

(2012) 08 AHC CK 0165

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32662 of 1993

Ratan Samaj High School, Panwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 1
Uttar Pradesh Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 — Section 13A

Citation : (2012) 08 AHC CK 0165

Hon'ble Judges : Rajes Kumar, J

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri R.C. Pal, learned counsel for the petitioner and Sri Pankaj Rai, learned Standing Counsel.

2. The undisputed facts of the present case are that the petitioner was running a Junior High School. The institution was covered under the provisions of the U.P. Recognised Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 (hereinafter referred to as the Act 1978). Since the Junior High School was under the grantinaid, therefore, the salary of the staff was being paid by the Basic Shiksha Adhikari and Basic Lekha Adhikari, Agra. On 22nd March, 1993, by the order of the Regional Secretary, Madhyamik Shiksha Parishad, Meerut, the Institution has been upgraded from Junior High School to High School level and the same has been granted recognition. Aid was not given to the level of High School by the State Government and, therefore, it did not fall within the purview of the U.P. High School and Intermediate Education (Payment of Salaries of Teachers and other Employees) Act, 1971.

3. It appears that up to the June, 1993, the staff of the Junior High School had received the salary from the respondent nos. 3 and 4, but thereafter the payment of salary has been stopped. The payment of salary has been stopped on

the ground that after upgradation to High School it ceases to be Junior High School and does not fall within the purview of Act 1978.

4. Challenging the action of the respondent nos. 3 and 4, the petitioner filed the present writ petition. On 15th September, 1993, as an interim measure, this Court has directed respondents to pay the salary to the staff of the petitioner institution as it was being paid till June, 1993.

5. The question involved in the present writ petition is whether after upgradation to the High School, the staff of the Junior High School, who were getting the salary from respondent nos. 3 and 4, the institution being under the grant in aid, are entitled to get the salary from the State Government.

6. Learned counsel for the petitioner submitted that when the petitioner institution was Junior High School, it was under the grant in aid and the staff of the Junior High School was getting salary from the respondent nos. 3 and 4 and even after the upgradation to the High School, they are entitled to get the salary till the institution falls within the purview of Act of 1971. He submitted that for the payment of salary during the transitory period, the Legislature has inserted Section 13A in Act of 1978. The said Section is clarificatory in nature. He further submitted that the issue involved in the present petition is squarely covered by the decision of the Division Bench of this Court in the case of *Dev Murti Shukla v. State of U.P. and others*, in Writ Petition No. 21602 of 1987, which has been followed by another Division Bench of this Court in the case of *Ramesh Chandra Yadav v. State of U.P. and others*, reported in 1998(1) LBESR 471 and has also been followed by the Learned Single Judge of this Court in the case of *Committee of Management, Shaheed Bhawani Dutt Joshi (Ashok Chakra) Higher Secondary School, Chaprun Tharali, Chamoli v. State of U.P. and others*, reported in (2001) 1 UPLBEC 213. He also placed reliance on the decision of the learned Single Judge of this Court in the case of *Nasiruddin Siddiqui v. State of U.P.*, reported in 2003LBESR2671 and *Ram Singh Savita and others v. State of U.P. and others*, reported in (1994) 3 UPLBEC 2037.

7. Learned Standing Counsel submitted that once the institution was upgraded to the High School, it ceases to be Junior High School and, therefore, the provision of the Act 1978 does not apply and the salary to the staff of the Junior High School cannot be given by the Government.

8. I have considered rival submissions.

9. The issue involved in the present case is no more *res integra*. In the case of *Dev Murti Shukla vs. State of U.P. (Supra)*, under the similar circumstances that the institution was Junior High School and was under the grant in aid, but after upgradation to the High School, it was not under the grant in aid and, therefore, the salary to the staff of the institution has been denied by the State Government, the Division Bench of this Court, on the aforesaid facts, has directed the concerned authorities to pay the salary and other emoluments to the duly appointed staff of the College. In the case of *Ramesh Chandra Yadav v.*

State of U.P. and others (Supra), following the decision of the Division Bench in Dev Murti Shukla's case, a direction has been given to pay the salary to the duly appointed employees. The aforesaid two decisions have been followed by the learned Single Judge in the case of Nasiruddin Siddiqui v. State of U.P. (supra), and Ram Singh Savita and others v. State of U.P. and others (supra).

