

(1989) 01 AHC CK 0001
In the Allahabad High Court
Case No : Civil Misc. Writ No. 10127 of 1987

Ram Niwas Chaube and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-01-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 10, 10(5), 11, 20, 9

Citation : (1989) 1 AWC 580

Hon'ble Judges : S.K. Dhaon, J; D.S. Sinha, J

Bench : Division Bench

Advocate : J.P. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The Petitioners allege themselves to be the Assistant Teachers of the Laghu Madayamic Vidyalaya, a Junior High School, which is governed by the U.P. Recognised Basic School (Junior High Schools) Recruitment and Condition of Service of Teachers Rules, 1978 (hereinafter referred to as the Rules). Their grievance is that they have not been paid their salary since 1st July, 1986. Hence the principal prayer is that the Respondents may be commanded to pay to the Petitioners their salary since 1st July, 1986 onwards.

2. The Petitioners had earlier approached this Court by means of writ petition No. 20272 of 1985, which was finally disposed of on 2nd March, 1987. This Court directed the District Basic Education Officer to dispose of the representations made by the Petitioners within a specified time. These representations related to the payment of salary. On 16th April, 1987, the District Basic Education Officer rejected the representations of the Petitioners. This order is also being impugned in the present writ petition.

3. The material averments are these. The Petitioner No. 1 was appointed as an Assistant Teacher in Sanskrit purely on ad-hoc basis and a letter of appointment

was issued to him on 19th March, 1986. He joined his duties on 1st July, 1986. On 19th March, 1986, the Petitioner No. 2 was appointed as an Assistant Teacher on an ad-hoc basis. He too joined his duties as an Assistant Teacher on 1st July, 1986. In paragraph 9 of the writ petition the averments are these:

That it is gathered from the committee of the management that the necessary papers of the Petitioners were sent to District Basic Education Officer for approval on 20-3-1986 and after expiry of the prescribed period, the Petitioners were appointed

This averment has been made on the basis of the information received from the record. A supplementary-affidavit has been filed. Annexure-I to this affidavit is an alleged copy of a letter of the management sent to the District Basic Education Officer seeking the approval of the appointment of the Petitioners.

4. A counter-affidavit on behalf of the Committee of Management has also been filed. The Committee of Management has supported the case of the Petitioners in so far as it has filed documents showing that the attendance register pertaining to the Petitioners had been verified by the Sub-Deputy Inspector of Schools from time to time.

5. The letters of appointments issued to the Petitioners by the Manager of the institution disclose that the selection committee appointed the Petitioners as temporary Assistant Teachers on ad-hoc basis, vide Annexures 2 and 10.

6. In the impugned order the District Basic Education Officer has emphasised that the Manager alone had appointed the Petitioners as Assistant Teachers. Further, the Petitioners had not been appointed as Assistant Teachers with the previous approval Of the District Basic Education Officer, hence no valid appointment in favour of the Petitioners came into existence at all. Therefore, the question of the District Basic Education Officer being under an obligation to make the payment of salary to the. Petitioners under the provisions of the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 did not arise.

7. Rule 9 of the Rules provides that for the appointment as Assistant Teacher in an institution the management shall constitute a Selection Committee. Rule 10 provides the procedure of selection. According to it after interviewing the candidates the Selection Committee shall prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment, The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the Management. The Manager shall within one week from the date of receipt of the papers from the Selection Committee sent a copy of (the list to the District Basic Education Officer. Clause (iii) of Sub-rule (5) of Rule 10 on which reliance has been placed by the learned Counsel for the Petitioner, reads:

If the District Basic Education Officer does not communicate his decision within

one month from the date of receipt of the papers under Clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee .

