
(1999) 03 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 23616 of 1994

Rama Nand Dwivedi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3, 4
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3, 4
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 3, 4

Citation : (1999) 2 AWC 1632 : (1999) 3 UPLBEC 139

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

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

Judgement

R.K. Agrawal, J.—By means of the present writ petition, the petitioner seeks writ, order or direction in the nature of certiorari quashing the order dated 30.5.1994 contained in Annexure-11 of the writ petition, which has been passed by the Regional Deputy Director of Education VIth, Gorakhpur, respondent No. 2. The petitioner has prayed further relief of mandamus commanding opposite parties to pay the arrears of the petitioner which is due since 1969 to untill now of C.T. Grade as well as L.T. Grade revised from time to time and also to pay the petitioner's present L.T. grade also.

2. The facts of the case in brief are that the petitioner was appointed as Assistant Teacher under Three Language Formula Scheme in C.T. Grade in Kisan Intermediate College. Uska Bazar, district Sidharthnagar (In short referred to as the Institution) for the following duration mentioned below:

A. From 11.8.1969 to 30.6.1970

B. From 3.8.1970 to 30.6.1971

C. From 2.7.1971 to 3.6.1972.

3. The petitioner's qualification is Shastri Acharya from Sampurnanand Sanskrit Vidyalaya, Varanasi. The petitioner was regularly appointed on 16.8.1972 and his services were approved and subsequently confirmed.

4. The case of the petitioner is that he has been appointed on a clear cut vacancy on a substantive post under Three Language Formula Scheme, even then the Committee of Management has made artificial break in the service of the petitioner. He has been paid only 2/3rd of C.T. grade which is continuing till now. The petitioner claims benefit of the Government Order dated 17.5.1971 filed as Annexure-1 to the writ petition, and Government Order dated 18.7.1973 contained in Annexure-2 to the writ petition. By means of the Government Order dated 17.5.1971. It was clarified by the State Government that the persons appointed as teachers under Three Language Formula Scheme (in short referred to as the Scheme), are entitled for C.T. grade. The approval for giving 2/3rd of the C.T. grade to such persons, is not correct and necessary modification should be made. The State Government vide Government Order dated 18.7.1973, clarified that the Three Language Formula Scheme, is not a temporary Scheme and service conditions of the teachers shall be applicable to the appointment made under the Scheme as well, and it should be kept in mind that service of teachers appointed under the scheme should not be terminated in any manner except under law. The petitioner made representation to the authority concerned. When the grievance of the petitioner was not being looked into, the petitioner approached this Court by filing Civil Misc. Writ Petition No. 13088 of 1981 which was disposed of by Judgment and order dated 29.7.1992 directing the District Inspector of Schools, Basti, to dispose of the pending appeal within three months from the date of production of a certified copy of said judgment and order before him, in accordance with law.

5. The District Inspector of Schools vide order dated 19th April 1993, directed the Committee of Management of the Institution to comply with the order dated 29.7.1992 immediately since the payment of salary prior to 1971 was the liability of the Committee of Management of the Institution. Thereafter, the petitioner approached the Manager of the Institution who in turn directed the Principal of the Institution to proceed in the matter. When nothing was done by the Principal of the Institution, the petitioner again approached this Court by filing Civil Misc. Writ Petition No. 42408 of 1993. This Court vide judgment and order dated 1.10.1993 disposed of the writ petition, directing the Regional Deputy Director of Education, Gorakhpur, to decide the matter within a period of two months. This Court, vide aforesaid order, permitted the petitioner to make representation before the Regional Deputy Director of Education concerned. In compliance with the order dated 1.10.1993 passed by this Court, the Regional Deputy Director of Education, respondent No. 2, passed order dated 30th May. 1994, denying the claim of the petitioner on the ground that the services of petitioner during the year 1970-71 were 30 days, during year 1971-72 were 32 days and during the

year 1972-73 were only 45 days. The District Inspector of Schools had not given his approval to the aforesaid services of the petitioner nor any salary had been given to him. In the circumstances without approval of District Inspector of Schools, the services of the petitioner cannot be treated as continuous. The petitioner is aggrieved by the aforesaid order dated 30.5.1994 passed by respondent No. 2.

6. No counter-affidavit has been filed on behalf of respondent Nos. 1, 2 and 3. The petitioner had filed an affidavit of service stating that he had sent copies of the writ petition, its annexures and the order dated 12th August. 1998, passed by this Court by registered post acknowledgement due, to the Committee of Management of the Institution, respondent No. 5 on 20.8.1998 outside the Court. He had not received back the registered cover nor acknowledgement due. This Court vide order dated 16.2.1999, treated the services on respondent Nos. 4 and 5 to be sufficient under the rules of the Court. No one has put in appearance on behalf of respondent Nos. 4 and 5.

7. I have heard Shri O. P. Pandey, learned counsel for the petitioner and the learned standing counsel for respondent Nos. 1, 2 and 3.

8. It is not in dispute that the petitioner has been appointed as Assistant Teacher under Three Language Formula Scheme. Initially, the petitioner was appointed for short periods, i.e., during the year 1970-71 for 30 days, during the year 1971-72 for 32 days and during the year 1972-73 for 45 days only. In view of the Government Order dated 18.7.1973, the services of the petitioner should not have been terminated in an irregular manner like the present case and, therefore, the services of the petitioner is to be treated as continuous. In view of the Government Order dated 17.5.1971, the petitioner is also entitled for scale of C.T. grade.

9. This Court in Civil Misc. Writ Petition No. 12117 of 1975, Narbadeshwar Pandey v. Deputy Director of Education, Gorakhpur and others, decided on 8.2.1978 held that the Three Language Formula Scheme at the initial stage was not temporary and the said Scheme was permanent, In this view of the matter. I hold that the petitioner is entitled for payment of the pay scale of C.T. grade since his initial appointment and the action of the respondents in paying only 2/3rd of the C.T. grade is wholly unjustified and without authority of law. The petitioner is entitled for all consequential benefits. It may be made clear that the liability for payment of salary in the C.T. Grade Scale will be upon the Committee of Management of the Institution respondent No. 2 till the date of coming into force of the Payment of Salary Act, 1971 and for the period subsequent to the date of enforcement of Payment of Salary Act, 1971, the responsibility for payment of salary shall be upon the District Inspector of Schools. respondent No. 3.

10. The writ petition is accordingly allowed with the aforesaid directions. There shall no order as to costs.