

(2011) 01 AHC CK 0278
In the Allahabad High Court
Case No : Writ A No. 52169 of 2009

Ram Pyare Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226
Penal Code, 1860 (IPC) — Section 161, 302
Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 — Section 10, 25(1), 3, 5

Citation : (2011) 8 ADJ 364

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—The Petitioners, working as Assistant Teacher in Mahatma Gandhi Purva Madhyamik Vidyalaya, Japtapur, Jaunpur (hereinafter referred to as "School") having not being paid their salary since June 2007, have approached this Court by filing this writ petition in October 2009 seeking mandamus commanding the Respondents to pay their salary along with arrears. Though the relief in the writ petition has been worded in much broader way so as to include other teaching and non teaching staff of the School but learned Counsel for the Petitioners has confined prayer to the Petitioners in the present writ petition only.

2. The School is recognized by the Board of Basic Education under the provisions of U.P. Basic Education Act, 1972 (hereinafter referred to as "1972 Act") and for the purpose of payment of salary of teaching and non teaching staff of the School, provisions of U.P. Junior High School (Payment of Salary of Teachers and Other Employees) Act, 1978 (hereinafter referred to as "1978 Act") are applicable. Since the dispute of management is pending before the prescribed authority, the School is under single operation.

3. Petitioner No. 2 took over charge as Head Master of the School after

retirement of one Kunwar Rajendra Singh, working as Head Master. Signature of Petitioner No. 2 were attested by District Basic Education Officer (hereinafter referred to as "DBSA") on 30.7.2001. With regard to appointment of six persons as Assistant Teacher, some dispute arose whereafter DBSA passed an order on 31.3.2001 withholding payment of salary of entire staff of the School. Challenging the aforesaid order dated 31.3.2001, writ petition No. 18657 of 2001 was filed wherein an interim order was passed on 16.5.2001 directing the Respondent No. 4 to make payment of salary to the Petitioners in that case in view of the order dated 20.3.2001 already passed by Respondent No. 4, i.e. DBSA, Jaunpur.

4. The Petitioner No. 2, however, did not submit salary bill since it would have resulted in payment of salary to certain Teachers who were not legally appointed in School. Hence, an order was passed by DBSA on 19.9.2003 u/s 5 of 1978 Act for single operation of accounts which was communicated by Finance and Accounts Officer, Basic Shiksha, Jaunpur by his letter dated 1.10.2003. DBSA also authorized one Shashi Kumar Mihsra, Assistant Teacher of the School to submit salary bills for payment of salary to all the Teachers pursuant to the interim order dated 16.5.2001 passed by this Court in writ petition No. 18657 of 2001. The order dated 19.9.2003 of single operation was challenged before this Court in writ petition No. 46211 of 2003 which was stayed by this Court by interim order dated 1.12.2003.

5. It appears that the Director of Basic Education sought the report with respect to validity of appointment Teachers in School pursuant whereunto DBSA submitted a report dated 6.11.2003 (Annexure 8 to the writ petition) wherein the appointment of the Petitioners was not disputed but with respect to appointment of Petitioner No. 3, a doubt was expressed.

6. The writ petition No. 18657 of 2001 came up for hearing before this Court on 3.9.2004. An application was filed by Sri Babu Nandan Shastri (Petitioner No. 4), Ram Pyare Gupta (Petitioner No. 7), Chandra Shekhar Yadav (Petitioner No. 8), Purshottam Ram (Petitioner No. 11), Nanhku Ram (Petitioner No. 12) and Om Prakash (Petitioner No. 13) in that case that they never signed vakalatnama and the writ petition was filed on their behalf illegally, hence, their names should be deleted from the array of the parties, which was allowed. The writ petition was directed to be dismissed so far as these persons were concerned by order dated 3.9.2004. With respect to remaining Petitioners, since none appeared, the writ petition was dismissed by the same order.

7. In the meantime, stay order dated 7.11.2003 passed in writ petition No. 46211 of 2003 was also recalled by this Court vide order dated 1.12.2003 whereagainst a special appeal No. 1385 of 2003 was filed which was disposed of vide judgment dated 17.12.2003 with the following order:

Heard the learned Counsel for the Appellants and Sri Anil Kumar Srivastava, learned Counsel, appearing for the contesting Respondents.

By this appeal, the Appellants have prays for setting aside the order dated 10th December, 2003 by which order a learned Judge of this Court has recalled the stay order dated 7th November, 2003.

A writ petition was filed by the Appellants in which order was passed on 15th October, 2003 granting three weeks time to file counter affidavit and three weeks thereafter was allowed for filing rejoinder affidavit. On an application filed by the Appellants an interim order was passed on 7th November, 2003 staying the operation of the order impugned in the writ petition. Thereafter an application was filed by the Respondents for recall of the order dated 7th November, 2003. The learned Judge by the order dated 10th December, 2003 vacated the interim order dated 7th November, 2003 on the ground that time allowed by the Court for filing counter affidavit had not expired.

The writ petition is still awaiting admission and no final order has yet been passed on the stay application. We have also been informed that counter affidavit has been filed in the writ petition.

In view of the above, we are of the view that the writ petition be listed for admission on 15th January, 2003 and if the writ petition is not disposed of on that date, the application for interim relief be considered by the learned Judge. We further observe that till further orders passed by the learned Judge in the writ petition, the State authorities shall not pass any bills for arrears of salary of any employee or teacher of the institution concerned.

The special appeal is disposed of with the aforesaid observation.

8. Therefore, the Division Bench restrained the State authorities from passing any salary bill for arrears of salary of any Teacher or other employee of the School till further order is passed by the Hon'ble Single Judge in the above writ petition. Despite the aforesaid order, it appears that payment of salary was made and Petitioners received their salary upto May, 2007.