Rule 11 provides that on the receipt of the communication of approval or as the case may be, on the expiry of the period of one month under Clause (iii) of Sub-rule (5) of Rule 10, the management shall issue appointment letter to the candidate given the first preference by the Selection Committee and so on. Rule 20, the marginal note of which reads " Temporary Appointment" provides:

Notwithstanding anything contained in these rules, the management may with the previous approval of the District Basic Education Officer, appoint for a period not exceeding six months any person as Head Master or Assistant Teacher as the case may be, provided that no person shall be so appointed unless he possesses the minimum qualification prescribed for the post

8. It will be immediately seen that Rules 10 and 11 deal with permanent appointments. It is the Petitioner's own case that they were appointed temporarily on ad-hoc basis. Therefore, the relevant Rule applicable to the case of the Petitioners is Rule 20. In this Rule the crucial words are "previous approval". It is apparent that in Rule 20 there is no provision of a deemed approval as in the case of permanent appointments under Rule 10. The conclusion, therefore, is inevitable that the Petitioners were not appointed by the management with the previous approval of the District Basic Education Officer.

9. Learned Counsel for the Petitioner has urged that the deeming clause as contained in Rule 10 should be imported in Rule 20. According to him, if it established that even for a temporary appointment the management had sought approval of the District Basic Education Officer and no approval was given within a period of one month then too the appointment made under Rule 20 would be deemed to be a valid appointment. Learned Counsel further urges that if this interpretation is not given Rule 20 would be hit by Article 14 of the Constitution of India as the provisions therein would become discriminatory.

10. Permanent and temporary appointments stand on different footings. The scheme, both in the case of a permanent appointment and in the case of a temporary appointment, is that prior approval of the District Basic Education Officer is necessary. However, in the case of a permanent appointment the rule making authority has provided built in safeguards. The Selection Committee, the composition of which is laid down in Rule 9, has to first make a recommendation. The recommendation has to be forwarded by the management to the District Basic Education Officer and then if the District Basic Education Officer does not give his approval within the specified time the provision of deemed approval has its play. In the case of temporary appointments the management alone has been given the discretion to select any candidate provided he possesses the minimum qualifications prescribed for the post. The appointment is made for a period not exceeding six months which is further extendable for another period of six

months coterminous with the close of the academic session in which such extension is granted. In Rule 20 the discretion is purely of the management in so far as the selection is concerned and that is why there is an insistence upon the previous approval of the District Basic Education Officer. Rules 10 and 20 are operating in different fields. They have been framed to meet different situations. The teachers appointed under two different categories stand on two different footings. There is no element of arbitrariness in the requirement of Rule 20 that no teacher can be appointed on temporary basis without previous approval of the District Basic Education Officer. On the contrary, it appears to be a wholesome Rule. It is to be remembered that by making a temporary appointment a financial liability is cast upon the District Basic Education Officer to make the payment of salary to the temporary teacher under the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978. The provisions of Rule 20 are free from any ambiguity. The rule making authority in its wisdom has not considered it proper to provide for a deeming provision in contrast to Rule 10. The provisions of Rule 20 are workable on their own strength. Therefore, the question of a deeming provision being read into Rule 20 does not arise. The submission that contents of Rule 20 are discriminatory and are hit by Article 14 of the Constitution of India cannot be accepted.

11. Reliance is placed by the Petitioners upon a decision of this Court in the case of Ram Nayan Shukla v. District Basic Education Officer, Gorakhpur 1981 UP LB EC 127. In that case the appointments of Assistant Teachers in a Junior High School were made for the session 1977-78. The Rules were published in the U.P. Gazette extra-ordinary on 13th March, 1978. An argument was raised that the appointments for the session 1977-78 having been made without obtaining the approval of the District Basic Education Officer, it was void. In reply it was contended that there was no statutory provision under which the approval of the District Basic Education Officer was mandatory. This Court observed that in the absence of any provision of law showing that no appointment even on temporary basis during the session 1977-78 without the prior approval of the District Basic Education Officer could be made, it was to be assumed that no approval was necessary. This case, therefore, is not apposite.

12. The Petitioners not having been validly appointed as Assistant Teachers, they are not entitled to the issue of a writ of mandamus commanding the District Basic Education Officer to pay them their salary under the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978. No obligation or duty is cast upon the said officer to pay any salary to the Petitioners under the provisions of the aforesaid Act.

13. This petition has, therefore, to fail. It is dismissed summarily.