
(2009) 07 AHC CK 0200

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33436 of 2009

Prem Narain Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0200

Hon'ble Judges : Arun Tandon, J

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard learned counsel for the parties.

2. Petitioners before this Court, who are 16 in number, claim to have been appointed in K.P. Inter College, Allahabad in the year 20042005 on ClassIV post.

3. K.P. Inter College (hereinafter referred to as "institution") is a recognized and aided Intermediate College. Provisions of the Intermediate Education Act, 1921 along with the Regulations framed thereunder and those of U.P. High School and Intermediate Colleges (Teachers and other Employees) (Payment of Salary) Act, 1971 (hereinafter referred to as Act, 1971) are fully applicable to the teachers and staff of the institution.

4. The petitioners before this Court claim that their appointments were made after obtaining prior permission from the District Inspector of Schools, Allahabad strictly in accordance with the Regulation 101 of ChapterIII of the Regulations framed under the Intermediate Education Act. It is further stated that their selections have been made strictly in accordance with the procedure prescribed and further that the appointment of the writ petitioners was duly approved by the District Inspector of Schools, Allahabad under his orders dated 20.09.2005 and dated 16.02.2006. They have since been working in the institution and are being paid salary regularly from the State Exchequer under the Act, 1971.

5. The petitioners are aggrieved by an order of the District Inspector of Schools

dated 26th June, 2009, whereby it has been directed that since the appointment of the writ petitioners is in excess of the number of ClassIV post, as worked out with reference to the "Manak" prescribed for recognized Intermediate Colleges, the petitioners are not entitled to salary from the public exchequer. The order has been passed with reference to the letter of the Regional Level Committee, of which the Joint Director of Education is the Chairman, dated 19th May, 2009.

6. K.P. Inter College was a recognized institution even prior to enforcement of Act, 1971. The said institution was also receiving grant in aid from the State Government. On the date the institution was taken within the purview of the Act, 1971 there were as many as 47 Class IV employee working in the institution and all these 47 Class IV employees in fact were paid their salary from the State Exchequer under the Act, 1971 also. It is stated that the "Manak", prescribing the number of post to be created in a recognized Intermediate College, was enforced under Government Order dated 20.11.1977 and therefore the posts, which were in existence and qua which payment was being made under the Act, 1971 up to the date of the Government Order, cannot be said to have been withdrawn because of the issuance of the "Manak".

7. It is clarified that unless an order is issued by the competent authority abolishing the excess posts in terms of the "Manak", the said posts cannot be said to be nonexistent only because "Manak" have been notified.

8. Counsel for the petitioner Sri Ashok Khare, Senior Advocate states that the prescription of "Manak" has the effect of laying down the standard for number of ClassIV posts to be provided in an institution. The existing posts in excess of "Manak" cannot be said to be abolished only because enforcement of the "Manak". He has placed reliance upon the judgment of this Court in the case of Krishna Kumar Singh vs. D.I.O.S., Deoria & Anr., reported in (1995) 1 LBESR 136 as also upon the judgment of this Court in the case of Sarbjeet Kaur (Smt.) vs. The State of U.P. and others, reported in (2005) 2 UPLBEC 1921.

9. The contention raised on behalf of the writ petitioner is opposed by the Standing Counsel and it has been stated that under the Government Order of 1977, laying down the "Manak", not only the norms pertaining to sanction of the post in a recognized institution were provided, Clause 2 of the Government Order further clarified that in case there were any excess post in existence in the institution, then appointee working against such excess post must be adjusted in other institution where vacancy is available and a direction be issued to the institution concerned to not to fill the vacancy which may be caused subject to retirement, death etc of the incumbent working against posts in excess of the "Manak". It is, therefore, contended that having regard to the Government Order of 1977, the liability of the State Government is limited to the number of posts, which can be said to be available and duly created in the institution with reference to "Manak" only. Any appointment in excess of the "Manak" shall be the liability of the management both in respect of their appointment as well as in respect of their payment of salary.

10. It is, therefore, contended that in the facts of the case the Regional Level Committee has rightly held that the petitioners are not entitled to payment of salary and the approval granted for the purpose under order dated 20.09.2005 and dated 16.02.2006 are illegal and therefore unenforceable in the eyes of law.

