

(2008) 12 AHC CK 0368
In the Allahabad High Court

Ramayan Yadav and others	Vs	APPELLANT
Director of Education (Secondary) Uttar Pradesh Camp Office, Lucknow and others		RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0368

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.

Heard learned counsel for the parties.

Shanti Niketan Inter College, Tekua, District Deoria is a recognised and aided intermediate college governed by the provisions of U.P. Intermediate Education Act, 1921, U.P. Payment of Salaries Act (No.24 of 1971) and U.P. Secondary Education Service Selection Boards Act, 1982. The petitioners, who are three in number, claim that they were appointed as Assistant Teachers in L.T. Grade on 01.03.1991 by the Management of the college. It has also been stated that D.I.O.S. through order dated 16.03.1991 granted approval to appointment of the petitioners, however they were not paid any salary. They claim that they are teaching since their appointments. Petitioners earlier filed writ petition No.7891 of 1995 along with others, which was disposed of with the direction to Director of Education, Secondary to decide the matter. Said order was passed on 14.02.2000. Ultimately, Director of Education through order dated 06.05.2002 rejected the claim of the petitioners. Said order has been challenged through this writ petition.

The Director has held that without creation of post and without there being any sanctioned post, petitioner had been appointed, hence salary could not be paid to them. The Director has further held that on 08.07.1984, the school had only 23 sanctioned posts out of which 15 posts were of teachers. Thereafter, on

04.09.1990, 11 new posts of teachers were created/ sanctioned by Deputy Director of Education, Gorakhpur in Graduate payscale and 8 new posts of teachers in the same payscale were again sanctioned on 02.02.1991, hence total sanctioned posts of teachers in the school were 34 along with principal, two clerks and 9 peons, total 46. Petitioners were appointed over and above the aforesaid strength of 34 teachers.

The contention of the learned counsel for the petitioners is that permission to open new sections had been granted by D.I.O.S., hence posts should be deemed to have been created/ sanctioned. In this regard, reference has been made to a judgment dated 07.07.1997 given by Single Judge of this Court in Writ Petition No.13818 of 1996, copy of which has been annexed as Annexure SA1 to the supplementary affidavit dated 15.08.2007. The matter is squarely covered by a Full Bench Authority of this Court reported in Gopal Dubey Vs. D.I.O.S., Maharajganj and another, 1999 (1) UPLBEC 1. In the said authority, Sections 7A & 7AA of U.P. Intermediate Education Act, 1921 and Sections 9 & 10 of U.P. Act No.24 of 1971 have been considered. Learned counsel for the petitioner has placed reliance upon Section 2(e) of U.P. Act No.24 of 1971, where teacher has been defined, however Section 9 of that very Act deals with creation/ sanction of post. D.I.O.S. has got no jurisdiction to create or sanction any post. Section 2(e) has also been considered in the aforesaid Full Bench Authority. The Full Bench authority has placed reliance upon Supreme Court authority reported in AIR 1995 SC 1121 "Director of Education v. Gajadhar Prasad Verma"

Accordingly, there is no merit in the writ petition, hence it is dismissed.

However, if any proposal is pending with the competent authority for creation of new posts in the school in question, then the same may be considered strictly in accordance with law.