.3 sent a letter to Secretary, U.P. Basic Education stating that against 125 Junior Primary Schools only 63 posts of Headmasters were sanctioned and 62 Primary Schools did not have any sanctioned post of Headmaster. Besides some schools are such wherein only one Assistant Teacher is working and many schools are lying closed. In case the sole Assistant Teachers working in Primary Schools are promoted, the schools shall stand closed. He thus sought guidelines from Secretary, Basic Education Board, whether the schools wherein no sanctioned post of Headmasters exist, can be provided a Headmaster or not. Having issued the said letter dated 30.10.2009, respondent No.3 issued order dated 4.11.2009 staying promotion order dated 14.10.2009. Again a reminder was given on 28.3.2010 to the Secretary, Basic Education Board and another reminder dated 31.3.2010 to Nagar Shiksha Adhikari, Allahabad.

13. In the meantime, Government Order dated 20.3.2010 having been received, the District Magistrate proceeded to amalgamate Primary Schools running in the same campus and closure of non functional Primary Schools. The said exercise completed and formal order was issued to that effect by respondent No.3 on 02.7.2010.

14. Since no further action was taken in respect to the stayed promotion order, one Mahmood Ullah filed writ petition No.51409 of 2010 which was disposed of on 28.8.2010 directing respondent No.3 to look into the matter and complete

proceedings within three months from the date of receipt of certified copy of the order. The said judgment of this Court was communicated to respondent No.3 alongwith letter dated 06.9.2010, served in the office of respondent No.3 on the same date. The said order having not been complied, Sri Mahmood Ullah filed contempt petition No.36 of 2011 wherein again Court directed Dr. Brajesh Mishra, to comply this Court's order within one week. It is only thereafter Nagar Shiksha Adhikari appears to have submitted report on 11.2.2011 giving details of number of sanctioned posts of Headmasters and Assistant Teachers as in February, 2011. The respondent No.3 thereafter prepared his own chart showing 32 headmasters and 64 Assistant Teachers in Senior Primary School whereagainst one Headmaster and 61 Assistant Teachers in February, 2011 were working. Similarly 47 Headmasters and 135 assistant teachers in Junior Primary Schools against which 41 headmasters and 120 assistant teachers are working in February, 2011. Having done so, he disposed of representation of Sri Mahmood Ullah by order dated 28.2.2011 by promoting 9 persons which included Sri Mahmood Ullah also as Headmaster.

15. Nothing moved on thereafter except the orders passed in the present writ petition. These are the documents which are contained in entire file but it had only one notesheet of 24th February, 2011 and no other notesheet.

16. When this Court asked Sri Suresh Singh, learned counsel appearing for respondents whether any notesheet was prepared in 2009, he could not give any reply. In these circumstances, this Court prima facie feels that file made available to the Court is incomplete and also has several gaps. The respondent No.3 is, therefore, directed to file an affidavit clarifying:

(i) Whether any notesheet was prepared in the matter in question before 24.2.2011 or thereafter or not?

(ii) In what manner number of sanctioned posts have been verified, whether by perusing the sanctioned orders or on mere guess work?

(iii) Why there is variance in number of sanctioned post in the report submitted by Nagar Shiksha Adhikari, Allahabad, the order passed by respondent No.3 on the representation of Mahmood Ullah and counter affidavit filed before this Court now in the present case?

(iv) Whether it is a normal practice in the office of respondent No.3 that the files do not contain regular notesheets showing consideration of the matter in regular course?

17. An affidavit explaining all these aspect shall be filed within ten days from today.

18. List this matter for further hearing on 02.01.2012 on which date the respondent No.3 shall also appear in person.