(2011) 01 AHC CK 0327

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3925 of 2006

Shyam Lal and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16A, 16B, 16C, 16D, 16E
Uttar Pradesh Municipalities Act, 1916 — Section 73, 73(2)

Citation : (2011) 3 ADJ 640 : (2012) 3 AWC 2374

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Both the Petitioners are employees of Sant Tulsi Das Municipal Inter College, Soron, District Etah (hereinafter referred to as the "College"). The Petitioner No. 1 was working as Chowkidar having been appointed on 5.8.1966 and on attaining the age of superannuation retired on 28.2.2000. The Petitioner No. 2 was appointed as Mali on 10.8.1966 and on attaining the age of superannuation retired on 31.1.2002. Since thereafter both the Petitioners made strenuous efforts to get their retiral benefits running between the State Government and Municipal Board, Etah but having failed to get retiral benefits approached this Court by means of the present writ petition where an order was issued on 12.12.2005 by the Assistant District Inspector of Schools, Etah informing the Manager/Principal of the College that the College in question is governed by local body whereupon U.P. Municipalities Act, 1916 (hereinafter referred to as the "1916 Act") is applicable and, therefore, pension of non teaching staff of the said institution is not payable by educational department but has to be paid by Nagar Palika, therefore, pension papers are being returned.

2. The Petitioners have sought a writ of certiorari for quashing the order dated 12.12.2005 and also a writ of mandamus commanding the Respondents to pay

pension and other retiral benefits forthwith.

3. On behalf of Respondent Nos. 1 to 4 a counter-affidavit has been filed stating that by Government Order dated 18.10.1982 issued to Officer In-charge, Nagar Palika, Auraiyya informing that the Government Notification dated 13.6.1909 as amended partially on 12.7.1982 provides that the institutions run by local bodies shall not be governed by provisions of Intermediate Education Act, 1921 (hereinafter referred to as the "Act, 1921") in respect to the appointment, funds and other conditions of service and such employees will be governed by 1916 Act and the Rules framed thereunder. They also admits that one employee, namely, Sri Jagdish Parashar, a Head Clerk of the College in question though was sanctioned payment of pension by the Government by letter dated 3.8.2005 but it was made clear that it shall not be treated as a precedent. To the same effect is a letter dated 21.3.2006 issued by the Director of Education, U.P., Allahabad informing all educational authorities that the retired employees of colleges maintained by local bodies shall not be entitled for payment by the Government but shall be governed by Rules and regulations applicable to Nagar Palika employees.

4. The Petitioners have specifically stated in paras 18,19 and 20 of the writ petition that U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as ''1971 Act'') is applicable upon the various schools run by Nagar Palika in the State of U.P. and Petitioners'' College was also governed by said Act and salary was paid to Petitioners through the office of Respondent No. 4 by applying provisions of 1971 Act.

5. These submissions have been replied in para 12 of the counter-affidavit which reads as under:

6. In para 14 of counter-affidavit the Respondents have also admitted that the provident fund is deducted by educational authorities though the amount of group insurance it is alleged that deducted by Nagar Palika.

7. The only question up for consideration, therefore, is whether pension to Petitioners is payable by State Government or by Nagar Palika, Soron, District Etah.

8. Section 73 of 1916 Act reads as under:

73. Appointment, etc., of servants on the educational establishment: (1) Subject to the provisions of Sub-section (2), the appointment of persons on the educational establishment of a Municipality shall be made by such authority as may be specified in this behalf by the State Government, and different authorities may be specified for different classes of posts on the establishment.

(2) The State Government may make Rules regulating the recruitment, punishment, appeal and other conditions of service of persons appointed to the educational establishment of a Municipality.

Provided that the appointment of a teacher or Head of an institution shall be governed by the provisions of the Uttar Pradesh State Universities Act, 1973, or the Intermediate Education Act, 1921, as the case may be.

