

(2010) 07 AHC CK 0236

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42650 of 2010

Shambhu Saran Shukla

APPELLANT

Vs

State of U.P and Others

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 9

Citation : (2010) 07 AHC CK 0236

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—This petition is a classic example of how with the jugglery of proceedings before the High Court, persons nearly thrice the total number of posts created for the institution under Section 9 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 have been successful in getting salary from State exchequer and the enquiry report of the Secretary of the Education Department recording the said fact has been rendered a waste paper.

2. In Writ Petition No. 25407 of 2007, it was brought on record before the Court that against 15 sanctioned post of teachers and employees in Field Marshal General Manik Shah Intermediate College, Nautan Harhiya Garh, District Deoria, 79 teachers in all 104 employees were being paid salary from the State exchequer. The averment was shocking and, therefore, the writ Court passed a reasoned order on 25.05.2007 requiring the Secretary, Secondary Education to conduct an enquiry and to ensure that unauthorized payment made to the persons, not validly appointed against non sanctioned post is recovered and action is taken for the purposes against all responsible including the employees of the government. An F.I.R. was also directed to be lodged if persons were found involved in criminal offence.

3. This Court further restrained payment of salary to the teachers and staff of the

institution, till the next date of listing. The order dated 25.05.2007 reads as follows :

?Petitioner is directed to implead Minister concerned as respondent no. 7 during the course of the day.

Standing counsel has accepted notice on behalf of respondents no. 1 to 5.

Issue notice to respondents no. 6 & 7 fixing 10.07.2007 as the date of appearance.

In the facts stated in the writ petition are correct then they will amount to Government money is being looted by the Committee of Management of the institution in connivance with the education department of District Deoria.

In para of the writ petition it is alleged that there are only 152 students enrolled in the institution recognized in the name and style ?Field Marshal General Manik Shah Intermediate College, Nautan Harhiya Garh, District Deoria?. The total sanctioned posts of teacher and employees in the institution is 15 only, while 79 teachers and in all 104 employees are being paid salary from public exchequer treating them to be employee of the institution.

It is further stated that Manager of the institution is Ex Minister of State of U.P. and it is because of this that no educational authority has the courage to obstruct the illegal salary bill which are being submitted qua the teachers and staff of the institution against non sanctioned and non available posts.

It has further been stated that a sum of Rs.1,50,0,000/ has been released as arrears for payment of salary to the teachers and staff of the institution. This Court cannot be a mere spectator of such factual situation and more stringent action is required to be taken.

Let Secretary, Secondary Education, U.P. Lucknow, summon the entire record from the Office of the District Inspector of Schools pertaining to the institution in question. He may also require the Manager of the institution to supply whatever records are available with the institution qua creation of posts and appointment of teachers and staff. After examination of records obtained from the Office of the District Inspector of Schools as well as those from the Committee of Manager of the institution, the Secretary, Secondary Education shall record categorical finding as to how many posts of teachers and staff have been created and as to how many teachers and staff are legally entitled for payment of salary. The Secretary, Secondary Education shall further examine as to how unauthorized payments against non sanctioned posts/non available vacancies, have been made through public exchequer. He shall ensure that salary is paid to only those validly appointed and possessed of prescribed qualification.

In case the Secretary, Secondary Education comes to the conclusion that large number of teachers and staff have been paid salary against non sanctioned posts or that their appointment are not in accordance with law, they are not possessed

of prescribed qualification, he shall ensure that the loss caused to the State Government is recovered from the officers of the State Government namely Joint Director of Education, District Inspector of Schools, Finance and Audit Officer in the office of the District Inspector of Schools as well as Committee of Manager and teachers and staff who have been unauthorizedly paid the money.

Against all such persons he shall lodge first information report and shall further ensure that investigation into the offence alleged is carried out with all promptness and no leniency is shown.

The entire exercise, as indicated above may be completed by the Secretary, Secondary Education, Lucknow after affording opportunity of hearing to the District Inspector of Schools, Joint Director of Education, Accounts Officer, Manager of the Institution and other employees teachers concerned within six weeks. The Standing Counsel shall forward a copy of this order to the Secretary by 31st May, 2007.

The report of the Secretary, Secondary Education, Lucknow and action taken shall be brought on record by means of an affidavit on or before 10.07.2007.

It is further provided that till the Secretary, Secondary Education, records his satisfaction qua validity of the appointment of teachers and staff of the institution, no further payment of salary to the teachers and staff of the institution shall be made till the next date of listing.

