
(2016) 03 AHC CK 0075

In the Allahabad High Court

Case No : Special Appeal Nos. 164, 166 and 517 of 2003

Naseer Uddin Anasari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 03 AHC CK 0075

Hon'ble Judges : Rakesh Tiwari and Shashi Kant, JJ.

Bench : Division Bench

Advocate : P.N. Ojha and Ashok Khare, for the Appellant; C.S.C. and B.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shashi Kant, J.—1. Heard Sri Vishnu Shanker Gupta, Advocate, holding brief of Sri Ashok Khare, learned Senior Counsel appearing for the petitioners-appellants and learned Standing Counsel appearing for the State-respondents.

2. Above appeals under Chapter VIII Rule 5 of High Court Rules, 1952, have been filed against the judgment and order dated 28.01.2003, passed by learned Single Judge in Civil Misc. Writ Petition No. 9114 of 2002, Naseer Uddin Ansari and others v. State of U.P. and others along with other connected writ petitions, whereby all the writ petitions were dismissed.

3. By means of these special appeals the petitioners-appellants have sought the relief to set aside the judgment and order impugned and allowing the writ petitions.

4. As all these appeals are preferred against a common judgment and order, therefore with the consent of learned counsel for the parties, they are heard together and are being decided by this common judgment and order.

5. Brief facts giving rise to the above appeals are that:

"5.1. The petitioners-appellants were appointed as untrained Assistant Teachers for Urdu Subject on payment of consolidated amount of salary applicable to untrained teachers. They joined and started discharging duties of their posts. They underwent Muallim-e-Urdu Course from Jamia Urdu, Aligarh, which is a Teachers Training Qualification for Urdu Teachers and recognized by the State Government vide Government Order dated 13.09.1994. As per details given in para 10 of the Special Appeal No. 164 of 2003, They passed the aforesaid training qualification on different dates.

5.2. Thereafter, Basic Shiksha Adhikari, Ballia sanctioned salary to the appellants-petitioners in the pay scale applicable to trained teachers with effect from date of acquiring the teachers training qualification of Muallim-e-Urdu by the petitioners-appellants.

5.3. On 28.07.2001, a telex message was issued by the Secretary, Board of Basic Education, U.P. Allahabad, objecting payment of salary as trained teachers to such candidates, who had passed Muallim-e-Urdu on dates subsequent to 11.08.1997.

5.4. The petitioners-appellants had filed a writ petition No. 31105 of 2002, Badruddin Ansari and others v. State of U.P. and others, challenging the directions contained in Telex dated 28.07.2001 in which a stay order was granted by this Court in favour of the petitioners-appellants which was extended from time-to-time. In pursuance of the stay order granted by the Court, each of the petitioners-appellants continued to get salary in the pay scale of trained Assistant Teacher and such salary has been regularly paid upto January, 2003. The writ petition was dismissed vide judgment and order dated 28.01.2003.

5.5. Being aggrieved by judgment and order impugned, the petitioners-appellants have approached this Court by means of these special appeals for redressal of their grievances."

6. Learned counsel appearing for the petitioners-appellants submitted that:

"6.1. The learned Single Judge has misread the Government Order dated 11.08.1997 as a Government Order of general applicability is applicable to teachers training qualifications recognized as equivalent to B.T.C (Urdu). It finds support also from the notice published by the Secretary, Board of Basic Education providing details of the teachers training qualifications, which stood de-recognized as a consequence of enforcement of provisions of National Council for Teachers Education Act, 1993 and the Order dated 11.8.1997.

6.2. In view of the matter, the Government Order dated 11.08.1997 has ceased to exist as the same has been quashed by a Division Bench of this Court in , 2000 (2) UPLBEC1340 (Upendra Rai v. State of U.P. and others).

6.3. As a consequence of the Government Order dated 11.8.1997 having been quashed by this Hon"ble Court, the learned Single Judge as well as Basic Education Department have wrongly placed reliance upon a Government Order

which was not in existence for taking action against the petitioners-appellants.

6.4. The learned Single Judge erroneously refers to the provisions of National Council for Teachers Education Act, 1993 and the Rules framed thereunder for upholding the decision of the respondents against the petitioners-appellants.

6.5. Learned Single Judge has also failed to notice that under Government Order dated 24.04.2002, all the petitioners-appellants became entitled to trained pay scale with effect from the date of having completed 5 years length of service and in pursuance to the aforesaid, each of them entitled to direction for continuance of payment of salary in pay scale applicable to the trained teachers.

6.6. Leaned Single Judge has also erred in upholding the direction for effecting recovery of salary paid to the petitioners-appellants in pay scale applicable to the trained teachers and in doing so, the learned Single Judge has failed to appreciate the ratio of several decisions cited before him and being noticed in the judgment itself, which precludes recovery of payment voluntarily made to the employees.

