

(2010) 07 AHC CK 0206

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19468 of 2008

Ram Sanehi

APPELLANT

Vs

State of U.P.through Secretary (Basic Education), Shiksha
Anubhag, U.P.Shasan, Lucknow and others

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0206

Hon'ble Judges : A.P.Sahi, J

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heart learned Counsel for the petitioner.

2. The claim is for payment of salary as a Class IV employee of a Junior High School.

3. The contention raised is that the petitioner was appointed in August 1991 and he also relies on an approval of the Basic Education Officer dated 16.8.1991. The institution, which was a Junior High School where the petitioner was appointed has been upgraded as a High School. The petitioner was not being paid salary as a result whereof he approached this Court and filed Writ Petition No. 44947 of 2007, which was disposed of on 18.9.2007 with a direction to decide the claim of the petitioner.

4. The impugned order dated 26.2.2008 has been passed rejecting the said representation.

5. Learned Counsel for the petitioner contends that in view of the order of approval dated 16.8.1991, it cannot be said that the petitioner was beyond the sanctioned strength of the institution. He further submits that the petitioner is entitled for payment of salary once the institution has been upgraded and brought under the grantinaid fiat

6. The first precondition for the purpose of payment of salary is that the post has

to be sanctioned by the competent authority. The Payment of Salary Act as applicable to Junior High Schools and applicable to upgraded institutions like High School and Intermediate Colleges makes a clear provision in section 9 of the Payment of Salary Act that no institution shall create any post except with the prior approval of the Director, In the instant case, there is nothing on record to indicate that the post against which the petitioner is claiming was ever approved earlier by the Director.

7. Secondly, the petitioner has been appointed after 2.7.1990. The Government Order dated 2.7.1990 clearly prohibits the appointment against a classIV post over and above a solitary post which is provided for in the said Government Order. The petitioner is admittedly appointed beyond the said sanctioned strength under the Government Order dated 2.7.1990.

8. In such a situation, the alleged approval dated 16.8.1991 is in violation of the provisions aforesaid and, therefore, the same cannot confer any right on the petitioner to claim payment of salary from the State Government The imugned order, therefore, cannot be faulted with on any of the grounds taken in the writ petition.

9. The writ petition lacks merit and is, accordingly, dismissed.