
(2006) 05 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17743 of 2005

Ramesh Chandra and Rimal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10, 10(1), 2, 3, 9
Uttar Pradesh Intermediate Education Act, 1921 — Section 7, 7(4), 7A

Citation : (2006) 6 AWC 5659

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashok Khare and Sunil Kumar Srivastava, for the Appellant; K.K. Chand, H.N. Singh, Aklank Jain, B.N. Singh and B.N. Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The Deputy Director of Education by an order dated 28.12.1989 while sanctioning the creation of new posts, also determined the total number of sanctioned posts in Sarvodaya Inter College, Nazirpur Sakat, District Etah. By this order, one post of Head Clerk, one post of Assistant Teacher in L.T. Grade and three posts of Assistant Teacher in C.T. Grade were sanctioned. The said order also specified that the total number of sanctioned posts in the institution were one post of Head Master, two post of Assistant Teacher in L.T. Grade and 17 posts of Assistant Teacher in C.T. Grade. The said order also specified that one post of C.T. Grade was in excess and that the said post would lapse as and when the post became vacant. With the passage of time, C.T. Grade was declared to be a dying cadre and were converted into an L.T. Grade. Consequently, as on date, there are 18 posts of Assistant Teachers in L.T. Grade in the institution.

2. It transpires" that the petitioners were appointed as Assistant Teachers in the

reserved quota on 17.8.2001 and their appointments were approved by the District Inspector of Schools by an order dated 6.9.2001, and since then, were being paid the salary from the sources generated by the Committee of Management on account of the fact that the institution was outside the purview of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1991).

3. By a Government Order dated 27.10.2004, the said institution was brought on the list of institutions receiving grant-in-aid w.e.f. 1.1.2004. The enclosure in the aforesaid G.O. specified that a total number of 22 posts in the institution would receive the salary from the State Exchequer, namely, one post of Head Master, 15 posts of Assistant Teachers, one post of clerk and five posts of Class IV employees. The enclosure further indicated the names of the fifteen Assistant Teachers who would be paid the salary from the State Exchequer, which included the names of respondent Nos. 6 to 9. The names of the petitioners were not included in the list and they have been excluded from receiving the salary from the State Exchequer.

4. The petitioners are aggrieved by the aforesaid Government Orders dated 27.10.2004 and have filed the present writ petition praying that the Government Order dated 27.10.2004 be modified by including their names as Assistant Teachers in L.T. Grade for the purposes of the payment of the salary under the U.P. Act No. 24 of 1971 or by deleting the names of two junior most teachers.

5. Heard Sri Ashok Khare, the learned Senior Counsel for the petitioners assisted by Sri Sunil Kumar Srivastava, Advocate, Sri K.K. Chand, the learned Standing Counsel appearing for the respondent Nos. 1 to 4, Sri Aklank Jain, the learned Counsel for the respondent No. 5 and Sri H.N. Singh the learned Counsel appearing for the respondent Nos. 6 to 9.

6. The learned Counsel for the petitioners submitted that the Deputy Director of Education by an order dated 28.12.1989 had sanctioned 18 posts of Assistant Teachers in which the petitioners were appointed in the year 2001. The order of the Government dated 27.10.2004, limiting the payment of the salary to only 15 teachers, was wholly arbitrary. The learned Counsel for the petitioners further submitted that the petitioners were appointed in order to fill up the backlog in the reserved category. By excluding the petitioners under the G.O. dated 27.10.2004, the reservation policy was not being taken into consideration and, therefore the Government, while ensuring payment to teachers under the U.P. Act No. 24 of 1971, was required to take into consideration, the reservation policy. The learned Counsel submitted, that the petitioner's name should therefore be included in the list after deleting the names of the last two teachers mentioned in the G.O. dated 27.10.2004.

7. The learned Standing Counsel appearing for the State Government and its authorities submitted that the State Government by G.O. dated 27.10.2004 sanctioned the payment for 15 posts on the basis of the standards prescribed in

the Government Order dated 9.8.1999, As per the revised norms, it was found that the required strength of the teachers was only 15 and that the institution had excess teachers in relation to the number of the students. Accordingly, while bringing the institution, under the Grant-in-Aid list, the State Government sanctioned the payment of the salary under U.P. Act No. 24 of 1971 for 15 teachers only, and took an undertaking from the institution, to the effect, that the liability for the payment of the salary of the teachers appointed in excess would be paid by the institution, and that there would be no liability on the part of the State Government to pay the salary to the teachers appointed in excess of the strength. The counter affidavit further indicated that the Committee of Management gave an undertaking to the effect that the payment of the salary of the teachers appointed in excess of the sanctioned strength, would be paid the salary from the own sources of the Committee of Management. Similar stand was also taken by the Committee of Management in its counter affidavit.

