
(2003) 02 AHC CK 0004
In the Allahabad High Court
Case No : C.M.W.P. No. 38980 of 1999

Smt. Savitri Gupta

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 2, 46, 16F(1), 16FF(1)

Citation : (2003) 5 AWC 3779

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.C. Gupta and Somesh Khare, for the Appellant; S.S. Sharma, Raj Kumar and, Enakshi Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Sri R.C. Gupta, learned Counsel for the Petitioner as well as Sri S.S. Sharma, Sri Raj Kumar and Miss. Enakshi Sharma learned standing counsel.

In this writ petition, the mandamus has been sought seeking direction to the authorities to pay the salary of Principal and the revised pay scale to the Petitioner upto 30th June, 1998 till he served as a Principal in his officiating capacity in the Government Girls Higher Secondary Schools, Malwa, Fatehpur.

2. The Petitioner has rendered her services as a teacher in private educational institutions and has retired as officiating Principal of the Institution namely Government Girls Higher Secondary School, Malwa, Fatehpur, on 30th June, 1998. The Petitioner has filed Writ Petition No. 34477 of 1999 for counting earlier services which was decided on 17.8.1999 with a direction to count the past services of the Petitioner served in the private institutions and for obtaining the salary during the officiating period as a Principal, a separate writ petition was filed. According to the Petitioner since she had worked as Assistant Teacher in Government Girls Higher Secondary School, Saheli, Fatehpur and she was senior

most teacher in the institution and by the order dated 27.9.1993 the Petitioner was given charge of the head of the institution by Joint Director Education, IV Region, Allahabad and the Petitioner joined the institution on 1.10.1993 and the Petitioner was allowed to continue as Head of the institution till 12.5.1995. Thereafter, the Petitioner was transferred and relieved for some other institution from the said institution on 5.8.1996 on the retirement of the head of the institution of Government Girls Higher Secondary School, Malwa, Fatehpur. The Petitioner being a senior most Principal was allowed to continue as a Principal by the order dated 31.10.1996 issued by the District Inspector of Schools, Fatehpur in view of the provisions of Chapter II Regulation 2 proviso and Chapter III Regulation 46. Regulation 2 of Chapter II of U.P. Intermediate Education Act is quoted as below:

(1) The posts of the Head of Institution shall, except as provided in Clause (2) be filled by direct recruitment after reference to the Selection Committee under Sub-section (1) of Section 16F or, as the case may be, under Sub-section (1) of Section 16FF:

Provided that in the case of any institution not being an institution referred to in Section 16FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months, or by death, retirement or suspension of any incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in institution.

The next relevant provision is Clause (3) of Regulation No. 2 of Chapter II which reads as under:

where the temporary vacancy in the post of the Head of Institution is for a period not exceeding thirty days, the senior most teacher in the highest grade may be allowed to work as acting Head of Institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher.

The Regulation 46 of Chapter III is also relevant for considering the grievances of the Petitioner which is as under:

Employees shall be allowed the scale of pay sanctioned by the State Government from time to time.

3. According to the Petitioner in reference of the proviso to Regulation No 2 Sub-clause (1) the Petitioner was appointed in the vacancy caused by retirement of the Head of the Institution to officiate as Head of the Institution by virtue of being a senior most teacher, therefore, he is entitled for the salary of the Head of the Institution. The Petitioner has asserted that he is entitled by the squarely covered decision of Division Bench judgment of this Hon'ble Court in the case of Narbadeshwar Mishra v. District Inspector of Schools 1982 UPLBEC 171. The aforesaid judgment has been followed by the Hon'ble single Judge in the case of

Pushkar Singh Verma v. District Inspector of Schools, Meerut and Ors. in Civil Misc. Writ Petition No. 27945 of 1999 decided on 14.7.1999

4. I have heard learned Counsel for the Petitioner. In para 10 of the counter-affidavit, the averments made in the writ petition had not been denied, however, according to the Petitioner he had worked as an officiating Principal in the Government Girls Higher Secondary School, Saheli, Fatehpur, from 1.10.1993 to 12.5.1995 and from 1.11.1996 to 30th June, 1998 in the Government Girls Higher Secondary School, Malwa, Fatehpur and in view of the directions in Dhaneshwar Singh Chauhan (supra), where it was observed that:

the salary of a teacher in aided and recognised institution is regulated by the Regulations framed under the U.P. Intermediate Education Act and the order issued by the State Government from time to time. Regulation 46 Chapter III lays down that employees of an aided and recognised institution shall be given the pay scale sanctioned by the State Government from time to time. The State Government has prescribed the scales of pay for teachers. The State Government issued an order on 18th January, 1974 accepting the recommendations of the U.P. Pay Commission prescribing scales of pay for teachers. Paragraph 5 (2) of Government Order lays down that a teacher while officiating on the post carrying higher grade is entitled to officiating salary in the higher grade and it further prescribed for determining the salary of officiating teacher in the higher grade.

In the instant case, the Petitioner's claim for salary in Principal's grade was sanctioned by the District Inspector of Schools in pursuance of the aforesaid Government Order. Respondents failed to place any material showing that the Petitioner was not entitled to the salary in the principal's grade while officiating on the post of Principal.

5. In Narbadeshwar Misra (supra), in paragraph 6, it was observed that a perusal of the proviso to Regulation 2 (1) shows that the Petitioner's case was squarely covered by it. The Petitioner was appointed in the vacancy caused by the retirement of Banshidhar Dixit, to officiate as the Principal of the College. The Petitioner was the senior most teacher, he was, therefore, lawfully appointed as the officiating principal contemplated by the proviso.

6. Similar view was also taken in Pushkar Singh (supra), where the Petitioner was allowed to be given the salary for the period when he worked as an officiating Principal. In view of the above, I find that the Petitioner had worked as an officiating Principal and he is entitled to the salary for the above period. He is entitled to be given salary in accordance with law. Therefore, the District Inspector of Schools, Fatehpur and the Joint Director Education, IV Region, Allahabad are directed to disburse the salary of the Petitioner within six months from the date of presentation of the certified copy of this order.

7. In view of the above observation, writ petition is allowed.