9. A Writ Petition No. 69388 of 2006 in the meanwhile was filed by the Management against certain Teachers claiming to be illegally appointed and not entitled for salary. This Court on 16.1.2007 passed an interim order restraining payment of salary to those six teachers which did not include any of the Petitioners.

10. The writ petition No. 46211 of 2003 was ultimately dismissed as infructuous by order dated 12.12.2007.

11. The Petitioner No. 2, in the meantime, officiating as Head Master, was detained in jail for his implication in a criminal case as a result whereof he was placed under suspension. DBSA, therefore, approved signatures of one Vijay Bahadur Yadav as In-charge Head Master ignoring the fact that appointment of Vijay Bahadur Yadav was challenged in writ petition No. 69388 of 2006 and this Court vide order dated 16.1.2007 has restrained the Respondents from making payment of salary to Vijay Bahadur Yadav and five other Teachers, namely, Sri

Arvind Kumar Chaturvedi, Sri Amar Bahadur Yadav, Sri Shashi Kumar Mishra, Sri Laxmi Narain Yadav and Sri Sarvesh Kumar Yadav. Since Vijay Bahadur Yadav was not to be paid salary, obviously, he did not submit any salary bill and the Respondents officials also did not take any step ensuring payment of salary to teaching and non teaching staff whose appointments were not in dispute and in regard whereeto, there was no order authorizing the official-Respondents for withholding their salary.

12. DBSA further complicated the matter inasmuch the Petitioner No. 2, Sri Chandra Shekhar Yadav, was released from jail on bail and, thereafter, requested for revocation of his suspension and to recognize him again as in-charge Principal. On his request, Sri Dhirendra Nath Singh, the then DBSA, passed an order on 7.8.2009, revoked suspension of Petitioner No. 2 and approved his signatures as officiating/in-charge Head Master. It is interesting to notice that this order was passed by DBSA despite the fact that Petitioner No. 2 was implicated in a criminal case u/s 302 I.P.C., wherein charge sheet was also filed against him and trial was pending, yet the said official sought it expedient not only to revoke suspension of the Petitioner No. 2, but also recognize/authorize him to function as officiating/in-charge Head Master and for that purpose his signatures were also approved by order dated 7.8.2009.

13. Vijay Bahadur Yadav, whose appointment was under challenge in writ petition 69388 of 2006 came to this Court in writ petition No. 45274 of 2009 and considering implication of Sri Chandra Shekhar Yadav in a criminal matter of such a serious nature, this Court passed order on 28.8.2009 staying the order of DBSA revoking suspension of Chandra Shekhar Yadav as also recognizing his signatures as Head Master.

14. The salary of the Petitioners and/or subsistence allowance to the Petitioner No. 2 having not been paid by the Respondents even thereafter, these three persons have filed the present writ petition seeking mandamus commanding the Respondents to pay them salary since June 2007.

15. Despite time having been granted on 12.10.2009, Respondents did not file any counter affidavit. Ultimately, this Court on 24.11.2010 passed stop order giving last opportunity to the Respondents to file counter affidavit by 13.12.2010 failing which they were to appear in person. It is only thereafter an affidavit was filed by Sri Dhirendra Nath Singh, the then DBSA stating that due to managerial dispute, payment of salary to the staff of the institution got disturbed. He has referred to an order dated 12.9.2007 passed in Special Appeal No. 1161 of 2007, Committee of Manaement v. State of U.P. and stated that in pursuance thereof, an order was passed on 24.10.2007 for single operation of accounts for payment of salary of the staff of Respondent No. 2, but since there was no permanent Head Master in the institution, the Petitioner No. 2, in-charge Head Master was in jail and the Petitioners 1 and 3 had expressed their inability to function as Head Master, the salary could not be paid.

16. He has also referred to interim order dated 16.1.2007 passed in writ petition No. 69388 of 2006 and dated 28.8.2009 passed in writ petition No. 45274 of 2009 in the chain of giving explanation for non payment of salary. He further says that on 30.4.2010, a Government Order was issued to all the District Basic Education Officer and Finance and Accounts Officer directing them to make payment of salary to only those teaching and non teaching staff who are regularly appointed and there is no dispute about their appointment. He says since an enquiry is going on in District Jaunpur for ascertaining the validity of appointment of certain staff, as a result thereof, payment of salary could not be made.

17. Lastly, he submits that on 7.5.2010, he passed an order attesting signature of Petitioner No. 1 as Head Master, but he has not produced the salary bill, hence salary could not be paid, but simultaneously in another paragraph, i.e. paragraph No. 11, he said that after his order dated 7.5.2010, payment of salary to teaching and non teaching staff of the institution started on the basis of bill submitted by in-charge Head Master, i.e., Petitioner No. 1. In para 30 of the counter affidavit, he says that Petitioner No. 1 submitted salary bill for the months of March and April 2010 which have been cleared for payment on 10.8.2010.

18. One of the justification for non payment of salary to the Petitioners provided in counter affidavit was the Government Order dated 30.4.2010 and the alleged enquiry pending in reference thereto.

19. This Court taking note of the said defence and also after going through the Government Order found some inconsistency in the stand and passed a detailed order on 13.12.2010 directing Director, Basic Education to appear in person and explain the things. Pursuant thereto, the Director, Basic Education filed an affidavit dated 23.12.2010 wherein he took the stand that Government Order dated 30.4.2010 has directed District Basic Education Officers and Accounts Officers to check illegal payment and no information was sought by Government. He stated that the aforesaid Government order was communicated to the concerned officials by Directorate's letter dated 4.5.2010 with a further instruction that the Government Order dated 30.4.2010 be complied with strictly and proceedings be communicated to the Directorate. He also states that the Management of the institution if failed to submit information as desired pursuant to the Government Order dated 30.4.2010, would result in non payment of salary to the employees of the institution concerned till the information desired is furnished. With respect to Petitioners, he has said that since desired information has not been submitted in respect of the institution of the Petitioners, hence, their salary was not released.

