
(2011) 12 AHC CK 0166
In the Allahabad High Court
Case No : Writ - A No. - 17122 of 2008

Santosh Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 12 AHC CK 0166

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Judgement

Hon"ble Pradeep Kumar Singh Baghel, J.—By way of this petition, the petitioner has approached this Court for a direction to the respondents to pay the salary of the petitioner on the post of Lab. Assistant in District Institute of Education And Training, (hereinafter referred to as D.I.E.T.), district Mau.

2. The short facts leading to the present litigation are that the petitioner claims to be appointed as Lab.Assistant on 3.10.1997 in D.I.E.T., district Mau. A copy of the appointment letter is annexed as Annexure-1 to the writ petition. the petitioner states that he was paid his salary upto February, 1999. However, the Joint Director of Education, Azamgarh Region, vide communication dated 12.4.99 issued a list of Nine Clerks and Four Class-IV employees in the D.I.E.T., district Mau. But the name of the petitioner and Lachchi Ram Yadav do not find place in the said list. A copy of the said letter is annexed as Annexure-4 to the writ petition. Consequent there upon the salary of the petitioner and of one Lachchi Ram Yadav who was a Class-IV employee was stopped, as the concerned authority was bound to pay the salary to only those employees whose names find place in the communication of the Joint Director of Education mentioned above.

3. Earlier Lachchi Ram Yadav who's salary was also stopped approached this Court by means of Writ Petition No. 50444 of 2000 challenging the order of the Joint Director of Education, Azamgarh Region dated 12.4.99 (supra). After exchange of affidavits this Court by its order dated 12.12.2002 set aside the

order of the Joint Director of Education dated 12.4.99 and issued a direction to the respondents to permit the petitioner therein (Lachchi Ram Yadav) to continue as Class-IV employee and pay his entire salary on the post of Class-IV employee including arrears of salary within a period of three months. A copy of the judgment of this Court is annexed as Annexure-5 to the writ petition. The Court has been informed by both the parties that this judgment has attained finality and it has been given effect to.

4. The petitioner had made a representations for payment of his salary to the Director, State Education Research And Training Council, U.P. Lucknow and to the Joint Director of Education as well as to the Principal, D.I.E.T., district Mau. From perusal of the record, it appears that petitioner had made some representations to the State Government also. The Deputy Secretary, State Government vide his communication dated 31.7.2003 asked the Director, State Education Research and Training Council, U.P. Lucknow (respondent no. 2 to the writ petition) to consider the matter of the petitioner and take appropriate action. The respondent no. 2 vide his communication dated 12th August, 2003 addressed to the Principal, D.I.E.T., district Mau sought his comments so that the State Government may be informed with regard to payment of salary to the petitioner. A copy of the communication of the Director to the Principal, D.I.E.T., district Mau is annexed as Annexure-11 to the writ petition.

5. I have heard learned counsel for the petitioner and learned Standing Counsel. Learned counsel for the petitioner has emphasized the fact that in spite of judgment of this Court in the case of Lachchi Ram Yadav the respondent no. 1,2 and 5 has not taken any decision with regard to the payment of salary to the petitioner. He further submits that by the letter of the Joint Director of Education dated 12.4.99 the petitioner as well as Lachchi Ram Yadav salary was stopped.

6. However, once the issue with regard to Joint Director's Administrative & Financial power has been decided by this Court by its judgment dated 12.12.2002 and the judgment has attained the finality, it is no more open to the respondents to sit over the matter. He further submits that the payment of salary of a Class-III employee relates to his livelihood and as such the inaction on the part of the respondents and withholding the salary without any justifiable cause violates his fundamental rights under Article 21 of the Constitution.

7. Learned Standing Counsel has invited the attention of the Court to paragraph 17 of the counter affidavit wherein it is mentioned that the Joint Director of Education has administrative and financial control over the District Institute of Education And Training also and an attempt has been made to distinguish the judgment of this Court dated 12.12.2002 on the ground that the said case was in respect to a Class-IV employee and the petitioner is Class-III employee and the Rule does not permit the Principal, D.I.E.T., to make appointment of a Class-III employee.

8. To my judgment, the said plea taken in the counter affidavit is wholly mis-

conceived. This Court in its judgment dated 12.12.2002 has categorically recorded a finding that no Rule has been mentioned by the Joint Director of Education which shows that the Joint Director of Education could exercise control over Principal, D.I.E.T. For the sake of convenience the relevant part of the judgment of this Court dated 12.12.2002 is extracted hereunder below:

In the counter affidavit it has been stated that Joint Director of Education being the superior officer in the district and is competent to give financial sanction to Class-III and IV employee working in D.I.E.T. and Principal, D.I.E.T. should take his permission before making any appointment. But no rule has been mentioned by the Joint Director of Education which shows that Joint Director of Education could exercise control over the Principal, D.I.E.T. In my opinion the Regional Joint Director of Education has neither administrative nor financial control over D.I.E.T., the letter written by him 12.4.1999 was without any authority or law and no effect could be given to it. The salary of the petitioner was illegally stopped by Senior Treasury Officer, Mau. The petitioner is entitled to continue on the Class-IV post and payment of salary including arrears of salary.

The writ petition succeeds and is allowed. The letter dated 12.4.99 issued by Joint Director of Education, Mau Annexure-2 to the writ petition is quashed, writ of mandamus is issued to respondents to permit the petitioner to continue on class-IV post and pay his entire salary on the Class-IV post including arrears of salary within a period of three months from the date of certified copy of this order is produced before respondent no. 4 and 5.

9. The matter is still pending for consideration before the State Government.

10. In the background of the aforesaid facts the Secretary, Basic Education, U.P. is directed to decide the matter within a period of six weeks from the date of production of a certified copy of this order along with a fresh representation, if the petitioner desires to file and certified copy of the judgment dated 12.12.2002 passed in Writ Petition No. 50444 of 2000.

12. With the aforesaid observations and order, the writ petition is finally disposed of. However, no orders as to cost.