
(2004) 07 AHC CK 0089
In the Allahabad High Court
Case No : Writ Petition No. 364 (S/S) of 1997

Ram Kewal Verma and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Citation : (2004) 5 AWC 5090 : (2004) 3 UPLBEC 2902

Hon'ble Judges : I.M. Quddusi, J

Bench : Single Bench

Advocate : K.D. Nag, for the Appellant;

Final Decision : Allowed

Judgement

M. Quddusi, J.—Heard Sri. K.D. Nag, learned Counsel for petitioners and learned Standing Counsel for the opposite parties No. 1 to 7 of both the writ petitions.

2. These are two writ petitions filed by teachers of two different schools involving identical controversy; as such both the petitions are decided together,

3. In both the writ petitions, the petitioners have prayed following reliefs :-

(k) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to pay salary to the petitioners in the regular pay scale with effect from their joining.

(l) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide the petitioners other consequential benefits like Group Insurance, General Provident Fund, retiral benefits etc. which are being made available to other teachers belong to privately managed High School and Intermediate College having Primary Section.

(m) issue any other writ, order or direction to which this Hon''ble Court may deem just and proper in favour of the petitioners.

4. Ram Kewal Verma others i.e. petitioners of Writ Petition No. 364 (S/S) of 1997

are primary teachers in primary section attached to the Shishu Sanskrit Mahavidyalya, Veersinghpur, Saraiyya, Saya-Ambedkar Nagar. Likewise Ms. Vijai Laxmi and others i.e. petitioners of Writ Petition No. 364 (S/S) of 1997 are primary teachers in "primary section attached to the Shree Shankar Sanskrit Vidyalya, Gandhi Nagar, Bhati, Faizabad/Ambedkar Nagar.

5. The teachers imparting education in higher classes of both the Sanskrit Vidyalyas were receiving salary in regular pay scale from the grant-in-aid provided by the State Government for salary payment to the teachers and staff. On the other hand, the primary teachers working in primary section were not covered under the grant-in-aid of State Government, as such, the primary teachers working in primary section are facing discrimination. Therefore, they filed the instant writ petitions

6. The instant writ petitioners further alleged that in the year 1992, State Government decided to pay salary to the primary teachers working in primary section attached to the aided Sanskrit Vidyalyas of UP. In this regard the Director of Education issued letter dated 5.3.1992 to the Inspector of Sanskrit Pathshalayan along with a list of vidyalayas proposed to be taken in grant-in-aid scheme, is on record as Annexure No. 1 with each of the Writ Petition. The Inspector, Sanskrit Pathshalayan was required to collect full details of primary teachers working in the vidyalayas as early as possible. The names of petitioners vidyalayas found place at SI. Nos. 14 and 15 in the list. Further actions liable to be performed by the authorities of State Government appear to remain unattended.

7. In support of their claim for payment of salary in regular pay scale, the learned Counsel for the petitioners have placed reliance on the case law laid down by this Court reported in Ramesh Upadhyaya and Another Vs. State of U.P. and Others, .

8. It is not disputed by the leaned Standing Counsel that a group of similarly situated primary teachers of Sri Alpeshwar Nath Sanskrit Mahavidyalya, Janewra, Fatehganj, Jaunpur, filed W.P. No. 29290 of 1990, Remesh Upadhyaya and Ors. v. State of U.P. and Ors., at Allahabad Bench which was allowed by the judgment and order dated 18.1.1993. It is evident from the paragraph-2 of the judgment passed in Ramesh Upadhyaya and Ors. v. State of U.P. and Ors. (supra) that by the G.O. dated 6.9.1989 about 339 institutions imparting education from primary level to the level of High School and Intermediate were approved by the State Government for payment of salary under Payment of Salaries Act, 1971, but the benefit of G.O. dated 6.9.1989 was not extended to the teachers of primary section of Sanskrit Institutions, thus they were discriminated. Ramesh Upadhyaya & others claimed benefit of the G.O. dated 6.9.1989 through writ petition, and the same was allowed vide judgment and order dated 18,1.1993. It is further pertinent to mention here that while allowing the writ petition of Ramesh Upadhyaya, Justice M. Katju J, issued a direction to pay salary to the teachers of primary section of Sanskrit Institutions through the State Exchequer

as being paid to the primary teachers working in other High School and Intermediate Colleges.