20. The Petitioners have filed rejoinder affidavit to the counter affidavit of Respondent No. 2 and in para 6 thereof it is said that the Petitioner No. 2 was recognized as Head Master and his signature was attested on 30.7.2001 whereafter salary bills were submitted under his signatures till May, 2007.

Thereafter, he was jailed and then, DBSA created all problems by firstly recognizing and approving the signatures of Vijay Bahadur Yadav, whose appointment was in dispute in writ petition 69388 of 2006 wherein an interim order was passed on 16.1.2007 restraining payment of salary to Vijay Bahadur Yadav and five others. Despite having passed an order of single operation, the educational authorities did not take steps ensuring payment of salary to the staff in respect where to there was no dispute. They also referred to this Court's interim order dated 28.8.2009 passed in writ petition No. 45274 of 2009 and said that Petitioner No. 1 and other staff submitted application before DBSA requesting him to recognize some other person for ensuring payment of salary but he did nothing and in these circumstances the present writ petition had to be filed only whereafter he recognized and approved the signatures of Petitioner No. 1 on 7.5.2010 pursuant where to he submitted the salary bills of March and April 2010 which has been paid but for subsequent period, in view of the Government Order date 30.4.2010, the entire payment of salary has been withheld.

21. It is said that the basic reason is that the authorities were pressurizing the institution and the Petitioners to somehow or other arrange to make payment of salary to illegally appointed Teachers including Sri Vijay Bahadur Yadav and Amar Bahadur Yadav and it is for that reason, a situation was created so as not to make payment of salary even to regularly appointed Teachers and others staff whose appointments were not at all in dispute. The Petitioners have questioned the bona fide of DBSA in recognizing Vijay Bahadur Yadav as officiating Principal knowing it well that his appointment was challenged in 69388 of 2006 wherein a stay order was passed by this Court restraining payment of salary to Vijay Bahadur Yadav and five others.

22. There could not have been any valid reason to the Respondent No. 2 to authorize and recognize signatures of Vijay Bahadur Yadav as Principal and to create anomaly for payment of salary. It is complained that salary of Petitioners since May 2007 till date except March and April 2007 is still unpaid though there is no valid reason for the same.

23. This Court in the above circumstances enquired from the Respondents as to whether salary for the period it is unpaid has been paid or not and if not why, whereafter a supplementary counter affidavit sworn by Sri Dharendra Nath Singh, DBSA has been filed. This time a slight different stand has been taken. It is said that salary upto May 2007 has been paid to the teaching and non teaching staff of the institution in question. It is further said that there was a managerial dispute. The Assistant Registrar passed an order on 25.9.2006 pursuant where to one Dinesh Kumar Yadav was recognized as Manager and Sri Ram Asre as Adhayksha of the Society. These two orders were challenged in writ petition No. 64079 of 2006 by rival Committees represented by Sri Lalta Prasad Gupta alleging to be Manager and then an interim order was passed on 30.11.2006 staying both the orders, i.e., of Assistant Registrar as well as of DBSA recognising Dinesh Kumar Yadav as Manager. Special Appeal No. 1601 of 2006

was filed against the interim order dated 30.11.2006 which was allowed on 2.1.2007 setting aside the interim order and directing Hon''ble Single Judge to decide writ petition on merits expeditiously. In all, there were four writ petitions pending before this Court involving managerial dispute of the institution concerned and they all were heard and decided by the Hon''ble Single judge vide judgment dated 3.8.2007 and following order was passed:

14. Having regard to the facts and circumstances, I find that the connected Writ Petition Nos. 48251 of 2004, 50619 of 2003 and 43710 of 2001 have since become infructuous as the elections by the Petitioner held on 5.1.2005 have been recognized by the Basic Shisha Adhikari and the certificate of registration was renewed in his favour. In case the Respondent No. 3 was aggrieved by any of these orders, the only remedy left to him was to have either resolved with 1/4th members to approach the Prescribed Authority and thereafter if he was still aggrieved, file suit in the Civil Court. The Writ Petition Nos. 48251 of 2004, 50619 of 2003 and 43710 of 2001 are dismissed as infructuous and the writ petition No. 64079 of 2006 is allowed. The orders of the Asstt. Registrar, Firms, Societies and Chits, Varanasi dated 25.9.2006 (Annex. 43) and 27.9.2009 (Annex. 44) are quashed and a writ of mandamus is issued to the Respondents not to interfere in Petitioner's functioning and discharging his duties as Manager of the institution.

24. Special Appeal No. 1161 of 2007 preferred against the judgment dated 3.8.2007 was disposed of on 12.9.2007 with the following order:

In view of the aforesaid, this appeal is disposed of with a direction upon the Assistant Registrar, Firms, Societies and Chits to transmit all the papers pertaining to the elections pleaded by Respondent No. 1 dated 5th October, 2005 and that pleaded by the Appellant dated 23rd February, 2006 to the Prescribed Authority u/s 25(1) within two weeks from the date a certified copy of this order is filed before the Assistant Registrar, Firms Societies and Chits. The Prescribed Authority shall examine the legality of the elections pleaded by the parties and shall adjudicate upon the dispute, preferably within six weeks from the date the papers are so received. The Prescribed Authority shall afford opportunity of hearing to the parties and shall permit exchange of documents. He shall pass a reasoned speaking order. The rights of the parties to manage the affairs of the society as well as the institution established by, and other consequential rights shall abide the decision to be so taken. The judgment of Hon''ble Single Judge dated 3rd August, 2007 stands modified accordingly.

