
(2004) 11 AHC CK 0178
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 27095 and 38539 of 2001

Pushpa Saxena (Smt.)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-11-2004

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 9

Citation : (2005) 5 AWC 4053 : (2005) 1 ESC 507 : (2005) 1 UPLBEC 418

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Ashok Khare and Mukesh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Ashok Khare, Senior Advocate, assisted by Sri Mukesh Kumar, Advocate, learned Counsel for petitioner and learned Standing Counsel for respondents.

2. Sukh Devi Balika Uchchatar Madhyamik Vidyalaya Mandir, Mahewa, district Etawah is a recognized and aided educational institution and is regulated by the provisions of U.P. Intermediate Education Act, 1921 and U.P. High School and Intermediate College (Payment of Salary to Teachers and other Employees) Act, 1971. The institution is running classes up to Class X with Class I to V as primary sections. The entire institution is receiving the grant-in-aid.

3. The petitioner was appointed as an Assistant Teacher in the primary section on 1.7.1978. Her services were terminated on 15.4.1984 with some other teachers of primary sections. The petitioner filed a Writ Petition No. 7065 of 1984 challenging the termination order. During the pendency of the writ petition, an order was passed by this Court on 7.5.1987 directing the petitioner to file a representation before the Director of Education (Secondary) against the order of termination. The representation was considered and decided by the Director of

Education (Secondary) on 13.10.1992. The Director held the termination order to be invalid and directed the Regional Inspectress of Girls Schools, Kanpur to take further action in compliance of the order.

4. The Committee of Management of the institution filed Writ Petition No. 44001 of 1992 against the order dated 13.10.1992 passed by the Director of Education (Secondary). The writ petition was heard and decided by this Court on 21.1.1993 along with Writ Petition Nos. 7065 of 1984 and 7064 of 1981. The Court did not agree with the submission of the petitioner that the Director of Education (Secondary) had no jurisdiction to decide the matter. It was held that even if the primary section of the institution has not been brought within the purview of the Payment of Salaries Act, the Deputy Director of Education would still have the jurisdiction in the matter inasmuch as the primary section of the institution was admittedly receiving quarterly grant for reimbursement of salaries to teachers and other employees. The powers of the Director of Education were delegated u/s 9 of the Payment of Salaries Act, 1971 to the Deputy Director of Education. It was observed that services of the concerned teachers were terminated for want of approval by the Regional Inspectress of Girls Schools. This Court, following the decision in Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, , held that the question of approval did not arise in such case and, therefore, the services of the concerned teachers were not liable to be terminated. Writ Petition Nos. 7064 of 1984 and 7065 of 1984 were found to have become infructuous.

5. The Committee of Management preferred a Special Appeal No. 227 of 1993 against the judgment which was dismissed by the judgment dated 15th April, 1993. The petitioner was permitted to resume duties by the Management on 29.7.1993 and is regularly working since then and has been paid her salary, taking into account the entire length of service of the petitioner right from the date of her initial appointment and also the increments during the period from 21.5.1984 to 28.7.1993. She, however, has not been paid the arrears of salary from 21.5.1984 to 28.7.1993.

6. By Civil Misc. Writ Petition No. 27095 of 2001, the petitioner has prayed for a direction to the respondents to disburse the arrears of salary for the period 21.5.1984 to 28.7.1993 as Assistant Teacher in compliance of the order dated 7.12.1998 within the period specified by this Court.

7. The petitioner made a representation to the Lok Ayukt, U.P., Lucknow on which notices were issued to the Joint Director of Education, Kanpur Region, Kanpur. The Joint Director of Education informed the Lok Ayukt that after terminating the services of the teachers of primary section, including petitioner Smt. Pushpa Saxena, the primary sections were closed from 1.7.1984 upto 30.6.1989 and no teaching work was performed and no payment was made. The teaching in primary sections was again started w.e.f. 1.7.1989 for which the Committee of Management appointed five teachers, excluding the petitioner, and they were paid salary from 1.7.1989 to 28.7.1993. The Lok Ayukt adjourned the

matter issuing a direction to the Director of Education to explain the circumstances in which the primary sections of the institution were closed. Subsequently, by order dated 26th May, 2001, the Secretary to the Lok Ayukt informed the petitioner that the Lok Ayukt does not have jurisdiction to decide the matter and that she should approach the Competent Authority, having jurisdiction over the matter.

8. The District Inspector of Schools, by his order dated 27.10.2001, with reference to the order of Lok Ayukt dated 24.1.2001, amended the fixation of salary payable to the petitioner and passed the salary bill of the petitioner for the month of August, 2001. In the connected Writ Petition No. 38539 of 2001, the petitioner has challenged the order of Lok Ayukt dated 24.1.2001 and the order of District Inspector of Schools, Etawah dated 27.10.2001.

9. I do not find that the petitioner is entitled to the prayers made in the writ petitions. The Deputy Director of Education (Secondary-3), Uttar Pradesh in his order dated 13.10.1992, deciding the representation in pursuance of the directions of this Court, held that the termination of the services of petitioner Smt. Pushpa Saxena and Km. Prabha Gaur, were improper and invalid. He, however, did not grant any relief for payment of salary. The High Court in Writ Petition No. 44001 of 1992 also did not make, any observation with regards to the payment of salary to the petitioner. In the judgment in special appeal, also no such observation was made. The petitioner was reinstated in service on 28th July, 1993. She did not make any demand for payment of salary for the period from 21.5.1984 to 28.7.1993 for a long period of time. The first representation was made by her some time in the year 1997 on which the District Inspector of Schools wrote a letter to the Manager/Principal of the college to prepare and submit the bill. The District Inspector of Schools by his letter dated 6.11.1998 again reminded the Management to submit the bill. The petitioner has relied upon the Fundamental Rule 54(3) of the U.P. Financial Rules which provides that where termination order is set aside by a Competent Authority/Court, the pay and allowance shall be paid in accordance with Sub-rules (2) and (3) of the Fundamental Rules. In the present case, Rule 54 is not applicable inasmuch as the termination has not been set aside by any Competent Court nor there is any violation of Articles 14 and 16 of the Constitution of India.

10. The legal position with regards to the payment of salary has been settled by the Supreme Court in Ram Ahsrey Singh and Another Vs. Ram Bux Singh and Others, and Secretary, School Committee, Thiruvalluvar Higher Secondary School Vs. The Govt. of Tamil Nadu and Others, . The back wages are not to be paid as a matter of right unless a clear finding is recorded by the Competent Authority or the Court that the order, terminating the services, was illegal and that the claimant was not gainfully employed during the period and was always willing and ready to perform duties for which the salary was claimed.

11. In the present case, the petitioner is claiming salary for the period from 21.5.1984 to 28.7.1993. The petitioner did not make any claim for arrears of

salary for a long period of time. The Fundamental Rule 54-A (3) is not applicable to the facts of the present case. The petitioner did not work for the period in question for which she is claiming the arrears of salary for a long period of time. There is also no averment or any material on record to satisfy the Court that the petitioner was not gainfully employed during the relevant period. The District Inspector of Schools, Etawah, in para 20 of his counter-affidavit filed in Writ Petition No. 38539 of 2001 has made a statement of fact that the college was closed in respect of the teaching work of primary sections from 1.7.1984 to 30.6.1989. The petitioner has not denied this assertion of fact in para 14 of her rejoinder affidavit.

12. For the aforesaid reasons, I do not find any ground for interference in any of the writ petition. Both the writ petitions are, consequently, dismissed. No order as to costs.