

(2009) 05 AHC CK 0099
In the Allahabad High Court

Shiva Kant Misra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0099

Hon'ble Judges : B.K. Narayana, J

Bench : Single Bench

Judgement

B.K. Narayana, J.—Heard Dr. L.P. Misra, learned Counsel for the petitioners and learned Standing Counsel for the opposite parties.

2. The petitioners, who are 17 in number, have filed this writ petition for issuing a writ of mandamus commanding the opposite parties to pay the petitioners their salary regularly and other consequential benefits and to treat the requisite number of teaching and non-teaching staff as duly sanctioned as a necessary corollary and consequence of the Government Order dated 29.10.2001 and its due implementation and accordingly make the the grant-in-aid available for payment of salary to the petitioners from the date of their appointments.

3. The petitioners No. 1 to 13 claim to have been appointed as Assistant Teachers in Prathma (Junior Section) and Purva Madhyama (Higher Secondary Section) and Uttar Madhyama Section (Senior Secondary Section) of Srimat Param Hans Sanskrit Mahavidyalaya Tikarmafi, Sultanpur, hereinafter referred to as "the Institution" between 2001 and 2006. Petitioner No. 14 claims to have been appointed as Clerk in the Institution on 21.12.2001 and the petitioners No. 15 to 17 claim to have been appointed as Class-IV employees in the Institution. True copies of the appointment letters of the petitioners have been collectively annexed as Annexure No. 2 to the writ petition. According to the petitioner, they have been appointed by the Committee of Management of the Institution after having been selected by a duly constituted Selection Committee after the posts against which they have been appointed were duly advertised.

4. Brief facts of the case are that Srimat Param Hans Sanskrit Mahavidyalaya Tikarmafi, Sultanpur is a Sanskrit Post Graduate College affiliated to Sampurnanand Sanskrit University, Varanasi and had been imparting education from Prathma to Acharya including Shastri level education till September, 2000.

5. With a view to provide for the establishment of a Board of Secondary Sanskrit Education in the State and for the matters connected therewith or incidental thereto the State Legislature enacted the Uttar Pradesh Board of Secondary Sanskrit Education Act, 2000 (U.P. Act No. 32 of 2000) which received the assent of the Governor on October 31, 2000 and was published in the U.P. Gazette Extra., Part-I on 1st November, 2000. Till coming into force of the U.P. Act No. 32 of 2000, the service conditions of the teachers and other employees of the Institution including payment of salary was governed by the Statues of Sampurnanand Sanskrit Vishwavidyalaya, Varanasi and the U.P. State Universities Act, 1973.

6. Section 13 of the U.P. Act No. 32 of 2000 provided that notwithstanding anything contained in the Uttar Pradesh State Universities Act, 1973 or any other Uttar Pradesh Act, on and from the commencement of this Act, all the institutions, situated in the State, immediately before such commencement including Government Sanskrit Schools, imparting Sanskrit education up to Uttar Madhyama, affiliated to or recognized by the Government Sanskrit College, Varanasi or Sampurnanand Sanskrit Vishwavidyalaya, Varanasi shall be deemed to have been recognized by the Board under this Act and shall cease to be affiliated to or recognized by the said Government College or Vishwavidyalaya and shall be governed by the provisions of this Act.

7. Subsequent to the coming into force of U.P. Act No. 32 of 2000, a Government Order was issued by the State Government on 29.10.2001 providing that the Managers of the such degree colleges who were desirous of running classes of Madhyama in their institutions alongwith Shastri and Acharya level classes shall be permitted to run classes of both the levels subject to their providing separate land, building teaching and non-teaching staff for the Sanskrit Madhyamik Vidyalaya and Sanskrit Degree College and the Sections of the Institution running Sanskrit Madhyamik Vidyalaya and Sanskrit Degree College shall be treated as two different Institutions. Government order further provided that the Managers of the Institutions who were interested in running Uttar Madhyama, Shastri and Acharya level classes in their institutions may submit their options before the Uttar Pradesh administration. In pursuance of the aforesaid Government Order, the Manager of the Institution submitted his option before the State Government for holding Uttar Madhyama as well as Shastri and Acharya level classes in the Institution subject to the conditions contained in the Government Order dated 29.10.2001. The option submitted by the Manager of the Institution was accepted by the State Government by Office Memorandum dated 20.02.2004. A true copy of the Office Memorandum dated 20.02.2004 has been annexed as Annexure No. 3 to the writ petition. By the aforesaid Office