6.7. Each of the petitioners-appellants had been sanctioned the pay scale applicable to trained teachers by the Department itself on the basis of departmental clarifications issued from time to time and there existed no misrepresentation or fraud on the part of the appellants-petitioners.

6.8. However, the provision of the Act, 1993 despite its enforcement from 1.7.1995, remains inoperative as no Rules were framed forthwith for implementing the provisions of the Said Act. Such Rules, known as National Council for Teachers Education Rules, 1997, were notified vide notification dated 3.12.1997, which was published in the Gazette of India on 9.12.1997.

6.9. Even after enforcement of the provisions of the aforesaid Act and the framing of the Rules, the Provision did not become applicable immediately so as to nullify all Teachers Training Qualifications. On the contrary, the provisions of the Act itself envisages a grace period of six months."

7. Per contra, learned Standing Counsel for appearing the respondents submitted that:

"7.1 The training qualification of Muallim-e-Urdu was declared equivalent to B.T.C. Urdu by the Government of Uttar Pradesh vide Government Order dated 13.09.1994 and the said equivalence has also been cancelled/withdrawn by the Government vide Government Order dated 11.8.1997. As such in view of the same only the candidates, who got trained and appointed as Assistant Teacher between 13.09.1994 to 11.08.1997 are entitled to get trained grade salary. Other than the said candidates, no one is entitled to get trained grade salary as vide Government Order dated 11.08.1997, the equivalence of Muellim-e-Urdu with B.T.C. Urdu has been cancelled.

7.2 In the present case, no candidates has admittedly got training of Muallim-e-

Urdu or appointed as Assistant Teacher from 13.09.1994 to 11.08.1997, as such the claim of trained grade salary is not payable to any of the petitioners-appellants, but by misleading the department, the petitioners-appellants have received the trained grade salary illegally which is liable to refunded and deposited in favour of the State for the said reasons and if they themselves will not return the complete excess amount received by them as trained grade salary, the same will be recoverable by the State through the concerned District Magistrate as land revenue."

8. The relevant portion of the impugned order reads thus:

"..... In the alternative, it is submitted that in case it is found that the petitioners have been wrongly given the trained grade, no deduction from their salary can be made. It is submitted that the sanction of pay scale applicable to trained teachers with effect from the date from which the petitioners have acquired the Muallim-e-Urdu degree has been sanctioned by the Basic Shiksha Adhikari and such sanction has been made with regard to such teachers all over the State of U.P. and that at the no point of time any misrepresentation or fraud has been played by the petitioners and in these circumstances even if it is held that the petitioners were wrongly sanctioned the pay scale applicable to trained teachers there would be not justification for recovery of such payment treating it to be an excess payment. Reliance has been placed upon.

(i) 1979 ALJ 1184, B.N. Singh v. State of U.P. and another)

(ii) 1996 (2) L.B.S.E.R. 858 (Keshav Tripathi v. U.P. State and others)

(iii) , 1994 (2) SCC 521 (Shyam Babu Verma and another v. Union of India and others)

(iv) , 1995 SCC (L and S) 248 (Sahib Ram v. State of Haryana)

(v) , 1996 (2) L.B.E.S.R. 231 (Ram Krishna Tandon v. State of U.P.)

(vi) 1996 (2) L.B.E.S.R. 248 (Harish Chand Srivastava v. State of U.P. and others)

In these cases it has been held that if excess payment is made in higher scale has been granted due to no fault of the employee and without misrepresentation or fraud on his part the amount said to have been paid in excess can not be recovered from him. In the counter affidavit of Dr. Vinod Rai filed on behalf of the State in W.P. No. 914 of 2002, it is stated in paragraph 4 that the petitioners have received the trained grade salary by misleading the department. It is also stated in paragraph 5 of that counter affidavit that no such letter dated 14.09.1997 on the basis of which the trained grade was granted to teachers having the training qualification of Muallim-e-Urdu was ever issued by the Basic Shiksha Parishad and that the said letter is a forged one. Similar stand has been taken in paragraph 11 of the counter affidavit filed by Sanjay Sinha, the Secretary, Basic Shiksha Parishad. In the counter affidavit of D r. Vinod Rai, a copy of the letter dated 30.08.2001 of the Secretary of the Basic Shiksha

Parishad has been filed in which it is stated that no such letter dated 24.09.1997 was issued by the Board and that the said letter is forged one. While it cannot be said that any of the petitioners in particular had practised fraud or misrepresentation but it does appear that the higher pay scale was sanctioned by the Basic Shiksha Adhikari in view of the alleged letter dated 24.09.1997 which was never issued by the Parishad and was forged. As such the cases cited by the learned counsel for the petitioners are distinguishable.

