
(1988) 07 AHC CK 0014

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4065 of 1987

Om Pal Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 2, 3
Uttar Pradesh Intermediate Education Act, 1921 — Section 7(4)

Citation : (1988) 2 AWC 1389

Hon'ble Judges : S.K. Dhaon, J;B.L. Yadav, J

Bench : Division Bench

Advocate : Sakha Ram Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—The Petitioner No. 1 is the Principal, Petitioners No. 2 to 8 are Assistant Teachers, the Petitioner No. 9 is a clerk and Petitioners No. 10 to 12 are peons. All the Petitioners are employed in the Aora Higher Secondary School, Aora, (Mawana), district Meerut, (for short the institution), which was upgraded from Junior High School. The Petitioners have approached this Court under Article 226 of the Constitution of India with a prayer that a writ in the nature of Mandamus may be issued commanding the Respondents to pay arrears of their salary and other allowances from March 1986 onwards and to continue to pay in future their salary regularly in accordance with the provisions of Section 3 of U.P. High School & Intermediate Colleges (Payment of Salaries of Teachers & others Employees) Act, 1971, (for short the Act).

2. It was urged on behalf of the Petitioner that even though the institution has been upgraded as High School from Junior High School, nevertheless the Petitioners are not being paid their salary in accordance with Section 3 of the Act. It was further urged that the act of Respondents in not paying the salary to

Petitioners even though the institution has been upgraded as High School, was discriminatory and violative of Article 14 of the Constitution of India, whereas Respondent No. 3 is paying salary to other institutions which were recognised or upgraded as High School or Intermediate Colleges and were receiving grant-in-aid. The present institution being upgraded to High School might not be in the list of grant-in-aid, but there appears to be no rationale in not making payment of salary to Petitioner whereas the salary of employees of other institutions are being paid.

3. Before considering the submissions made on behalf of the Petitioners it is better to notice the main averments in counter affidavit filed on behalf of Respondents. In para 6 of the counter affidavit it has been stated that the institution has been upgraded to High School in 1986 and after upgradation it did not receive grant-in-aid and it was not brought on the list of grant-in-aid for High School hence the Petitioners were not entitled to benefits of the Act. The Act applies only in the cases of institution receiving aid out of State funds. Before the institution comes on the list of grant-in-aid, the responsibility for payment of salary to teachers and other employees rests on the management of the institution. There is no such responsibility of the Basic Shiksha Adhikari or the District Inspector of Schools. In such cases quinquennial grant is released by the State on the basis of Manager's return to the Committee of Management for disbursement of salary to teachers and other employees and it out of the quinquennial grant that the management may make payment of salary to teachers and other employees. It is for the Management to take bring the institution on the list of grant-in-aid. In para 6(10) of the counter affidavit it has been stated that the institution has ceased to be a Junior High School as the same has been upgraded to High School, hence the provisions of U.P. Junior High School (Payment of Salaries to Teachers & other Employees) Act, 1978, (U.P. Act No. 6 of 1979), was not applicable. The Petitioners cannot receive payment of salary under the Act of 1979.

4. Both the submissions on behalf of Petitioners are devoid of merits. As regards the first submission, earlier there was some controversy in respect of the matter, inasmuch as, one view was taken that once a Junior High School was accorded recognition as High School u/s 7(4) of U.P. Intermediate Education Act, 1921, and the maintenance-grant which used to be paid prior to its upgradation was also paid, in the event the teachers and other employees of High School were entitled to benefits of Section 3 of the Act--See Brij Bhushan Lal Sinha and Others Vs. State of U.P. and Others, . The other view was that unless the institution receives grant-in-aid or maintenance grant as defined u/s 2(c) of the Act, the teachers and other employees would not be entitled to benefit of the provisions of Section 3 of the Act--See Mahendra Singh v. State of U.P. 1978 AWC 446 . There was obviously a conflict in the views taken in the aforesaid two Division Bench decisions of this Court and consequently, the matter was referred to a Full Bench of this Court in State of U.P. v. District Judge, Varanasi 1981 EC 195 : 1981 AWC 418. In the Full Bench Mahendra Singh v. State of U.P. (Supra),

was approved whereas *Brij Bhushan Lal v. State of U.P. (Supra)*, was overruled.