Till such decision of the Prescribed Authority neither the Appellant nor the Respondent No. 1 shall have any right to manage the affairs of the society/institution and during this period there shall be single operation of accounts in the institution.

With the aforesaid observation/directions this special appeal is disposed of finally.

25. In view of the aforesaid judgment dated 12.9.2007, DBSA passed an order

on 24.10.2007 u/s (5) of 1978 Act. Thereafter, he has referred to the order whereby he recognized signature of Sri Vijay Bahadur Yadav and subsequent orders recognizing Chandra Shekhar Yadav as in-charge Head Master and the interim order passed thereon etc. He has clarified that Petitioner No. 2 was arrested in criminal case on 24/25.8.2007 and, hence, Vijay Bahadur Yadav was recognized as in-charge Head Master. He further states that salary bill of the month of May, 2010 was presented by Petitioner No. 1 on 22.12.2010 and since earlier no salary bill was presented, hence payment could not be made. He also referred to the Government Order dated 30.4.2010 and says that the information has not been submitted.

26. Having gone through the pleadings, as referred to above in detail, and also submissions advanced by the learned Counsel for the parties, which is basically nothing but reiteration of above pleadings and documents, this Court finds that here is a case which is a glaring example to show, how educational authorities make a simple matter too complicated resulting in violation of valuable rights of earning salary by the employees in respect whereof there is no doubt about their appointment etc. They got entangled in a motivated vicious circle and thereby receive no salary for months and years together. Moreover, the authorities in their discretion whenever they like, make payment of salary despite an otherwise order of this Court. Of their sweet will, they also create situation so as not to make salary to even validly appointed staff, though there is no otherwise order restraining for payment of salary to them either by a Court of law or otherwise.

27. Now, I may demonstrate the above inference drawn by this Court from the fact borne out from the record.

28. Rival dispute of management in effect had not caused any hindrance in payment of salary to the staff of the institution in question, though the educational authorities have tried to rope it in their pleadings to justify their failure in ensuring payment of salary to the Petitioners. The real dispute in respect to payment of salary arose when the question of legality of appointment of six persons, namely, Vijay Bahadur Yadav, Arvind Kumar Chaturvedi, Amar Bahadur Yadav, Shashi Kumar Mishra, Laxmi Narain Yadav and Sarvesh Kumar Yadav arose in the year 2001. On 31.3.2001 DBSA passed an order withholding payment of salary to entire staff of the institution due to the dispute with respect to legality of appointment of aforesaid six persons as Assistant Teacher. This order was stayed on 16.5.2001 in writ petition No. 18657 of 2001. The said writ petition was filed by 12 Petitioners. This Court directed DBSA to ensure payment of salary to all the Petitioners in view of his earlier order dated 20.3.2001 whereby it had approved payment of salary for the said 12 persons namely, Sri Kunwar Rajesh Singh (Assistant Teacher), Sri Chandra Shekar Yadav (Assistant Teacher), Sri Ram Narain Gupta (Assistant Teacher), Sri Arvind Kumar Chaturvedi (Assistant Teacher), Sri Ramesh Chandra Bind (Assistant Teacher), Sri Amar Bahadur Yadav (Assistant Teacher), Sri Shashi Kumar Misra (Assistant Teacher), Sri Laxmi Narain Yadav (Assistant Teacher), Sri Shyam Kanhaiya Yadav (Clerk),

Sri Purushottam (Peon), Sri Om Prakash (Peon) and Sri Nanhakuram (Peon).

29. DBSA recognized the signature of Petitioner No. 2, Chandra Shekhar Yadav as in-charge Head Master on 30.7.2001 and, therefore, he submitted salary bills as per order dated 16.5.2001 of this Court and it appears that salary was paid. Later on in 2003 when Petitioner No. 2 tried to submit salary bills so as to exclude those tTeachers in respect of whom he thought that they were illegally appointed, DBSA passed an order on 19.9.2003 for single operation of the accounts pursuant whereto Finance and Accounts Officer by letter dated 1.10.2003 informed that now the accounts shall be operated by him alone.

30. Sri Sheetla Prasad Maurya, the then DBSA, Jaunpur immediately thereafter passed another order on 24.10.2003 authorizing one Shashi Kumar Mishra, Assistant Teacher to submit salary bill of all the teaching and non teaching staff of the institution directing him to submit bill in respect to the six Assistant Teachers, namely, Sri Vijay Bahadur Yadav, Sri Arvind Kumar Chaturvedi, Sri Amar Bahadur Yadav, Sri Shashi Kumar Mishra, Sri Laxmi Narain Yadav and Sri Sarvesh Kumar Yadav and a Clerk, namely, Sri Shyam Kanhaiya. Here Sri Shashi Kumar Mishra, who was authorized by DBSA to submit salary bill was one of those six Assistant Teachers whose appointments were in cloud.

31. The order dated 1.10.2003 communicated by the Finance and Accounts Officer for single operation was challenged in writ petition No. 46211 of 2003 wherein this Court initially on 15.10.2003 passed an order permitting the parties to exchange pleadings but thereafter on 7.11.2003 passed an interim order staying order dated 1.10.2003, It was recalled on 10.12.2003 and then matter was taken in intra Court appeal wherein a detailed order was passed on 17.12.2003 restraining the State authorities from passing any bill for arrears of salary of any employee or in-charge of institution concerned till the order is passed by learned Single Judge in the above writ petition. This order of Division bench continued to hold field upto 12.12.2007 when the writ petition was ultimately dismissed, but, it appears that it did not prevent or checked State authorities including Respondent No. 2 from paying salary to entire staff of the College including the Petitioners and six Assistant Teachers whose appointments were doubted till May 2007. The Division Bench order was not at all paid any heed by the State authorities and the Petitioner No. 2 continued to submit salary bill of all the Teachers in furtherance of the interim order dated 16.5.2001 passed in writ petition No. 18657 of 2001, though that writ petition was also ultimately dismissed in its entirety on 3.9.2004.