8. The respondent Nos. 6 to 9 submitted that they are senior to the petitioners, having been appointed in the year 1994 and 1996 respectively, and that they have been working continuously since then, whereas, the petitioners have been appointed in the year 2001. Consequently, the petitioners, being juniors, were left out in the Government order dated 27.10.2004. The respondent further submitted that the question of the applicability of the reservation under the provisions of Uttar Pradesh Public Services(Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 for the payment of the salary under the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1991) does not arise. The reservation policy was only applicable at the stage of the appointment on the post in question and had nothing to do in so far as the payment of salary was concerned.

9. The recommendation for opening a new subject or a group of subjects in an institution and consequently recognition of an institution in a subject is governed under the U.P. Intermediate Education Act, 1921 which is a statute to establish a Board to regulate and supervise the system of High School and Intermediate Education in U.P., whereas U.P. Act No. 24 of 1971 has been enacted to regulate the payment of the salaries to the teachers and other employees of the High School and Intermediate Colleges and to provide for matters connected therewith. In my opinion, the two statutes operate in different fields.

10. Before proceeding further, it would be convenient to refer to some of the provisions of the Payment of Salaries Act, 1971 and the U.P. Intermediate Education Act, 1921.

11. Section 2(b) of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 defines "institution" as:

(b) "institution" means a recognised institution for the time being receiving

maintenance grant from the State Government;

12. Section 2(c) of the said Act defines "maintenance grant" as-

(c) "maintenance grant" means such grant-in-aid of an institution, as the State Government by general or special order in that behalf direct to be treated as maintenance grant appropriate the level of the institution.

13. Section 2(e) defines "teacher" as

(c) "teacher" of an institution means a Principal, Headmaster or other teacher in respect of whose employment maintenance grant is paid by the State Government to the institution and includes any other teacher employed in fulfilment of the conditions of recognition of the institution or its recognition in a new subject or for a higher class or as a result of the opening with the approval of the inspector of a new Section in an existing class:

14. Section 3 of the Act provides for the payment of the salary to a teacher. Section 9 of the Act provides as under:-

9. Approval for post:- No institution shall create a new post of teacher or other employee except with the previous approval of the Director, or such other Officer as may be empowered in that behalf by the Director.

15. Section 10 provides for liability for payment as salaries as under:-

10. Liability in respect of salary.-(1) The State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after March 31, 1971.

(2) The State Government may recover any amount in respect of which any liability is incurred by it under Sub-section (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrears of land revenue due from the institution.

(3) Nothing in this section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee.

16. Under the Intermediate Education Act, Section 7(4) provides a procedure to the Board to recognize an institution for the purposes of examinations.

17. Section 7-A of the Act provides:-

7-A Recognition of an institution in any new subject or for a higher class.- Notwithstanding anything contained in Clause (4) of Section 7-

(a) the Board may, with the prior approval of the State Government, recognize an institution in any new subject or group of subjects or for a higher class;

(b) the Inspector may permit an institution to open a new section in an existing class.

18. The aforesaid provisions under the Payment of Salaries Act and the Intermediate Education Act has been analysed by a Full Bench of this Court in *M.B. Majumdar Vs. Union of India*, as under:

From the provisions of the two Acts and the Regulations noticed above, the scheme of things that emerges is that the Board constituted under the U.P. Intermediate Education Act is the competent authority to accord recognition to an institution of the purposes of its examinations in subjects specified in the sanction order as provided in Section 7. The Board is also empowered u/s 7-A to accord recognition to an institution in any new subject or group of subjects or of a higher class with prior approval of the State Government.

The Payment of Salaries Act, on the other hand, is an Act to regulate the payment of salaries of teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the State funds and to provide for matters connected therewith. An Institution under the said Act means a recognized institution for the time being receiving maintenance grant/ grant-in-aid from the State Government. In respect of such an institution the State Government takes the liability to pay salary to the teachers and the other employees of the institution. A teacher or employee, in order to claim the benefit of payment of salary under the said Act has to fulfil certain conditions prescribed under the statute. The Management of the institution, in order to claim reimbursement of salary of its teachers and employees, is also to fulfil the conditions prescribed under the Act. In Section 9 of the Act it is mandated that no institution shall create a new post of teacher or other employee except with the prior approval of the Director or such other officer as may be empowered in that behalf by the Director.

19. From the aforesaid, it is clear that Section 9 of the Payment of Salaries Act indicates that no institution shall create a new post of a teacher or other employee except with the previous approval of the Director. On the other hand, u/s 7-A of the Intermediate Education Act, the Director is empowered to accord recognition for opening a new subject in an institution.