5. In case the first submission of the learned Counsel for the Petitioner is accepted, that would be against the dictum laid down in the Full Bench decision of this Court in *State of U.P. v. District Judge, Varanasi (Supra)*, and that would, by implication, lead to acceptance of the view taken in *Brij Bhushan Lal v. State of U.P. (Supra)*, which was overruled in the aforesaid Full Bench. It was held in *Brij Bhushan Lal's case (Supra)*, which was overruled in Full Bench, that grants-in-aid received by the Junior High School would be deemed to be grant-in-aid received by the High School and on the basis of upgradation itself the institution was entitled to the benefit of the provisions of Section 3 of the Act.

6. The interpretation of provisions of Section 3 of the Act has to be made along with the provisions of Section 10 and the definition of the word "institution" as given u/s 2(b) and the definition of the term "maintenance grant" as provided u/s 2(c) keeping in view of legislative intent as expressed through the words employed, and by taking note of the Preamble to the Statute and the Statement of Objects and Reasons.

7. The elementary rule of statutory construction is to ascertain the legislative intent. That construction has to be preferred which advances the purpose and object of legislation. In some cases the plain words may not convey the intention of legislature, in that event the preamble or the object of the Act has to be looked into. In some cases the Court has to regard to the legislative history too. In *Attorney General v. H.R.H. Prince Ernest Augustus of Hanover (1957) AC 436*, it was observed that "where there is preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore, clearly permissible to have recourse to it as an aid to construing the enacting provisions". The object of the Act or its long heading is to the effect that it was an Act to regulate payment of salary to teachers and other employees of High School & Intermediate Colleges receiving aid out of the State funds. The only irresistible conclusion emanating from the object of the Act is that unless the institution receives grant-in-aid out of the State funds, it is not entitled to the benefit of the provisions of the Act.

8. The word "institution" has been defined u/s 2(b), which means the recognised institution for the time being receiving maintenance grant from the State Government. The word "maintenance grant" has been further defined u/s 2(b) which means such grant-in-aid of an institution, as the State Government by general or special order in that behalf directs to be treated as maintenance grant appropriate to the level of the institution. As stated in counter affidavit, such maintenance grant was not given by the State Government to this institution. In other words, the institution was not brought on the list of grant-in-aid. Even though Section 10 of the Act enacts that the State Government shall be liable to pay salary to teachers and other employees of every institution due in respect of any period after March 31, 1971, but this Section has to be interpreted keeping in view the object of the Act, which was that the Act would be applicable only in

respect of institutions receiving aid out of State funds. We are of the considered opinion that receiving aid out of State funds or in other words, the grant-in-aid was the condition precedent for application of the provisions of the Act. Even though Section 3 provides that salary of teachers and other employees of an institution in respect of any period after March 31, 1971 shall be paid before the expiry of 20th day of the subsequent month by the State Government, but that payment is to be made only in respect of the institution receiving grant-in-aid or receiving aid out of State funds which was appropriate to the level of the institution. Reading Section 3 along with Section 10 and the definition of word "institution" and "maintenance grant" and keeping in view the object of the Act, there remains no room for doubt that unless an institution is brought on the list of grant-in-aid, the Petitioners, i.e., the teachers and employees of the institution, were not entitled to receive salary from the State Government. Even though the institution might be receiving some grant, but unless that was a "maintenance grant" as defined u/s 2(c) of the Act, that would not be sufficient to entitle the Petitioners to receive salary from the State Government in view of the provisions of Section 3 of the Act. We have indicated above that the grant received must be as specified under the Act or as defined under the provisions of Section 2(c). For bringing an institution in the list of grants-in-aid, there are administrative instructions as was noticed by the Division Bench of this Court in the case of Mahendra Singh v. State of U.P. (Supra). In that case it was observed that the Petitioners who were teachers and employees of institution have no locus standi to challenge the order of Government. It was indicated that the grant-in-aid is given to institutions by the State Government in accordance with the instructions contained in the U.P. Education Code. The provisions contained in the Education Code are not statutory. Instead the Code consists of administrative instructions issued by the Government from time to time which have been complied in the Code for the purposes of departmental guidance. It is, therefore, for the institution or the Committee of Management thereof to comply with the terms and conditions of the relevant provisions of U.P. Education Code or the administrative instructions so that the institution may be brought on the list of grant-in-aid and it must receive grant-in-aid as provided in the object of the Act. It is only if the institution receives grant-in-aid that the Petitioner can be held to be entitled to the benefit of Section 3 of the Act.