32. After May 2007, it appears that for one or two months, the salary bills were not submitted and in the meantime on 24/25.8.2007 the Petitioner No. 2 was arrested and sent to jail, hence salary bills could not be submitted. Thereafter, DBSA took a strange step and authorized Vijay Bahadur Yadav to work as in-charge Head Master and attested his signatures despite having knowledge that his appointment was already under challenge before this Court in writ petition No. 69388 of 2006 wherein an interim order was passed on 16.1.2007

restraining payment of salary to six Assistant Teachers which include Vijay Bahadur Yadav.

33. It appears that Vijay Bahadur Yadav did not submit any salary bill since he could not have claimed salary in view of the interim order passed by this Court and, hence, he also did not take any interest to ensure payment of salary to the Petitioners and other staff in respect to whom there was no reason to withhold salary. DBSA also paid no heed to the situation of non payment of salary to the staff of the College in respect to whom there was no dispute and no restraint order even otherwise was passed to withhold payment of salary.

34. Thereafter, when this writ petition was filed and the Respondents were directed to file counter affidavit, they chose not to respond for more than a year. This Court granted time to the Respondent to file counter affidavit on 12.10.2009 but for more than a year, no reply was filed whereafter this Court had to pass an order on 24.11.2010 as discussed above. The only redeeming feature in between is that probably after receiving notice of the writ petition, on 7.5.2010 DBSA recognized and approved signatures of Petitioner No. 1 as In-charge Head Master authorizing him to submit salary bills which he submitted for the months of March and April, 2010 and the same were paid in August 2010, but the subsequent bills were not allowed to be submitted in view of the Government Order dated 30.4.2001 whereby Management of the institution had to submit information about various appointments of teaching and non teaching staff in the institution and after their verification only DBSA was supposed to make payment as stated in the said Government Order.

35. Therefore, for withholding payment after April 2010, Respondent No. 2 has taken shelter under Government Order dated 30.4.2010 and also that requisite information has not been received by it.

36. I may also remind at this stage that validity of appointment of six Assistant Teachers is still sub-judice before this Court in writ petition No. 69388 of 2006 and, therefore, so far as these six persons are concerned, it is difficult at this stage to accept that the Respondent No. 2 could have taken a final decision particularly when this Court has also restrained him for making payment of salary to these six persons.

37. During the course of argument, Sri K.S. Kushwaha, learned Standing Counsel, when enquired, stated at the bar that so far as the validity of appointment of the Petitioners is concerned, the same being not in dispute, there is no reason to refrain from paying salary to them. He only submits that since the information desired under the Government Order dated 30.4.2010 has not been received from institution concerned and that since the salary bills were not submitted for the subsequent period, it has not been paid. He, however, could not show anything as to how the salary for the period of June 2007 to February 2010 was not paid to the Petitioners though their appointments were not assailed and the interim order dated 16.1.2007 relates only to six Teachers specifically

named in that writ petition. He also could not reply to the allegation made by the Petitioners in para 6 of the rejoinder affidavit that the Respondent No. 2 and educational authorities were pressurizing Petitioners to pay salary to all the Teachers to which they were not agreeing and, hence, the payment of salary to the Petitioners has been interrupted in such a manner which is wholly illegal and arbitrary.

38. The payment of salary has been ensured to the teaching and non teaching staff of an aided institution by provisions of 1978 Act. Section 3 of 1978 Act mandates that payment of salary to the concerned staff shall be made by 20th of the following month, meaning thereby, if the salary of January has to be paid, it shall be paid by 20th of February and so on. 1978 Act nowhere authorize to detention or withholding of salary of a teaching or non teaching staff of any institution governed by the said Act except, off course, the cases where the appointment itself can be said to be illegal or invalid or non est. So far as the three Petitioners are concerned, that is not the case. Admittedly, with respect to Petitioner No. 2, the only thing pointed out by learned Standing Counsel is that he was placed under suspension after his arrest in August 2007 and when the order of suspension was revoked, the same was also stayed. He, thus, is to be deemed under suspension and cannot be paid full salary. That being so, the subsistence allowance or half salary, as the case may be, had to be paid to the Petitioner No. 2 in accordance with rules but this cannot justify non payment of even a single penny to other Petitioners. So far as Petitioners 1 and 3 are concerned, even such a justification is not available. Vague submissions and pleadings attempted to be relied on by the Respondents that there was managerial dispute, many cases were filed, many orders were passed and that is how the authorities were confused and salary could not be paid, but, as this Court has placed the chain of events chronologically, it shows that so far the three Petitioners are concerned, at no stage, there was any reason that they ought not to have been paid salary particularly when after the Division Bench decision of this Court in Special Appeal No. 1161 of 2007, order of single operation was passed on 24.10.2007 and, thereafter, it ought to have been ensured by Respondents that salary is paid to uncontroverted staff in strict compliance of 1978 Act, which could not have been deferred even by an executive order.