The Full Bench in the case of *Gopal Dubey (supra)* further held-

While dealing with matters like recognition and payment of salary of teachers and other employees relevant matters to be taken into consideration are different, Regarding recognition, the authority has to satisfy itself about necessary infrastructure, the facilities available in the educational institution, the benefit to the students of the locality in opening the new subject in the Institution, the potentiality of the institution to cater to the needs of the students of the locality etc. while dealing with the question of granting approval for creation of posts of a teacher or other employee in an institution, the primary consideration is the preparedness of the State Government to bear the financial liability of the new post proposed to be created.

and further held-

In view of the above discussion the answer to the question formulated by us is that on recognition being granted by the Board in respect of a subject in an Institution u/s 7-A of the U.P. Intermediate Education Act, 1921 it will not be presumed that the post of lecturer in such subject stands sanctioned by the Director of Education u/s 9 of the Payment of Salaries Act.

20. Coming back to the facts of the case, it is clear that the order of the Deputy Director of Education dated 28.12.1989 was an order passed u/s 7-A of the Intermediate Education Act. There is no order granting approval of the post u/s 9 of the Payment of Salaries Act, 1971. In the absence of approval u/s 9 of the Act of 1971, the petitioners are not entitled for the payment of the salary under the Act of 1971.

21. There is another aspect of the matter. The institution was brought under the grant-in-aid list providing the payment of the salary to 15 Assistant Teachers which was based on the norms/standards provided under the G.O. dated 7.8.1998. The petitioners have not challenged the Government Order dated 9.8.1998 nor have alleged that the norms provided in the G.O. dated 9.8.1998 was not properly followed. It therefore follows that the State Government while providing grant-in-aid has treated it to be appropriate to the level of the institution as defined u/s 2(c) of the Act of 1971.

22. In the State of U.P. and Ors. v. District Judge, Varanasi and Ors. 1981 UPLBEC 336, a Full Bench of this Court explained the meaning of the words "appropriate to the level of the institution" as defined u/s 2(c) as-

When the definition of the term "maintenance grant enjoins that it should be appropriate to the level of the institution it casts a duty upon the State Government to apply its mind in regard to the level of the institution. It is not the argument of the standing counsel for the petitioners, nor can it obviously be, that the level of a Junior High School is the same as that of a High School or an Intermediate College. So the fact whether the School is a Junior High School or a High School or an Intermediate College is also a relevant fact to be kept in mind while fixing the amount of maintenance grant. Even two High Schools or Intermediate Colleges may have different levels inter se e.g. One may be imparting education in larger number of subjects and may have larger number of teachers and employees than the other. This distinction again will have to be kept in mind by the State Government while fixing the amount of maintenance grant for each School, we may add that the distinctions pointed out above in regard to level of an institution are only illustrative and not exhaustive. The word "level" has, inter alia, the following dictionary meanings.

height, natural or appropriate position or rank; a condition of equality; in the same line or plane; equal imposition or dignity.

23. In view of the aforesaid, it is clear that there is no infirmity in the order of the Government dated 27.10.2004.

24. The submission of the learned Counsel that the reservation policy should be followed in the order dated 27.10.2004 is patently misconceived. The Reservation Act of 1994 is applicable only with regard to appointments. Once the appointments are made, the Act of 1994 comes to an end and has no further role to play. The Payment of Salaries Act has been framed to regulate the payment of the salaries to the teachers and employees. The Reservation Act of 1994 has nothing to do in so far as the issuance of the order dated 27.10.2004 for the payment of the salary is concerned.

25. The last submission of the learned Counsel for the petitioners is also misconceived. The claim that the names of the last two teachers in the enclosure annexed to the order dated 27.10.2004 be deleted and replaced by the names of the petitioners is bereft of merit. Admittedly the petitioners are the junior most teachers, being appointed in the year 2001, whereas the respondent Nos. 6 to 9 were appointed much earlier and therefore are senior to the petitioners. The State Government, while bringing the institution under the grant-in-aid list, rightly included the teachers for the payment of the salary in the order of seniority. Since the petitioners were the junior most, their names were rightly excluded from the list.

26. In view of the aforesaid, this Court finds that there is no error in the order of the State Government dated 27.10.2004. Further, in view of the undertaking given by the Committee of Management that they would disburse the salary to the petitioners from their own sources, the claim of the petitioners to be paid the salary under the Payment of Salaries Act is misconceived. The writ petition accordingly fails and is dismissed. However, there shall be no order as to cost.