Memorandum the division of the land and building of the parent society was accepted by the Sanskrit Education Section of the U.P. Government. However, despite accepting the option submitted by the Manager of the Institution salary of the petitioners was not paid as a result several representations were filed by the Committee of Management of the Institution before the Secretary (Secondary Education), Government of Uttar Pradesh, Director of Education, Principal Secretary (Education) and Deputy Director, (Education) (Sanskrit) and for payment of petitioners' salary but without any response and hence the petitioners have been compelled to file the instant writ petition.

8. In the counter affidavit filed on behalf of the opposite parties, it has been stated that the payment of the salary to the teachers and other employees of the Institution imparting Sanskrit education is governed by the U.P. Act No. 24 of 1971. In paragraph-12 of the counter affidavit it has been stated that the posts against which the petitioners have been appointed have neither been created nor sanctioned by the State Government. In paragraph-19 of the counter affidavit, a statement has been made that since the students have been admitted in the Institution without prior approval of the District Inspector of Schools, the appointment of the petitioners made in the Institution against the posts on the basis of the total strength of the students studying in the Institution without the said posts having been duly created, cannot be said to have been made in accordance with the Rules.

9. Learned Counsel for the petitioner has submitted that the stand taken by the opposite parties in the counter affidavit is per se unsustainable and refuting the same he has submitted that before the U.P. Act No. 32 of 2000 was enforced, the salary of the teachers and other employees of the Institution and other Sanskrit Post Graduate Colleges imparting education from Prathma to Shastri and Acharya was made in accordance with the provisions of the U.P. State Universities Act, 1973 and the First Statute of the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi and the U.P. Act No. 24 of 1971 was not at all applicable. The payment of salary was regulated by Chapter-IX-A of the U.P. State Universities Act, 1973 as inserted vide U.P. Act No. 21 of 1975.

10. Learned Counsel for the petitioner next submitted that there is no provision under the U.P. Act No. 32 of 2000 requiring creation or sanction of a post in an Institution governed by the Act before making any appointment although Sections 25 and 26 of the U.P. Act No. 32 of 2000 provide that subject to the provisions of this Act, the Head of institution and teachers and other employees of an institution shall be appointed in accordance with the regulations and service conditions of all the persons employed in the Institution shall be governed by such conditions of service as may be prescribed by regulations and any agreement between the Management and such employees. No regulations have been framed by the Board till date in exercise of its power u/s 22 of the Act and hence the service conditions of the petitioners who have been appointed by the Management shall be governed by the agreement between the petitioners and

the Management of the Institution which are contained in the appointment letters of the petitioners.

11. Learned Counsel for the petitioner next submitted that as a result of the bifurcation of the Institution into two sections, namely, one section imparting education upto Uttar Madhyama and other upto Acharya and Shastri level, the entire existing teaching and non-teaching staff of the Institution prior to its division was transferred to the Section of the Institution imparting education upto Acharya and Shastri level and no teacher or employee was left for working in the section of the Institution imparting Sanskrit education upto Uttar Madhyama level. This vacuum compelled the Management of the Institution to appoint the petitioners for making the Uttar Madhyama level Section of the Institution functional. The appointments of the petitioners are valid appointments made u/s 26 (1) of the Act. The petitioners, who are working for the last more than eight years are entitled for payment of their salary and the Payment of Salary Act, 1971 has not been made applicable to the appointments made under U.P. Act No. 32 of 2000.