11. The Committee of Management on behalf of the institution as well as the Principal has supported the stand taken by the petitioners. The Principal has stated that in the year 2003/2004 as many as 24 Class IV employees were being paid salary under the Act, 1971. He further clarifies that the Class IV appointments have been made in the institution against the vacancies, which were caused due to retirement of employees as detailed in paragraph 3 of the supplementary affidavit, and all these Class IV employees, who retired between 1988 to 2005, were drawing salary from the State Exchequer under the Act, 1971. He further points out that the "Manak" cannot be the basis for nonsuiting the appointed candidates, specifically in the background that such appointments were made after obtaining prior permission of District Inspector of Schools for making the advertisement. The appointments were made with the financial approval of the District Inspector of Schools. Even otherwise it is stated that having regard to the number of student enrolled and infrastructure available, number of Class IV employee actually working in the institution is the minimum required to maintain the institution.

12. I have heard counsel for the parties and have gone through the records of the writ petition.

13. From the pleadings as they stand on record following undisputed facts emerge:

K.P. Inter College was a recognized institution and was receiving financial aid from the State Government even prior to the institution being brought within the purview of Act, 1971. At the time the Act, 1971 was made applicable to the institution 47 Class IV employees were actually working in the institution and all such 47 Class IV employees were in fact paid salary from the Public Exchequer after the institution was taken within the purview of Act, 1971.

14. Such situation has been permitted to continue without any objection. The Government Order dated 20.11.1977 laying down the "Manak" for creation of post in a recognized aided institution provides the norms for the number of various category of post to be created in an institution. The Government was aware of the fact that in large number of institutions employees in excess of the strength, as calculated in terms of the "Manak", are working and in order to mitigate against they being denied salary because of Manak provided, the State Government in the said order itself pointedly recorded two important facts; (a) that the "Manak" would become enforceable w.e.f. 1976/77 and (b) in paragraph 2 it was stated that any employee working in excess of the strength, as would be determined under the "Manak" in an institution, would be adjusted in any other institution by way of transfer where vacancy is available and then the existing

post shall be abolished. It has been further provided that if it is not possible to adjust such employee by way of transfer then they may be adjusted against subsequent vacancies, which may be caused in the institution. For ready reference Clause 2 of the Government Order dated 20.11.1977 reads as follows:

"2. "eq>s ;g Hkh dguk gS fd ;fn iwoZ fu/kkZfjr ekudksa (;fn dksbZ gks rks) ds vk/kkj ij fdlh fo|ky; ds fy, l`ftr in bl jktkKk esa fu/kkZfjr ekud ds vuqlkj vuqeU; la[;k ls vf/kd ik;s tk;sa rks lEcFU/kr in/kkjdkas dks ;FkkIEHko fdlh vU; laLFkk esa LFkkukUrj.k djds muds inksa dks fu;ekuqlkj lekIr dj fn;k tk;] ijUrq ;fn mudk LFkkukUrj.k lEHko u gks rks mUgsa mlh fo|ky; dh Hkkoh fjDr;ksa esa lek;ksftr fd;k tk;A blds foijhr fdlh fo|ky; esa iwoZ l`ftr in fdlh ekud (;fn dksbZ gks rks) ds vk/kkj ij ugha Fks vFkok rRdkyhu izo`Rr ekudksa ds vuqlkj vf/kd Fks rks mUgsa fu;ekuqlkj rRdky lekIr dj fn;k tk;A bu inksa ij dk;Zjr deZpkfj;ksa dks ekuoh n`f"Vdks.k ls fdlh vU; fo|ky; esa lsok ;kstu fnyk;s tkus dk ;FkkIEHko iz;kl fd;k tk;A"

15. At this stage itself the Court may record that admittedly no such action was taken by the authority concerned either to abolish the excess ClassIV posts of K.P. Inter College vizaviz the "Manak" or to adjust the excess employees working therein by way of transfer, or informing the institution that such excess posts stand abolished.

16. Parties before this Court have more or less admitted that there is nothing in the records of the institution or in the office of the District Inspector of Schools which could establish as to how many ClassIV posts were actually created in the said institution. To the similar effect is the finding recorded in the order of the Regional Level Committee.