9. Reverting to second submission of the learned Counsel for the Petitioner about the alleged discriminatory treatment to Petitioners who were teachers and employees of the institution and were not receiving their salary from the State Government in view of the provisions of Section 3 of Act, whereas teachers and other employees of other High Schools were receiving their salary under the provisions of Section 3 of the Act, we are of the opinion that only those institutions can get benefit of Section 3 of the Act which were brought on the grants-in-aid list and were receiving maintenance grant as defined u/s 2(c) of the Act. The Petitioners' institution was not receiving maintenance grant or grant-in-aid as defined u/s 2(c). In case the management of the institution wants that

benefit of Section 3 may be availed to teachers and other employees of the institution, it must fulfil the conditions of paragraph 233 under Chapter IX of the U.P. Education Code (for short the Code) or the administrative instructions.

10. An institution desirous of being brought on the grants-in-aid so that it may receive maintenance grant as defined u/s 2(c) of the Act, has to make an application in the prescribed Form No. 28 of Appendix I as provided under Paragraph 307 of the Code. This application would be considered by the Government through the Schedule of New Demands. Paragraph 309 of the Code provides for the provisions under which the grant can be refused. It is not, accordingly, as a matter of course that the grants-in-aid or maintenance grant as defined u/s 2(c) is disbursed by the State Government to every institution even though it might have been upgraded from Junior High School to High School or from High School to Intermediate College. After complying with the prescribed conditions envisaged by Paragraphs 293, 307 and 308 of the Code as amended from time to time, along with other relevant instructions, the institution would get maintenance grant as defined u/s 2(c). There appears to be no discrimination if a particular institution has complied with the directions or instructions as contemplated by the aforesaid provisions of the Code and was brought on grants-in-aid or maintenance grant as defined u/s 2(c) and thus becomes entitled to the benefit of Section 3 of the Act and the one which did not comply with these conditions nor was brought on grants-in-aid. In order that the Petitioners may have the benefit of Section 3 of the Act, the management of the institution must make an application as contemplated by paragraph 307 of the Code and by complying with other conditions it may get maintenance grant as defined u/s 2(c).

11. In *State of U.P. v. District Judge, Varanasi* (supra), it was held in para 14 that the High School or Intermediate College would not be entitled to the benefit of the Act unless it is recognised as defined u/s 2(d) of the Intermediate Education Act, 1921 and it receives grant-in-aid appropriate to its level or maintenance grant as defined u/s 2(c) of the Act. In the present case even though the Petitioners' institution is recognised as defined u/s 2(d) of the Intermediate Education Act, but as it was not receiving grant-in-aid appropriate to its level or maintenance grant as defined u/s 2(c) of the Act, it is not entitled to benefits of provisions of the Act. The teachers and employees of a particular institution which is receiving grant-in-aid appropriate to its level or it is receiving maintenance grant u/s 2(c), are entitled to benefits of the Act and receive their salary from the State Government. But as the Petitioners institution is not receiving grants-in-aid appropriate to its level or maintenance grant as defined u/s 2(c) of the Act, the Petitioners would not be entitled to benefits of the Act u/s 3 of the Act we fail to visualize any discrimination or violation of Article 14 of the Constitution of India.

12. In view of the premises aforesaid, the present petition fails and it is accordingly dismissed.