12. Learned Counsel for the petitioner next submitted that the Institution prior to its bifurcation into two Sections was receiving grant-in-aid from the State Government and even presently the salary of the teachers and employees working in the Section of the Institution imparting education upto Shastri and Acharya level is being paid by the State Government while the teaching and non-teaching staff of the Section of the same Institution, which is imparting education upto Madhyama level has been denied payment of salary by the State Government, which is clearly discriminatory.

13. Learned Counsel for the petitioner lastly submitted that since the students are studying in the Institution and are being imparted education, the corresponding posts of teachers and employees shall be deemed to have been sanctioned. In support of his contention, he has relied upon an unreported judgment of this Court dated 12.05.1999 given in Writ Petition No. 7633 (S/S) of 1992.

14. Learned Standing Counsel appearing for the opposite parties reiterated the stands taken by the opposite parties in their counter affidavit. I have carefully examined the submissions made by the learned Counsel for the parties and have perused the record.

15. Learned Standing Counsel has miserably failed to show that the payment of salary of the teachers and employees of the Institution imparting education upto Uttar Madhyama is governed by the Payment of Salary Act, 1971. He has further failed to bring on record any regulation framed by the Board u/s 22 of the U.P. Act No. 32 of 2000 framing any regulations prescribing any procedure for appointment of the Head of Institutions and teachers and other employees of the Sanskrit Institutions and their service conditions.

16. The Institution is imparting education upto Uttar Madhyama pursuant to the

permission granted by the State Government vide Office Memorandum dated 20.02.2004. The opposite parties have nowhere disputed the specific averment made in paragraph-6 of the writ petition that at the time of the issuing of the Government Order dated 29.10.2001 i.e. before the Institution was bifurcated into two Sections/ Institutions there were eight teachers working in the Institution and after bifurcation of the Institution, all the eight teachers were shifted to the Section of the Institution imparting education upto Acharya and Shastri level as a result no teaching or non-teaching staff was left in the Section of the Institution for imparting education upto Uttar Madhyama and since no regulations were framed by the Board prescribing any procedure for making appointment of the Head of the Institution, teachers and other employees u/s 22 of the Act, the Management of the Institution in exercise of its power u/s 26 (1) of the Act appointed the petitioners as Assistant Teachers and non-teaching employees in the Institution for running the Secondary Section of the Institution.

17. It is not in dispute that the Section of the Institution imparting education upto Shastri and Acharya level is receiving grant-in-aid from the State Government and the salaries of the teaching and non-teaching staff of that Section of the Institution is being paid by the State Government. The State Government by its Office Memorandum dated 20.02.2004 had granted permission to the Management of the Institution to run classes upto Acharya and Shastri level and Uttar Madhyama level subject to the conditions mentioned in the said Office Memorandum and Management of the Institution having fulfilled all the conditions mentioned in the Office Memorandum dated 20.02.2004, the State Government is bound to make payment of the petitioners' salary. The submission made by the learned Counsel for the opposite parties that the State Government is not liable to pay the petitioners' salary for the reason that the posts against which the petitioners have been appointed have not been sanctioned by the opposite party No. 5 is totally misconceived and unacceptable. The petitioners have been appointed under the provisions of U.P. Act No. 32 of 2000, which is self contained Act and there is nothing in the Act which may indicate that the provisions of Payment of Salary Act, 1971 shall apply to the persons appointed as Assistant Teachers in the Institution imparting education upto Uttar Madhyama for the purpose of payment of their salary. Since the State Government is paying salary of the teachers and the non-teaching employees working in the section of the Institution in which education upto Acharya and Shastri level is being imparted, the State Government, in my opinion, cannot deny its liability to make payment of the petitioners' salary w.e.f. the date of their appointments.

18. In the result, the writ petition is finally disposed of with a direction to the opposite parties No. 1 to 5 to take necessary decision on the representations dated 23.10.2007 submitted by the Manager of Srimat Param Hans Sanskrit Mahavidyalaya Tikarmafi, Sultanpur (Annexures No. 4 to 8 to the writ petition) and on the petitioners' claim for payment of their salary from the date of their respective appointments in the Institution in the light of the observations made

hereinabove and in accordance with law within a period of two months from the date of production of certified copy of this order.