List on 10.07.2007.?

4. The order passed 25.05.2007 was subjected to challenge by means of two separate Special Appeal before two Division Benches of this Court by the teachers and staffs i.e. Special Appeal No. 658 of 2007 and Special Appeal No. 1010 of 2007. Both the Special Appeals were dismissed.

The Secretary, Secondary Education, in compliance to the order of this Court conducted a detailed enquiry and found that only 10 teachers were entitled to payment of salary. It was further noticed that under an order passed by the Contempt Court in Contempt Petition No. 1585 of 1993, 37 teachers were being paid salary. The Secretary, further noticed that as against 29 sanctioned post, 76 persons were being paid salary from the State exchequer qua the institution. It was found that an F.I.R. was lodged in the matter and the police has submitted a final report. Because of the order of the Contempt Court it was recorded that no recovery can be affected. The report is enclosed as Annexure 6 to this petition.

5. In order to circumvent the said order of the writ Court the ingenuity of the litigant came into play. A Public Interest Litigation was filed being P.I.L. No. 16698 of 2006 in respect of illegal appointments in the institution. With oblique motives Writ Petition No. 25407 of 2007 was got clubbed with Public Interest Litigation Petition No. 16698 of 2006. The writ petition was dismissed by the Division Bench after observing that no individual cause survives as the issues involved will be examined in the P.I.L. vide order dated 29.03.2010 and the

Secretary was directed to place the report on record of the Public Interest Litigation.

6. On 20.05.2010 the Public Interest Litigation was got dismissed as infructuous, therefore, the entire exercise which was undertaken in the matter of fraudulent appointment in the institution namely Field Marshal General Manik Shah Intermediate College, Nautan Harhiya Garh, District Deoria resulting in defrauding the public money has been rendered a waste paper. The payment continues unabated even today.

Such manner of proceedings before this Court reflects upon the manner in which people with money to file petitions after petition can make use of Court proceedings for perpetuating illegalities.

7. The High Court has been constituted under the Constitution of India for protecting the laws of the land. Public money cannot be utilized for payment of salary to teachers and other staff appointed beyond the sanctioned post and any order of the Court to the contrary must end. The Court must segregate illegal appointees from validly appointed teachers and staff. Any order of the High Court which perpetuates illegality and is to the rescue of fraudulent appointees only brings disrepute to the judicial system.

8. This Court has no hesitation to record that the entire system of education in the State of U.P. is full of such unfair persons who time and again approach this Court with ulterior motives and manage to get orders for getting salary from the State exchequer.

9. I have been sitting in this jurisdiction for last more than 3 months and from the petitions which have come up before me, it can be safely and with sense of responsibility stated that :

From Secretary of the Department to the Clerk in the office of the District Inspector of Schools and from Manager of the institution to the Peon, all are involved, at some point of time, in creating situations where persons :

(a) not qualified.

(b) appointed against non sanctioned post.

(c) appointed without statutory procedure prescribed being followed having drawn salary from the State exchequer for years together and on various occasions the orders passed by the High Court are the source of such illegal payment being made.

10. The situation is so bad that the State Government does not even know as to how many posts of teacher and other staff have been created institutionwise districtwise or for the entire State for which liability of payment of salary is upon the State under U.P. Act No. 24 of 1971.

11. If this Court is correct in its assessment of the situation as aforesaid, the

next question which arises is, as to who will act to rectify the hopeless situation, when the head of the Education Department of the State Government is not above board.

12. Extra ordinary situations need extra ordinary solutions. A High Court Judge should not feel shy in taking the responsibility to act and to stand to the oath taken for protecting the Constitution and the laws without fear or favour. The High Court cannot permit the system to die and will act with all its might to save the situation. Education is the back bone of every democracy and if system of appointment of teacher in aided Intermediate Colleges is permitted to be corrupted, there is hardly any hope for the democracy to survive in this country in the letter and spirit of the word of true democracy.

13. A time has come when this Court must honour the duty which has been cast upon it under Article 226 of the Constitution of India and all such illegal appointments in the District Deoria which are engaging the attention of this Court must be brought to an end immediately. Fraudulent appointments cannot be perpetuated with the help of this Court.

