
(2009) 04 AHC CK 0329
In the Allahabad High Court

Santosh Maheshwari & others

APPELLANT

Vs

State of U.P.& others

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0329

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Allowed

Judgement

Rakesh Sharma, J

Here is a group of teachers working in primary section of Seth Chhaju Singh, Jhandu Singh Maheshwari Junior High School Sarai Lal Das, Meerut has approached this Court seeking benefits which may be made available to them under the Payment of Salary of Teachers and Other Employees Act, 1978. The institution in which the petitioners were working was established in the year 1935 and thereafter it was raised to Junior High School and formal recognition was granted on 4.12.1963. Since 29.7.1965, the Junior High School of the aforesaid Institution was brought in grant in aid. By another Government Order dated 17.5.1979, the Junior High School was brought within the purview of U.P. Junior High School (Payment of salary of teachers and other employees) Act, 1978. The writ petition No.17504 of 1999 was preferred by the petitioners which was disposed of vide judgment and order dated 27.7.99. A contempt petition was also preferred registered as contempt petition No.4506 of 1999 Smt. Prakash Wati and others Vs. Sri Raj Pal Singh Nimesh and others in which notices were issued. The State Government in compliance of the direction in the above judgement and order dated 27.7.99 has issued a formal order on 3.1.2005 allowing the benefits of Payment of Salary Act, 1978 to the petitioners. A copy of the Government Order dated 3.1.2005 is annexed as Annexure18 to the writ petition. However, some conditions were mentioned in this orders. The petitioners have been pursuing the remedy throughout in this Court and by filing representations to the concerned authorities. However, on 22.5.2006 the

contempt petition was disposed of and the contempt notice was discharged.

Learned counsel for the petitioners has reiterated his earlier stand that they are fully qualified and trained teachers. Their appointments were duly approved by the District Basic Education Officer, Meerut vide order dated 23.3.1999. A copy of this approval order has been annexed as Annexure 5 to the petition. It has already been submitted at length that primary section of the institution is part and parcel of the junior high school section from where all the classes from 1st to 8th are run in the same building and with a common Head Master, the institution is managed by a common Committee of Management. The Junior High School section was brought in grant in aid vide order dated 29.7.1965. The State Government has also treated the primary section of the Institution as integral part of the Institution by issuing various government orders on 14.3.1990 and 22.3.97. The petitioners have placed reliance on a judgment rendered by Hon'ble Apex Court in the case of Vinod Sharma and others Versus Director of Education and others 1998(2) UPLBEC 1082 in support of the submission. According to him the petitioners' case is fully covered by the decision.

Learned Standing Counsel has opposed the writ petition on the ground that the petitioners were working in primary section only. Moreover in various paras of the counter affidavit it has been pleaded specially vide para 5 that the primary section and junior High School sections in the institution are different and the petitioners cannot claim parity with junior high school teachers. It has further been submitted in the counter affidavit that the petitioners are not approved teachers. Only approved teachers are paid salary under the Act of 1978. The Management had made appointment of the teachers without following due procedure. The same plea has been reiterated in other paras of the counter affidavit highlighting the allegations that the petitioners were not approved teachers and as such they were not entitled for salary. As far as the judgment in Vinod Sharma's case is concerned, the issue has now been raised in State of U.P. Vs. Pawan Kumar Dwivedi.

I have heard learned counsel for the parties and perused the record. The petitioners have categorically submitted in paras 5&6 of the writ petition that the primary section of the institution is part and parcel of the junior high school. All the classes from 1st to 8th are run in the same building with a common head master and maintained by a common Committee of Management. Moreover, the petitioners' counsel has taken the Court to a copy of order of approval duly signed by the District Basic Education Officer, Meerut according approval to the appointment of the petitioners. Specific order has been passed by the District Basic Education Officer on 23.3.99 according approval to ten teachers. The petitioners' name finds place in the list of those teachers. Mention of this approval has also been made in judicial orders passed on 25.1.2006 and 20.5.2006. In view of the approval recorded by the then Basic Education Officer on 23.3.99, the allegations levelled against the petitioners in the counter affidavit appear to be unfounded. It is evident from the order of the Basic Education

Officer dated 23.3.1999 that the petitioners were duly approved teachers. They are qualified and trained to impart instructions in primary or junior high school section. Since they have been continuously working as approved teachers they are entitled to be provided with the benefits of Payment of Salary Act, 1978. The respondents shall ensure compliance of the government order dated 29.1.2005 as the petitioners' appointments have been found to be approved by the then Basic Education Officer on 23.3.1999. Accordingly, the writ petition is allowed. All the necessary consequences shall follow.