39. In fact, Sri Kushwaha, when confronted with this situation, could not provide any justification except of saying that now the Petitioner No. 1 has been authorized and if he submits salary bill, the same shall be looked into and passed in accordance with law. This stand justify an inference which would have been drawn by any person of ordinary prudence. Non payment of salary to the Petitioners since June, 2007 till date except for two months, as staed above, which has been paid in August 2008, is wholly unjustified. The entire authority vested in the educational authorities, particularly when on 24.10.2007, order of single operation was passed. Yet they failed to ensure payment of salary as mandated vide Section 10 of 1978 Act. In absence of any believable justification,

inaction on the part of Respondents is clearly illegal and arbitrary. It also amounts to violation of Petitioners' fundamental right enshrined under Article 21 of Constitution which includes within its ambit right to earn livelihood.

40. Learned Counsel for Petitioner stated that Respondents-educational authorities are harassing Petitioners by not paying their salary so as to cause benefit to illegal appointees is writlarge from the fact that on two occasions when they passed the orders of single operations, they authorized signature of two of the illegally appointed Teachers, namely, Sri Shashi Kumar Mihsra and thereafter Vijay Bahadur Yadav and in respect to both of these Teachers, this Court has passed an interim order for not making payment of salary to them. This shows that inaction on the part of the Respondents was not unfounded or a sheer mistake but it was motivated and tainted with an intention otherwise than bonafide. He stated at bar that as a matter of fact, not even a single salary bill of the staff of an educational institution is sanctioned every month in the office of educational authorities unless an fixed amount is regularly paid by the staff of the concerned institution, which is termed to be "smooth functioning fees" and thus virtually all the staff of various educational institutions have taken to be a fait accompli and virtually as a matter of fact unwritten sanction is going on yet the educational authorities in order to enlarge their illegal appointees indulged in further activities of encouraging illegal appointments and payments of salary to them in which they have their loin's share. He said that this kind of corruption, prevailing in almost all the offices of educational authorities, is extremely difficult to prove but, as a matter of fact, it is there. A very few teachers dare to approach this Court for redressal of their grievances and protection of their rights but that does not mean that the system gets sensitized in any manner at any point of time and continue to move as it is with impurity. Though in the absence of any pleadings it is difficult to make any observation on this statement of learned Counsel for the Petitioner, but taking into consideration the experience of the Court, particularly, considering the fact that this Court is looking after this jurisdiction for quite sometime and what it has experienced from the various cases like this, it cannot be said as to what learned Counsel for Petitioner stated at the bar is wholly unfounded. This is really a matter of shame. When in education department, such kind of corruption is prevailing, one can easily understand plight of poor teachers and non teaching staff of the educational institutions if they attempt to prove such activities on the part of educational authorities which identify them for a special treatment, which sometimes become difficult for them to overcome.

41. This Court has recently observed in Civil Misc. Writ Petition No. 45893 of 2008 (Smt. Mithilesh Kumari v. State of U.P. and Ors.) decided on 18.11.2010 that in the last 60 years of independence, if there is one field we can boast of a national allround development and that too multifold, it is the field of corruption. It has various shades. It is not confined to only one field of bribery, cash and kind, but has different colours and nuances.

42. In paras 40 to 56 of the judgment in the case of Smt. Mithilesh Kumari, (Supra) this Court has observed which in my opinion is fully contextual for the case in hand also:

40. There are some statutes in the name of checking/preventing this menace, but that is virtually toothless, a paper tiger. These statutes have not proved at all, in actual sense, a deterring measure, for the civil servants engaged in such activities. In fact these activities are beyond any limits and bounds and have crept in all the wings of State, whether executive, legislature or even judiciary.

41. Corruption has been defined in different dictionaries and some of which, useful for our understanding, may be reproduced as under.

42. The Concise Oxford Dictionary of Current English" published by Oxford University Press, first published in 1995, at page 301 defines corruption as under:

Corruption: 1 moral deterioration, esp. widespread. 2 use of corrupt practice, esp. bribery or fraud. 3a irregular alteration (of a text, language, etc.) from its original state. b an irregularly altered form of a word. 4 decomposition, esp. of a corpse or other organic matter. [Middle English from Old French corruption or Latin corruptio (as Corrupt)].

43. In P. Ramanath Aiyer "Concise Law Dictionary With Legal Maxims, Latin Terms & Words and Phrases" published by Lexis Nexis Butterworths Wadhwa Nagpur, Third Edition Reprint 2010, at page 268:

Corruption. Something against law; something forbidden by law, as certain acts by arbitrators, election or other officers, trustees; an act done with intent to gain an advantage not consistent with official duty and the rights of others.

44. In "Judicial Dictionary" by KJ Aiyer, 14th Edition, Lexis Nexis Butterworths India, New Delhi, 2007, at page 288:

Corruption. The term covers "criminal misconduct". A public servant is said to commit an offence of criminal misconduct in the discharge of his duty, if he, by corrupt or illegal means, or by otherwise abusing his position as a public servant, obtains for himself or for any other person, any valuable thing or pecuniary advantage.

An attempt to obtain a bribe in a single case, which was never paid, does not fall under cl (a), (b) or (d) of s 5, and therefore, is not "corruption", within the meaning of the Prevention of Corruption Act 1947.

45. In "Encyclopaedic Law Dictionary (Legal & Commercial)" by Dr. A.R. Biswas 3rd Edition 2008, published by Wadhwa and Company, at page 369:

Corruption. Corruption is impairment of integrity, virtue or moral principle, depravity; inducement to wrong by bribery or other unlawful or improper means; a departure from honesty, integrity or fair dealing.

46. In the context of some statutory provision or even otherwise the word

"corruption" has been explained in various decisions by the Courts also and some of such may be referred as under.

47. In *Secretary, Jaipur Development Authority v. Daulat Mal Jain* 1997 (1) SCC 34:

. . . When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as "corruption".