14. In the aforesaid background this Court while entertaining another writ petition no. 32207 of 2010 qua the same institution vide order dated 27.05.2010 recorded that the report of the Secretary was not a waste paper and it had to be acted upon. The Court, therefore, directed the Secretary to take all necessary action on the report referred to above, within two months and no leniency was to be shown. The order dated 27.05.2010 reads as follows :

?Heard learned counsel for the parties.

In Writ Petition No. 25470 of 2007 (Mritunjay Rai vs. State of U.P. and others) this Court passed a detailed order requiring the Secretary, Secondary Education to examine the legality or otherwise of the appointments of teachers and employees concerned of Field Marshal General Manik Shah Intermediate College, Nautan Hathiya Garh, District Deoria. It was further directed that only if the Secretary, Secondary Education comes to a conclusion that appointments of the teachers and staff of the institution was legal and valid, future payment of salary shall be made to them.

This order was subjected to challenge by means of two separate Special Appeal Nos. 758 of 2007 and 1010 of 2007. Two different Division Benches of this Court dismissed the appeal so filed by the teachers and staff of the said institution.

The Secretary has examined in detail the legality or otherwise of the appointments made in the institution and has submitted its report some time in the year 2007. It is admitted to the petitioner that the salary of the teachers and staff, not found to be validly appointed, has not been released in view of the order of the Writ Court till date.

The Writ Petition No. 25470 of 2007 was got clubbed with the Public Interest Litigation No. 16698 of 2006. The writ petition was dismissed on 29.03.2010

after recording that no independent cause survive, inasmuch as the Public Interest Litigation is pending and the report of the Secretary has been directed to be placed on the record of Public Interest Litigation.

So far as the Public Interest Litigation is concerned, an order has been passed on 20.05.2010 dismissing the same as infructuous. The petitioner has, therefore, come up by means of this writ petition for appropriate action being taken on the report of the Secretary, referred to above.

In the facts and circumstances of the case, I am of the considered opinion that the State Government is duty bound to take all necessary action on the port of the Secretary, which has been enclosed as Annexure10 to the writ petition. All who are found involved in payment of illegal salary as well as in receipt of salary must be brought to book. The loss caused to the State Government must be recovered, inasmuch as the report submitted by the Secretary is not a waste paper. Public money is involved.

In view of the aforesaid, let respondent no. 1 take all necessary action in terms of the report of the Secretary, referred to above, preferably within two months from the date a certified copy of this order is filed before him along with a copy of the report, enclosed as Annexure10 to the writ petition. It is made clear that no leniency is to be shown in the matter.

With the aforesaid observation/direction the present writ petition is disposed of.?

15. This order was subjected to challenge by means of Special Appeal No. 932 of 2010 before a Division Bench of this Court and during summer vacations an order dated 08.06.2010 has been passed staying the operation of the order dated 27.05.2010 on the ground that the petitioner had not been afforded an opportunity of hearing in the matter. The order reads as follows :

?Heard learned counsel for the appellant and learned Standing Counsel for Respondents no. 1 to 5 and Shri S.K.Pandey for Respondent no. 6.

Issue notice to Respondents no. 7 & 8 by registered post.

Learned Standing Counsel prays for and is allowed one months time to file counter affidavit. The appellant will have three weeks thereafter to file rejoinder affidavit.

Learned counsel for the appellant has urged that action is being taken against the appellant in pursuance of the order passed by the learned Single Judge without giving any opportunity of hearing to the appellant, therefore, the appellant is entitled for interim relief.

Until further orders of this Court, the effect and operation of the order dated 27.05.2010 passed by the learned Single Judge in Writ Petition No. 32207 of 2010 so far as it relates to the appellant, shall remain stayed.?

16. In the background of the said interim order of the Division Bench this petition

has been filed by a person who claims to have worked as teacher in the Field Marshal General Manik Shah Intermediate College, Nautan Harhiya Garh, District Deoria for payment of his retiral dues.

17. Normally this Court would have dismissed the writ petition with a direction that after the legality of the appointment of the petitioner is examined in light of the report of the Secretary enclosed as Annexure 6 to this petition, his claim for retiral benefits can be considered by the authorities. But such a direction may encroach upon the interim order dated 08.06.2010 passed in Special Appeal No. 932 of 2010 which in fact stays the direction of the writ Court for the report being acted upon.

18. This Court deems it fit and proper that this writ petition may be tagged with Special Appeal No. 932 of 2010 and placed before the Division Bench hearing Special Appeal on 29.07.2010 as unlisted matter for consideration of the matter.