10. It appears that in order to clarify the position, the Legislature has introduced Section 13A in Act 1978 by U.P. Act No. 34 of 2000, published in U.P. Gazette, Extra, Part I, Section (Ka) 1st March, 2000, which reads as follows:

"13A. Transitory provision in respect of certain upgraded institutions. (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, mutatis mutandis, apply, to an institution which is upgraded to High School or Intermediate standard and, to such teachers and other employees thereof in respect of whose employment maintenance grant is paid by the State Government to such institution.

(2) For the purpose of this section the reference to the students wherever they occur in Section 5, shall be construed as reference to the students of classes up to junior high school level only."

11. It is clear that Section 13A has been introduced to protect the interest of those Junior High School Institutions, which were under the grant-in-aid and subsequently upgraded to High School and were not getting any maintenance aid from the State Government. It provides for payment of salary to the teachers and other staff of such institutions, who were duly appointed and in respect of whose employment maintenance grant is paid by the State Government to such institution.

12. In the case of State of U.P. and others vs. Ram Charitra (2001) 1 SCC 43, the Apex Court has held that the position was same even prior to insertion of Section 13A in the Act of 1978.

13. In view of the above, I am of the view that even prior to insertion of Section 13A in Act 1978 on 1.11.2000, the position of law was same, namely the teacher and the staff of Junior High School, which was aided prior to upgradation to High School, will continue to get the salary and allowances from the State Government even after upgradation to High School. To remove the doubt, Section 13A has been inserted in Act 1978, which clearly stipulate the above position. Section 13A is, therefore, clarificatory in nature and applies retrospectively.

14. It will also be useful to refer a recent decision of the Apex Court in the case of State of U.P. and others v. Committee of Management, Mata Tapeswari Sarswati Vidya Mandir and others, reported in 2010 (1) ESC 44 (SC). Though this decision is not directly on the issue involved, but it has some bearing on the issue. In the said case, the Junior High School Sections were not under the grant-in-aid. They have been denied benefit of grant-in-aid. The expectation of the

institution were negated when by the notification dated 7th September, 2006, the Directorate of Basic Education, U.P., decided to bring one thousand unaided permanently recognised (A-Class) Junior High Schools on its grant in aid list, but included a condition. It was categorically indicated that the institution imparting education below or higher than Class 6 to 8 would not be eligible to apply. As a result of the above, some institutions were completely excluded from the grant in aid list scheme inasmuch as a decision had been taken by the State Government not to provide grant in aid to educational institutions of Junior High School after their upgradation as High School or Intermediate College and an exception was made in respect of the institutions, which had been receiving grant in aid for their Junior High Schools Sections, despite the fact that the said institution had been upgraded. In the writ petition, Condition No. 2(iii) and Condition No. 12 of the Government Order dated 7th September, 2006 were challenged. Learned Single Judge has allowed the writ petition and quashed the aforesaid two conditions being discriminatory and violative of Article 14 of the Constitution of India. The decision of the learned Single Judge has been upheld in the Special Appeal. The State Government filed Appeal before the Apex Court. The Apex Court has upheld the order of the learned Single Judge and the order of the Division Bench in Special Appeal. In the said decision, it has been held that when one thousand educational institutions were to be provided such benefit, noninclusion of the respondent institutions from being considered for the grant in aid for the Junior High School Sections is wholly unjustified and cannot be sustained, merely because on account of the cut off date of grant of recognition. They had not been brought within the ambit of grant in aid scheme on account of their seniority position, namely, upgradation to the High School. The Apex Court has also considered Section 13A inserted in 1978 Act, which provides assistance to those institutions, which had already been covered by the grant in aid scheme. The aforesaid position of law is only beneficial for the limited purpose that even after upgradation to the High School, Junior High Schools were held entitled for the benefit of the grant in aid.

15. In view of the foregoing discussions, the writ petition is allowed. The respondents are directed to pay the salary to the staff of the Junior High School of the petitioner institution, who were duly appointed till the institution may come within the purview of 1971 Act.