48. In *High Court of High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another*,

Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of "corruption". "Corruption" thy name is depraved and degraded conduct..... In the widest connotation, "corruption" includes improper or selfish exercise of power and influence attached to a public office.

49. In *B. R. Kapur v. State of T.N.* 2001(7) SCC 231:

. . . scope of "corruption" in the governing structure has heightened opportunism and unscrupulousness among political parties, causing them to marry and divorce one another at will, seek opportunistic alliances and coalitions often without the popular mandate.

50. In *State of Andhra Pradesh Vs. V. Vasudeva Rao*,

. . . The word "corruption" has wide connotation and embraces almost all the spheres of our day-to-day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations.

51. In the context of the Prevention of Corruption Act and Section 161 Indian Penal Code the Courts were mainly concerned as to when it can be said to be an offence and that is how it has been interpreted and some of such decisions may also be looked into. (1942 Rangoon 30; *State of Madras (Collector of Coimbatore) Vs. Rajagopala Ayyar (C.S.)*, *Bishambar Lal Daya Chand Vs. State of Punjab*,

52. In general the well accepted meaning of corruption is the act of corrupting or of impairing integrity, virtue, or moral principle; the state of being corrupted or debased; lost of purity or integrity; depravity; wickedness; impurity; bribery. It further says, "the act of changing or of being changed, for the worse; departure from what is pure, simple, or correct; use of a position of trust for dishonest gain.

53. Though in a civilised society, corruption has always been viewed with particular distaste to be condemned and criticised by everybody but still one loves to engage himself in it if finds opportunity, ordinarily, since it is difficult to resist temptation. It is often, a kind, parallel to the word "bribery", meaning

whereof in the context of the politicians or bureaucrats, induced to become corrupt. The Greek Philosopher Plato, in 4th Century BC said, "in the Republic that only politicians who gain no personal advantage from the policies they pursued would be fit to govern. This is recognised also in the aphorism that those who want to hold power are most likely those least fit to do so." While giving speech before the House of Lords William Pitt in the later half of 18th Century said, "Unlimited power is apt to corrupt the minds of those who possess it." Lord Acton in his letter addressed to Bishop Creighton is now one of the famous quotation, "Power tends to corrupt and absolute power corrupts absolutely.

54. Corruption is a term known to all of us. Precise meaning is illegal, immoral or unauthorized act done in due course of employment but literally it means "inducement (as of a public official) by improper means (as bribery) to violate duty (as by committing a felony)." It is an specially pernicious form of discrimination. Apparently its purpose is to seek favourable, privileged treatment from those who are in authority. No one would indulge in corruption at all if those who are in authority, discharge their service by treating all equally.

55. We can look into it from another angle. Corruption also violates human rights. It discriminates against the poor by denying them access to public services and preventing from exercising their political rights on account of their incapability of indulging in corruption, of course on account of poverty and other similar related factors. Corruption is, therefore, divisive and makes a significant contribution to social inequality and conflict. It undermines respect for authority and increases cynicism. It discourages participation of individuals in civilised society and elevates self interest as a guide to conduct. In social terms we can say that corruption develops a range bound field of behaviour, attitude and beliefs. Corruption is antithesis of good governance and democratic politics. It is said, that when corruption is pervasive, it permeates every aspect of people's lives. It can affect the air they breathe, the water they drink and the food they eat. If we go further, we can give some terminology also to different shades of corruption like, financial corruption, cultural corruption, moral corruption, ideological corruption etc. The fact remains that from whatever angle we look into it, the ultimate result borne out is that, and the real impact of corruption is, the poor suffers most, the poverty groves darker, and rich become richer.

56. In the case in hand, it may not be necessary for this Court to go in the concept of corruption a bit more deep but I find that here is a case where a senior officer of the Government, in the rank of Director, indulged himself in a sheer illegal act but giving it a colour of compliance of this Court's order and that is how has also tried to overlook a complete defiance on the part of a petty employee, i.e., a staff nurse, who could dare to disobey and defy order of a much superior officer, i.e., Chief Medical Officer and remain absent for almost two years. He has also tried to give an occasion to such a defying employee to claim condonation of such defiance and reward with all benefits without any loss. This

would result ultimately a loss to public exchequer also inasmuch as a non-worker, if paid salary for such a long time for her/his sheer audacity of remaining absent, it would also amount to a breach of trust with public revenue to which every public servant owe a duty and responsibility. In P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, the Apex Court said that every public servant holds the office in trust to the public and, therefore, to justify expenditure of public revenue, duties commensurating to the office must be allowed to be discharged by every public servant. Admittedly, that has not happened in this case. The Petitioner has failed to perform her duty without any authority on her part. From the point of view of Petitioner or some public servant, it could have been a small matter, but this Court has no hesitation in putting on record that omission of small level of corruption ultimately grow cancerously. This country has now reached a stage where we find level of corruption running in several thousand of crores and going to even lacs of crores. Everyone wherever is possible, indulging in such activities depending on one's capacity, capability and opportunity. This Court do not mean to say that all are corrupt. Fortunately that is not so. Still we have sufficiently large number of people who do not indulge in such activities and bold enough to discard any attempt, if made by someone, but those who want to take advantage of such widespread corruption, have now become so fearless that they can dare to approach and go to any extent to lure those who are in authority, to seek favour in one or the other manner. In their belief, everyone has some price, degree may defer. Fortunately, this country still have sufficiently large number of people who are beyond such vice. Probably it is for this reason we are still marching ahead and developing with galloping pace but now time has come when stern steps have to be taken with determination and cementised will to nip out corruption at every level, lest it may be too late.

43. The Court of equity while, exercising jurisdiction under Article 226 of the Constitution, is not only bound to look into genuine grievances of the citizens but also under an obligation to pass appropriate orders against the State or its Officers and instrumentalities as the case may be so as to mitigate valid grievances.