9. Learned Counsel for petitioners further informed that the said judgment and order dated 18.1.1993 was challenged by the State of U.P., in the Hon'ble Supreme Court by filing the SLP No. 2470 of 1994, which was dismissed on 12.7.1995. In result the Joint Secretary, Government of U.P. passed orders dated 29.2.1996, for payment of salary to Ramesh Upadhyaya & others in regular pay scale with effect from October, 1989 in compliance of judgment and order dated 18.1.1993 passed by this Court. A copy of order dated 29.2.1996 issued for compliance of judgment is on record as Annexure No. 7 to the instant writ petition.

10. It is also not disputed by the learned Standing Counsel that the District Inspector of Schools, Faizabad (P.I.O.S.) issued a common letter dated 24.2.1996 (Annexure No. 2 to the writ petition) to 15 Sanskrit Vidyalayas, including both the Vidyalayas of petitioners, directing them to furnish detail of teachers working in primary section. The required particulars and information about the petitioners was sent by their respective managements to the D.I.O.S., Faizabad as well as to the Up-Nirikshak, Sanskrit Pathshalayan immediately after.

11. On account of no further action and non-payment of salary in regular pay scale the petitioners preferred several representations and reminders for payment of salary. On account of in-action and due to non-payment of salary in regular pay scale, petitioners approached this Court by filing the instant writ petitions.

Separate counter affidavits were filed by Mr. Arun Kumar Sinha, Up-Nirikshak Sanskrit Pathshalayan, Faizabad through the learned Standing Counsel in both the writ petitions and in reply the rejoinder affidavits were filed by the respective petitioners. The main thrust of the opposite parties in both the counter affidavit is in three folds.

Firstly, the primary sections of the vidyalayas are imparting education in accordance with the syllabus prescribed by "Basic Shiksha Parishad as such the vidyalayas are not attached to the main Sanskrit Vidyalaya.

Secondly, neither the State Government created any post nor granted sanction for the post in the Vidyalaya in question.

Thirdly, the petitioners have been appointed by the management for which approval has not been granted by the State Government due to non-creation of post.

The objections raised in counter affidavit of opposite parties No. 1 to 7, have been emphatically repelled through the rejoinder affidavits. In reply to the First objection, Sri K.D.Nag, learned Counsel for petitioners submitted that the Nirikshak, Sanskrit Pathshalayan, Faizabad, issued certificate dated 17.11.1973, certifying that the primary section is attached to the Shishu Sanskrit

Mahavidyalya, Veersinghpur, Saraiyya, Saya-Ambedkar Nagar. The certificate dated 17.11.1973 is on record as Annexure No. 10 with Rejoinder Affidavit in W.P.No. 364 of 1997. Similarly the President, Zila Parishad, Faizabad issued certificate dated 16.3.1970 certifying that the Primary section is attached to the Shree Shankar Sanskrit Vidyalya, Gandhi Nagar Bhati, Faizabad/Ambedkar Nagar. The certificate dated 16.3.1970 is on record as Annexure No. 10 to the rejoinder affidavit in W.P.No. 365 of 1997. Moreover the Nirikshak, Sanskrit Pathshalyan, Faizabad periodically visited the Vidyalyas and countersign documents of the Vidyalyas. As such the First objection of the opposite parties falls to the ground.

12. It is further noteworthy that primary sections of both the Vidyalyas were recognized and selected for being taken on grant-in-aid scheme, as such the common letter dated 24.2.1996 (Annexure No. 2) was issued in the name of both the Vidyalyas of petitioners, in pursuance to the general mandamus issued by Justice M.Katju in the matter of Ramesh Upadhyaya and Ors. v. State of U.P. and Ors. (supra) for paying salary to the primary teachers working in primary section attached to the Aided Sanskrit Vidyalyas, in regular pay scale.

13. Second and Third contention of the opposite parties are two facets of the same coin, so the same are dealt together. It is evident that the petitioners-teachers are working as Teachers in primary section in respective Vidyalyas since their appointment. Some of the teachers were appointed as back as in the year 1980 to 1987 and by now they have completed about 20 years of service. Teachers of primary section, performing pains taking job of handling, molding and grooming the young children in a way to mold them responsible citizen of our society.