As a result of the aforesaid discussion, it is directed that such of the petitioners who fulfill the requirement of the government dated 24.04.2002, Annexure-6 of the counter affidavit of Sanjay Sinha filed in Writ Petition No. 9114 of 2002, would also be entitled to payment of the trained grad in accordance with the aforesaid government order. The claim of the petitioners to the trained grade on the ground that they had acquired the qualification of Muallim-e-Urdu is turned down. Except for the direction given above the petitioners would not be entitled to any other relief and the writ petitions are dismissed in respect of other reliefs. This order will not be applicable to the petitioners No. 2 and 67, namely, Mohd. Ashraf Ali and Mohd. Azam in Writ Petition No. 42748 of 2002 in respect of which the writ petition is being dismissed as not pressed in view of the application made by them."

9. So far as recovery of excess amount is concerned, learned Single Judge has referred and examined this aspect of the matter. While passing the impugned order, learned Single Judge has taken into consideration the case of the petitioner-appellants in detail along with rulings referred by them and the case of the respondents and after referring to paras 4 and 5 of the counter affidavit sworn by Dr. Vinod Rai on behalf of the State in Civil Misc. Writ Petition No. 9164 of 2002 and para 11 of the counter affidavit sworn by Sri Sanjay Sinha, Secretary, Basic Shiksha Parishad and the copy of letter dated 30.08.2001 of the Secretary of the Basic Shiksha Parishad has been filed in which it is stated that no such letter dated 24.09.1997 was issued by the Board and that the said letter is a forged one. It is held by learned Single Judge that while it cannot be said that any of the petitioners in particular had played fraud or misrepresentation but it does appear that the higher pay scale was sanctioned by the Basic Shiksha Adhikari in view of the alleged letter dated 24.09.1997 which was never issued by the Parishad and was forged. As such the cases cited by the learned counsel for the petitioners are distinguishable.

10. In view of the above, we find no illegality and infirmity in the findings recorded by learned Single Judge and otherwise arguments raised on behalf of appellants are devoid of force.

11. Apart from above, it is stated in para 20 of the affidavit of Sri Shakeel Ahmad in Special Appeal No. 166 of 2003, Badruudin Ansari and others v. State of U.P. and others, that they were getting salary in the pay scale of trained Assistant Teacher in pursuance of the stay order passed in Writ Petition No. 31105 of 2002, Badruddin Answari and others v. state of U.P. and others, which was dismissed in

the month of January, 2003. For ready reference, para 20 of affidavit is quoted below:--

"20. That aggrieved by the directions contained in the Telex dated 28.07.2001, the petitioners-appellants filed a writ petition before this Hon'ble Court which was numbered as Civil Misc. Writ Petition No. 31105 of 2002 (Badrudin Ansari and others v. State of U.P. and others). In the said writ petition, a stay order was granted in favour of the petitioners-appellants by this Court, a true copy of which is annexed as ANNEXURE-9 to this affidavit. The aforesaid stay order was extended from time to time. In pursuance to the stay order granted by this Hon'ble Court each of the petitioners-appellant continued to get salary in the pay scale of trained Assistant Teacher and such salary has been regularly paid upto the month of January, 2003."

12. It may also be mentioned here that genuineness of the aforesaid letter 24.09.1997 is disputed not only before this Court but also before the Writ Court, which may be determined on the basis of evidence adduced by the parties, which is not permissible in exercise of writ jurisdiction under Article 226 of the Constitution of India or while exercising appellate power under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 and the petitioners-appellants will be at liberty to raise this matter at an appropriate time and appropriate forum.

13. It is apparent from the above that the petitioners-appellants have gotten their salary in pursuance of the stay order dated 07.08.2002 granted by this Court and Department has not paid the salary of trained grade Teachers to the petitioners-appellants by its own as its wisdom.

14. Having heard the rival arguments of the parties and on perusal of record, it reveals that only the Assistant Teachers, who obtained training of Muallim-e-Urdu or appointed between the period from 13.09.1994 to 11.08.1997 were entitled to get salary of trained grade teachers. Since the petitioners-appellants were neither obtained training of Muallim-e-Urdu nor appointed as Assistant Teachers between the period referred above, therefore they were not found entitled to get trained teachers grade salary. It further reveals that the petitioners-appellants who fulfill the requirement of the Government Order dated 24.04.2002, Annexure-6 of the counter affidavit of Sri Sanjay Sinha filed in Writ Petition No. 9114 of 2002, are also entitled to payment of the trained grade teachers in accordance with the aforesaid Government Order. The Writ Court, while passing the impugned judgment and order, has taken into consideration all the relevant facts and case laws applicable to the case.

15. In view of the aforesaid discussions and on perusal of the impugned order, we are of the considered opinion that the impugned order under challenge in these appeals does not suffer from any illegality or infirmity, requiring interference by this Court.

16. For the above stated facts and reasons, the aforesaid special appeals lack merit and are accordingly dismissed.

17. No order as to costs.