
(1999) 11 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 9000 of 1996

Smt. Nirmal Rani

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Citation : (2000) 2 AWC 1046 : (2000) 1 UPLBEC 86

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : H.N. Tripathi, for the Appellant;

Judgement

A. K. Yog, J.—Petitioner was appointed as Assistant Teacher in a recognized Junior High School, which was upgraded to High School and Intermediate level. Detailed facts have been mentioned in the writ petition. Institution (Kunwar Ranjit Singh Inter College, Nagariya Parikshit, Air Force, Bareilly) was getting grant-in-aid and the provisions of U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act. 1971, are applicable to it.

2. Petitioner received her salary when the College came on grant-in-aid list in 1994 and she was paid until impugned order dated August 9. 1995 (Annexure-IV to the writ petition) and consequential order dated August 31. 1995 (Annexure-XI to the writ petition) were passed.

3. Petitioner has passed High School and Intermediate Examinations of -U. P. Board. Allahabad". She also passed "Madhyama" (Intermediate level). Sahitya Ratna (B. A. level) as well as Shiksha Visharad Examinations, [said to be equivalent to B.Ed.) Teaching Training Course from Hindi Sahitya Sammelan. Allahabad. Petitioner has filed certain documents (as Annexure-1. II and III to the writ petition) to show that "Shiksha Visharad" of Hindi Sahitya Sammelan is recognized as equivalent to B.Ed/Trained Teacher.

4. It appears that some complaints were made and a preliminary enquiry was

held by the District Inspector of Schools, who passed impugned order dated August 9, 1995 (Annexure-IV to the writ petition). District Inspector of Schools, Bareilly, under the impugned order Informed the Institution that salary of the petitioner apart from other three persons, shall not be sanctioned under the Payment of Salaries Act. 1971, on the ground that these persons did not possess requisite training qualification.

5. Petitioner made representations dated May 30. 1995 (Annexure-VI to the writ petition) and August 29. 1995 [Annexure-VIII to the writ petition), to the manager of the Institution. She sent copies to the concerned authorities also. Petitioner thereafter made representation dated November 2, 1995 to the District Inspector of Schools and representation dated November 15, 1995 (Annexure-X to the writ petition) to the Director of Education (Secondary).

6. Petitioner has filed copies of interim orders dated August 31. 1995 passed in the Writ Petition Nos. 1902 of 1995 and 19397 of 1995 filed by other two teachers, who were also covered under the same impugned orders.

7. Respondent Nos. 2 and 5 are represented through learned standing counsel and respondent Nos. 3 and 4 are represented by Shri Rajesh Tripathi, Advocate, who has filed today a counter-affidavit (after serving a copy on the learned counsel for the petitioner on September 21, 1998).

8. The said counter-affidavit supports the case of the petitioner, which shows that management has no grievance if petitioner is allowed to continue in service in the institution.

9. On the other hand no counter-affidavit has been filed by respondent Nos. 1, 2 and 3 to controvert the facts stated in the writ petition.

10. Learned counsel for the petitioner submitted that petitioner was taken by surprise inasmuch as she was never apprised of the complaint against her ; she was never given notice regarding filing of alleged forged certificates, she was given no notice nor afforded opportunity and lastly no enquiry was held by the competent authority, namely-the Committee of Management of the Institution before the impugned order terminating her services has been Issued.

11. In Paragraph 24 (a) of the petition it is stated, ".....In the year 1994 respondent No. 2 without following the principles of natural Justice, without giving opportunity of hearing or to show cause suddenly sent a letter to the Manager of the institution who is highly annoyed with the petitioner best cause known to him and withdrew the financial sanction granted in respect of substantive appointment of the petitioner on the post of Assistant teacher In the Institution."

12. Again In Paragraph 24 (d) It is stated that. That the Manager of the Institution without any resolution of the Committee of Management without any authority in law passed the Impugned order dated 9.8.1995 and relieved the petitioner from the service of the institution and without passing any order of

termination against the petitioner relieved her. Neither the petitioner has been removed from service by the appointing authority nor the appointing authority authorised the Manager of the institution to relieve the petitioner from the post of Assistant Teacher, so the order dated 21.8.1995 passed by the Manager of the institution is void being without Jurisdiction."

13. Petitioner has categorically stated in Paragraph 24 (e) that she did not conceal "fact" regarding her qualification or caused ?misrepresentation".

14. In the representation filed by the petitioner it was also contended that she is entitled for exemption in view of length of services (more than 10 years) and even if training degree is ignored, petitioner is eligible and should be treated at par with any other assistant teacher possessing training degree/certificate.

15. The respondents have not filed relevant document to Indicate whether petitioner was apprised of the charges in respect of which enquiry was being held, in absence of due notice of the allegations against her services of petitioner could not have been terminated without holding enquiry and affording opportunity to the petitioner as contemplated under law.

16. The enquiry held by District Inspector of Schools under Payment of Salaries Act. 1971 can. at best, be said to be a preliminary enquiry. If petitioner is not guilty of committing fraud or misrepresentation, and she has not been given opportunity to defend, the action of terminating services on the part of the concerned respondent cannot be justified. The authorities ought to have considered the relevant Issue on merit in the light of the contention of the petitioner [whether she had acquired enough teaching experience which would have entitled her to seek exemption of required training degree). As the record stands today, there is complete non-application of mind to the said issue raised by the petitioner.

17. Averments made by the petitioner in the writ petition show that she was given no notice and that she has not been removed by the competent authority, namely, the Committee of Management after holding enquiry as contemplated under law. It is also not disputed by any of the respondents.

18. In view of the unrebutted statements contained In the writ petition that termination order has been passed in violation of the principles of natural justice, that she was given no charge-sheet, that no disciplinary enquiry was held as contemplated under Regulations framed under the U. P. High School and intermediate Education Act and that the employer (Committee of Management of the Institution) had taken no decision on its own and that she was directed to be relieved under the dictates of the District Inspector of Schools without giving opportunity as contemplated under law, "the Impugned orders are vitiated in law and cannot be sustained.

19. Accordingly, I issue a writ of certiorari quashing the Impugned orders dated August 9, 1995 (Annexure-IV to the writ petition) and August 21, 1995

(Annexure-X to the writ petition). A writ of mandamus is also issued directing respondents to reinstate the petitioner treating her in services continuously with effect from August 8, 1995 for all purposes including seniority, pension, etc. Petitioner will be paid salary in future by giving benefit of and accounting for the annual increments, all allowances perks etc., and she will be paid future salary month by month along with other staff of the College. It is further directed that concerned authorities shall decide the question of payment of arrears of salary for the period from August, 1995 till the date of joining after taking into account whether petitioner has been willing to work and that she was not gainfully employed elsewhere including such other mitigating circumstances as may be relevant under law. In case petitioner was not gainfully employed and willing to work, she shall be paid full back wages with 12% per annum simple interest from the date of salary being due till the date of actual payment of the dues.

20. Writ petition stands allowed.

21. No order as to costs.