17. The situation, which therefore emerges before this Court, is that despite the issuance of the Government Order in the year 1977, appropriate action as contemplated therein has been taken by the State Authorities either informing the institution that number of sanctioned ClassIV would stand reduced and further that no future appointment shall be made against the excess posts nor the excess employee from K.P. Inter College were transferred to any other Inter College, where suitable vacancy was available, at any point of time.

18. What is worst is that even against subsequent vacancies, which were caused in the institution, such excess appointees were not adjusted. This Court has no hesitation to record that this situation has continued as on date for last 32 years and cannot be approved of by this Court. Action on the part of the education authorities promptly in accordance with the Government Order, issued from time to time, needs no emphasis from this Court. It is only because of such inaction that situations are created, that the State authorities are not in a position to ascertain as to how many posts in fact had been created in recognized Intermediate Colleges in the State. This in turn adversely affect the financial arrangement which are required to be made for the development of the institutions. At the same time this Court finds that the institutions are also to be

blamed, for not taking appropriate action as per the Manak provided. They together have created a situation where appointments on ClassIV posts in excess of the Manak have been made, vacancy whereof was caused due to retirement etc. of an earlier employee, who was paid salary from the public exchequer. Further such appointments have been permitted to be made by the authorities first by granting permission at the first instance to fill up the vacancy and thereafter by grant of financial approval to the appointment so made.

19. This Court may record that at the time of granting permission to fill in the vacancy, it was the duty of the District Inspector of Schools to have examined the records and to have ascertained that ClassIV vacancy, said to be available in the institution, was in excess of number of posts to be provided under the Manak fixed vide Government Order of 1977 or not. The District Inspector of Schools failed to discharge his duty for the second time when he granted financial approval to the appointment made to fill up the vacancy, which was in excess of the Manak and on the third occasion also the District Inspector of Schools failed to act in accordance with the Manak when he released the salary of such appointees under the 1971 Act.

20. In this background this Court records that the poor ClassIV employees, who have been offered appointment, are now being targeted and are being denied salary from the State Exchequer because of lapse on the part of the District Inspector of Schools and other authorities of the State to act in accordance with the "Manak".

21. The judgment relied upon by the counsel for the petitioner in the case of Sarbjeet Kaur (Smt.) and Krishna Kumar Singh (supra) have held that if an appointment is made against a vacancy, which has been caused by retirement etc. of a person, who was earlier getting salary under 1971 Act. Then such appointment cannot be objected on the ground that the vacancy is outside the "Manak" or the post had not been duly created. The principle laid down therein is applicable, more so, for the reasons recorded herein above.

22. In view of the aforesaid, this Court finds that it is too late from the day for the State authorities to question the appointment of the petitioners on the ground of the same being in excess of the "Manak". The State authorities cannot be permitted to take benefit of their own wrong.

23. This Court, therefore, finds that a case has been made out for setting aside the order of the Regional Level Committee dated 19.05.2009 and that of the District Inspector of Schools dated 26.06.2009.

24. Accordingly, the order of the Regional Level Committee dated 19.05.2009 and that of District Inspector of Schools dated 26th June, 2009 are hereby set aside. The District Inspector of Schools shall determine the number of ClassIV post which are to be sanctioned in the institution in terms of the "Manak" and shall intimate the Principal and management of the institution that in future no appointment against any ClassIV vacancy, in excess of the "Manak", shall be

made and if any such appointment is made, it shall be responsibility of the management/Principal of the institution to pay salary to such appointee. It is further left open for the District Inspector of Schools to act in accordance with Clause 2 of the Government Order of 1977 and to adjust the petitioners, appointed in excess of Manak, in any other institution where suitable vacancy is available provided the institution concerned agrees to such adjustment. In case the institution concerned refuses to adjust the petitioners, they shall continue in the present institution and paid salary accordingly.

25. It is made clear that the Principal as well as management of the institution shall not make any fresh appointment on ClassIV and ClassIII posts in excess of the "Manak" prescribed henceforth and if the petitioners are not adjusted by way of transfer in any other institution, they shall be adjusted against the vacancies which may become available in the institution from time to time in terms within the "Manak".

26. It goes without saying that if the institution feels that any additional ClassIV posts are required for the institution, it is always open to the institution to apply for fresh creation of the post, such request shall be considered by the State Government in accordance with law.

27. Subject to observations/directions issued, the present writ petition is allowed.