9. Proviso to Sub-section (2) of Section 73 was inserted by U.P. Act No. 10 of 1978 make it clear that appointment of teaching staff of an institution established by Municipality shall be governed by provisions of Act, 1921. The power has been conferred upon the State Government to make Rules regulating recruitment, punishment and other conditions of service of staff of educational establishment of a municipality unlike the Regulations framing power conferred u/s 297 upon a Municipality governing the conditions of service of all servants of a Municipality. A pervasive control, therefore, has been given to State Government by virtue of Section 73 of 1916 Act in respect to employees of educational establishment of a Municipality. This is further fortified from the fact that for the purpose of application of payment of salary the employees of institution in question are governed by provisions of 1971 Act which has not been disputed by Respondents. The amount of provident fund is also deducted by educational authorities and deposited into funds as decided by the Government like the funds of other Government servants. The letter dated 18.10.1982 appears to have been issued with reference to some notification of 1909 without looking to the fact that Section 73 as it stands today was substituted by U.P. Act No. 7 of 1953 and proviso to sub-section 2 was inserted by U.P. Act No. 10 of 1978. It does not appear that while issuing aforesaid letter dated 18.10.1982 the aforesaid provisions were taken into consideration by the authorities concerned. It further refers to Section 16-K(3) of Act, 1921 though no such provision exist either in the Act, 1921 or 1916 Act.

10. Section 16-H of Act, 1921 confers power upon the Government to exclude certain institutions from being governed by certain provisions of Act, 1921 and reads as under:

16-H. Exemption of certain classes of institutions from the operation of certain Sections.- (1) The provisions of Sections 16-A, 16-B, 16-C, Sub-section (2) to Sub-section (13) of Section 16-D and Sections 16-E, 16-F and 16-G shall not apply to recognised institutions maintained by the State Government or the Central Government.

(2) In the case of recognised institutions maintained by a local body, the State Government may declare that all or any of the provisions referred to in Sub-section (1) shall not apply or shall apply subject to such alterations, modifications or additions as it may make and the provisions, if any, so made applicable, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

11. It is not shown that in exercise of such powers any order was issued with reference to institution in question or the institutions maintained by local body. Moreover, the exemption contemplated u/s 16-H(2) is in reference to only limited

provisions, i.e., 16-A, 16-B, 16-C, 16-D (2 to 13), 16-E, 16-F and 16-G and not to the other provisions of Act, 1921. After insertion of proviso to Sub-section (2) of Section 73 of 1916 Act it is now absolutely clear that entire provisions of Act, 1921 are applicable to an institution of Municipality.

12. Moreover the letter dated 18.10.1982 is not a Government Order applicable to all institutions of Municipalities but even otherwise is confined to only Nagar Palika Auraiyya. There is nothing to show that any provision was made under any statutory provision by the State Government making only Nagar Palika responsible for payment of retiral benefits of educational institutions of Nagar Palika even though the institution is governed by 1971 Act. In absence of any provisions shown to this Court, I am not inclined to accept the defence of Respondents that in view of letter dated 18.10.1982 the retiral benefits of Petitioners are not payable by the State Government.

13. Learned Counsel for the Respondent at this stage contended whether the Petitioners were governed by provisions pertaining to provident fund or contributory provident fund is not clear and, therefore, whether Petitioners were entitled for pension cannot be stated at this stage.

14. However, in the counter-affidavit no such dispute has been raised that the Petitioners are not entitled for payment of any retiral benefits and the only defence taken therein relying on the letter dated 18.10.1982 that it is the liability of Nagar Palika concerned. As already discussed above, this Court is not inclined to accept the above defence taken by Respondents.

15. In the result, the writ petition is allowed. The impugned order dated 12.12.2005 is hereby quashed. The Respondent No. 5 is directed to forward the pension papers of Petitioners forthwith and in any case not less than one month from the date of production of a certified copy of this order to the District Inspector of Schools concerned who shall examine the same and pass appropriate order and forward the papers to competent authority for sanction of pension to Petitioners immediately thereafter. The entire exercise shall be completed by the concerned competent authority including the District Inspector of Schools within a period of three months from the date of receipt of papers from Respondent No. 5. The Petitioners shall also be entitled to interest on the entire unpaid amount at the rate of 8% per annum which shall commence after one month from retirement till the amount actually paid. The Petitioners shall also be entitled to costs which is quantified to Rs. 5,000/-.