44. The Respondents are expected to work as a model employer and a law abiding employer. It must have shown a sense of care and justice for its employees. The Respondents have acted wholly illegally and whimsically in withholding the salary of the Petitioners without there being any justification for the same. This act of laxity and total apathy on the part of Respondents is not wholly unjust and arbitrary but to my mind travels in the realm of malice in law. It ought to be dealt with severely by this Court so that in future no Government Officer or public servant may have the audacity of harassing its employees.

45. In Smt. Shailendra Rai v. State of U.P. and Ors. 2010 (3) ESC 1991, this Court has observed in para 21:

Every Government officer, howsoever high, must always keep in mind that

nobody is above law. The hands of justice are meant not to only catch out such person but it is also the constitutional duty of a Court of law to pass suitable order in such a matter so that such an illegal act may not be repeated, not only by him/her but others also. This should be a lesson to everyone committing an act which is ex facie unjust and having not been done for any just or lawful reason. Prima facie it must be treated to have been done for collateral purposes and covered by the term "malice in law."

46. The Apex Court has summarised "malice in law" in Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, as under:

It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another. (Para 8)

47. Further in para 9 of the judgment in S.R. Venkatraman (supra) the Court observed:

The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of Government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power.

48. Mukesh Kumar Agrawal Vs. State of U.P. and Others, the Apex Court said:

We also intend to emphasize that the distinction between a malice of fact and malice in law must be borne out from records; whereas in a case 12 involving malice in law which if established may lead to an inference that the statutory authorities had acted without jurisdiction while exercising its jurisdiction, malice of fact must be pleaded and proved.

49. In Somesh Tiwari Vs. Union of India (UOI) and Others, dealing with the question of validity of an order of transfer on the ground of malice in law, the Apex Court in para 16 of the judgment observed as under:

Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e on the allegations made against the Appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an

order of transfer is assed in lieu of punishment, the same is liable to be set aside being wholly illegal. (para 16)

50. In *H.M.T. Ltd. rep. by its Deputy General Manager (HRM) and Another Vs. Mudappa and Others*, the Apex Court in paras 18 and 19 defined malice in law by referring to "Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989" as under:

18. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite". It is a deliberate act in disregard of the rights of others.

19. It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law, i.e legal mala fide. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.

51. In brief malice in law can be said when a power is exercised for an unauthorized purpose or on a fact which is claimed to exist but in fact, is non-est or for the purpose for which it is not meant though apparently it is shown that the same is being exercised for the purpose the power is supposed to be exercised. (See *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, *Punjab State Electricity Board Ltd. Vs. Zora Singh and Others*, *K.K. Bhalla Vs. State of M.P. and Others*, *P. Mohanan Pillai Vs. State of Kerala and Others*, *M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others*, *Swaran Singh Chand Vs. Punjab State Electricity Board and Others*, and *Sri Yerneni Raja Ramchander @ Rajababu Vs. State of A.P. and Others*,

52. In our system, the Constitution being supreme, yet the real power vest in the people of India since the Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee.

53. The Respondents being the State Government, i.e., "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed under our Constitution, sovereignty vest in the people. Every limb of the constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind the Respondents that they are expected to perform in a more

responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their employees like the Petitioners. The Respondents have the support of the entire machinery and the various powers of the statute and an ordinary citizen or a common man is hardly equipped to match such might of the State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration, no doubt, involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to the occasion otherwise the confidence of the common man would shake. It is the responsibility of the Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain the arbitrary and arrogant unlawful inaction or illegal exercise of power on the part of the public functionaries.

54. Regarding harassment of a Government employee, referring to observations of Lord Hailsham in *Cassell & Co. Ltd. v. Broome* 1972 AC 1027 and Lord Devlin in *Rooks v. Barnard and Ors.* 1964 AC 1129, the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, held as under:

An Ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law.... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it.... Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.(para 10)

55. The above observation as such has been reiterated in *Ghaziabad Development Authority Vs. Balbir Singh*,

56. In the case of *Registered Society v. Union of India and Ors.* (1996) 6 SCC 530 the Apex court said as under:

No public servant can say "you may set aside an order on the ground of mala fide but you can not hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary.

57. In the case of Shivsagar Tiwari Vs. Union of India (UOI) and Others, the Apex Court has held as follows:

An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit.

58. In the case of Delhi Development Authority Vs. Skipper Construction and another, has held as follows:

A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.

59. The above discussion as well as exposition of law and the facts of this Case leave no doubt in the mind of this Court that Respondents-educational authorities, in the case in hand, have acted in a wholly illegal and illmannered negligent way so as to cause a point of starvation to the Petitioners by not paying their salary for last almost more than three years and odd. This is nothing but a sheer and flagrant infringement of not only legal rights of the Petitioners of getting salary but also violation of their fundamental rights under Article 14, 16 and 21 of the Constitutions.

60. In view of discussions made hereinabove, Respondents are directed to ensure payment of salary to Petitioners in accordance with law for the period from June 2007 to February 2010 and May 2010 till date without any further delay and, in any case, not beyond two months from the date a certified copy of this order is produced before the competent authority.

61. The action of the Respondents having been found to be wholly arbitrary and illegal, here is a fit case where the writ petition should be allowed with exemplary cost, so that similar attitude in future be checked on the part of the present Respondents and others also. The cost, therefore, is quantified to Rs. two lacs, which, at the first instance, shall be paid by Respondent No. 1 but it shall be at liberty to recover the said amount from the officials concerned, who are found responsible for non payment of salary after holding enquiry in accordance with law.

62. With the aforesaid observations/directions, the writ petition is disposed of finally.