14. From the pleadings of the parties, it is clear that Shishu Sanskrit Mahavidyalya, Veersinghpur, Saraiyya, Saya-Ambedkar Nagar and Shree Shankar Sanskrit Vidyalya, Griadhi Nagar Bhati, Faizabad/Ambedkar Nagar, both are Sanskrit Vidyalyas recognized by the State of U.P. and affiliated with Shree Sampurnanand Sanskrit Vishwavidyalya, Varanasi. The teachers of higher sections of both the Vidyalyas were getting salary in regular pay scale, under the grant-in-aid scheme from the State Exchequer, but the teachers of attached Primary section were paid by the Management from its own sources. The Primary Teachers of the Vidyalyas were appointed by the respective Management. However the State Government decided in the year 1992 to pay salary from State Exchequer to the primary teachers of primary section, attached to aided Sanskrit Vidyalyas. Moreover in the matter of Ramesh Upadhyaya and others (supra), Justice M. Katju issued a direction to pay salary to the teachers of primary section of Sanskrit Institutions, through the State and the same has already been complied with by the State Government vide letter dated 29.2.1996 (Annexure No. 7 to Writ Petition).

15. Since the instant writ petitioners cannot be discriminated regarding payment of salary by the State Government, they are entitled to get salary from State Exchequer.

16. On the strength of counter affidavit, the learned Standing Counsel argued that the posts on which the petitioners are working were not created by the State Government, but could not point out as to what steps have been taken by the authorities of education department for creation of posts, after decision of State Government to pay salary to the primary teachers of Sanskrit Vidyalyas.

17. Learned Counsel for petitioners, Sri K.D.Nag, emphatically submitted that the concerned authorities of education department were duty bound to take all such steps and measures which are necessary for implementation of decision of State Government with respect to the payment of salary to the teachers of Primary section attached to the Sanskrit Vidyalyas. Mr. Nag, further submits that the opposite parties have themselves allowed to exist the situation of "non-creation of posts" and consequential non-approval" of appointments of petitioners in the Vidyalyas in question due to their own inaction. The alleged impediment of "non-creation of posts" must have been removed and cured by the opposite parties themselves as early as possible. The opposite parties must be stopped to plead the denial of payment of salary to the petitioners on the ground of their own fault.

18. In support of aforementioned submission, learned Counsel for the petitioners placed reliance on the judgment of the Hon'ble Apex Court given in the matter of The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, . In Paragraph 6 of the said judgment, their Lordships have held as under:

"The position has to be accepted as well settled that imparting primary and secondary education to students is the bounden duty of the State Administration. It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high" standards of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions."

19. I have no hesitation to hold that after taking a decision in the year 1992 to pay salary from State Exchequer to the teachers of primary section, attached to aided Sanskrit Vidyalyas, the State Government must have taken steps for "post creation" or must have declared or treat the posts "stands created in accordance with the norms fixed by the State Government for creation of posts.

20. In the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the Apex Court has held that "the mere fact that the State is not taking away the right as at present does not mean that right to education is

not included with in the right to life. The content of the right is not. determined by perception of threat. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. The effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law".

21. Almost in similar situation similar controversy brought to my notice in several other cases of teachers, where working teachers were facing hostile discrimination in the matter of salary payment for want of post creation and for want of approval of appointment.

22. I have already held in my judgment dated 9-2-2004, in the matter of W.P. No. 2054 (S/S) of 2000, Committee of Management, Anand Singh Inter College, Rai Asksrspur, District - Pratapgarh v. State of U.P. and Ors., that in the matter of Educational Institution, the Director of Education is Head of the Department, and he must take responsibility to ensure smooth running of the colleges and vidyalyas. The power to create necessary posts must be exercise candidly and promptly so the decision of State Government for payment of salary is carried in letter and spirit. Simultaneously the Director of Education must issue necessary instructions to the concerned officers to grant necessary approval for appointments to the petitioners.

23. In view of what has been discussed above, both the Writ Petitions are allowed. A writ in the nature of mandamus is issued commanding the Director of Education (Madhyamik), Uttar Pradesh to create necessary numbers of posts to accommodate all those petitioners who are presently working in the respective Vidyalyas within a period of 90 days from the date of production of a certified copy of this order. It is also directed that the concerned District Inspector of Schools shall make payment of salary and arrears of salary to the petitioners in regular pay scale w.e.f. October, 1989 under the grant-in-aid scheme, as given to Ramesh Upadhyaya and others by the Joint Secretary, Government of U.P. vide order dated 29.2.1996 (Annexure No. 7 to the instant writ petition). The Director of Education will pass formal orders to sanction the necessary number of posts and also get sanction the budget -for payment of salary to the petitioners w.e.f. October, 1989 or from the date of actual appointment for those who were appointed subsequent to October, 1989.