
(2010) 07 AHC CK 0123
In the Allahabad High Court

Smt. Shalini Saxena

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0123

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Shri V.C. Mishra, learned Senior Counsel assisted by Shri Vivek Mishra, Advocate for the petitioner, learned Standing Counsel for the respondents No. 1 to 4 and Shri K. Shahi for the respondent No. 5.

2. As per the learned Counsel for the petitioner, she was formally regularly appointed on the post of Assistant Teacher on 10.7.2007 in Mary Mother Junior High School (Balika), Rajeev Gandhi Nagar, Farrukhabad. This institution is recognised institution as per the provisions contained in U.P. Basic Education Act, 1972. Necessary formalities required for making direct recruitment as per the provisions of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 were followed. The post was duly advertised and the Selection Committee was constituted after scrutinising the candidature of the candidates and the petitioner was formally regularly appointed. The management has sent the requisite papers to the respondent No. 3 vide letter dated 11.7.2007 seeking approval/financial sanction to the appointment of the petitioner on the post of Assistant Teacher. The respondent No. 3 vide an order dated 11.7.2007 accorded approval to the appointment of the petitioner on the post of Assistant Teacher in the aforementioned institution. The petitioner's name find place at serial No. 3 in the order of approval granted by the respondent No. 3. After grant of approval to the appointment of the petitioner, the paper seeking financial sanction were submitted and accordingly the respondent No. 2 vide an order dated 19.7.2007 accorded financial sanction

to the appointment of the petitioner on the post of Assistant Teacher for the purpose of disbursement of salary under U.P. Junior High Schools (Payment of Salary of Teachers and other employees) Act, 1978. The respondent No. 3 in furtherance of these proceedings passed an order on 20.7.2007 directing the respondent No. 4 for payment of salary to the petitioner on the post of Assistant Teacher held by the petitioner in the aforesaid institution. Formal appointment order was accordingly issued and the petitioner assumed charge and settled started discharging duties, functions and responsibilities of the post of Assistant Teacher in the institution w.e.f 14.7.2007. Despite the fact that the petitioner is continuously discharging her duties on the post of Assistant Teacher in the aforesaid institution no payment of salary whatsoever has been made to the petitioner. This has compelled the petitioner to file the present writ petition, which was entertained on 10.7.2008 and Hon. Dilip Gupta, J. has passed the interim order. The operative portion of the interim order dated 10.7.2008 is quoted below:

In view of the aforesaid, an interim mandamus be issued to the respondent No. 3 and 4 to either make payment of salary to the petitioner for the current month and continue to pay the future salary month by month or show cause by filing a counter affidavit within four weeks from today. The payment of salary for the earlier months shall be considered at the time of disposal of the petition.

3. A counter affidavit has been filed in which it has been indicated that because of the order dated 20.1.2003 no salary can be paid to the petitioner. As far as selection and appointment of the petitioner is concerned no challenge had been made. The only hindrance which has caused non-payment of salary is existence of the Government Order dated 20.1.2003.

4. Shri K. Shahi has also resisted the motion, highlighted the submissions put-forth in the counter affidavit. He has drawn the attention of the court to para Nos. 3, 4, 5 and 8 of the counter affidavit in support of his submissions.

5. Shri V.C. Mishra, learned Senior Counsel has submitted that the provisions contained in the Government Order dated 20.1.2003 are not applicable in the present case. In the present case the statutory Rules of 1978 as indicated above shall hold the field. He has drawn the attention of the Court to the findings and conclusions recorded by this Court on 4.5.2005 in a judgment passed by Hon. V.K. Shukla, J. The relevant portion of the order is quoted below:

After respective arguments have been advanced, factual position which is emerging in the present case is that one Syed Maqsd Hasan has been performing and discharging the duties as officiating Headmaster and he was appointed as Assistant Teacher under three language Formula School. Post which has fallen vacant on account of attaining the age of superannuation of Syed Maqsd Hasan is to be filled up by managing committee of the institution in terms of Rule 3 of 1978. As far as post of Headmaster is concerned, it is true that claim of one Jai Karan Singh has been rejected on 20.12.1999 and against

the order dated 20.12.1999 civil misc. writ petition No. 2227 of 2000 is pending before this Court wherein Jai Karan Singh is not one of the petitioner and thereafter Jai Karan Singh had preferred writ petition No. 43320 of 2004 before this Court wherein directives were given for consideration of his claim and thereafter as claim has been rejected by the Additional Director of Education, Jai Karan Singh has filed fresh writ petite against said order and the aforementioned writ petition has been directed to be tagged and clubbed with civil misc. writ petition No. 2227 of 2004 as such section and appointment Headmaster, if any, made would subject to decision in civil misc. writ petition No. 2227 of 2000 and other connected matters. As far as post of Assistant Teacher is concerned, which has fallen vacant on account of attaining the age of death of Syed Maqsud Hasan same has to be filled up as per law and same would be subject to ultimate decision in writ petition No. 5395 of 2001. District Basic Education Officer is enjoined upon to provide nominee in case there exists vacancy and same has to be filled up in terms of 1978 rules. Government order dated 20.1.2003 in the facts of the present case is uncalled for in as much as 1978 Rules are self contained and said rules does not envisage for taking any prior approval from the State Government before proceeding to make selection and appointment and as such said Government to the extent it directs taking sanction from State Govern is ultra vires to the provisions as contained under 1978 Rules and the same cannot be made foundation and basis for withholding the permission. Thus, respondents are duty bound to provide nominee in case validily elected managing committee is proceeding to make selection as per 1978 rules against duly sanctioned post.

In these circumstances and in this background District Basic Education Officer, Allahabad is directed to take appropriate decision on the application moved by the petitioner for sending of nominee within a month from the date of receipt of certified copy of the order....

For the reasoned mentioned above, present writ petiion is allowed and disposed of.

6. Similar view has been expressed by Lucknow Bench of this High Court in a judgment rendered on 9.10.2007 in W.P. No. 3418 (S/S) of 2007 passed by Hon. S.S. Chauhan, J.

7. There is substance in the submissions of Shri V.C. Mishra, learned Senior Counsel for the petitioner that in the present case the petitioner was appointed after following a detailed procedure and process of direct recruitment as per relevant Service Rules. An advertisement was inserted in the newspaper and the Selection committee was constituted and after the scrutiny of all eligible candidates, the petitioner was appointed in service. An approval was also accorded by the District Basic Education Officer and the financial approval was also accorded by the Assistant Director of Education (Basic) Kanpur Region, Kanpur. As far as the hindrance caused by G.O. Dated 20.1.2003 is concerned, the provisions of the same has now been held ultra vires by this Court. There

shall have to be excluded from consideration. The G.O. Dated 20.1.2003 not come in the way of the petitioner.

8. In view of above, the writ petition is allowed. Since there appears to be no legal hindrance in making payment of salary admissible to the petitioner, the court has no option left except to pass order directing the respondents to pay regular salary to the petitioner including arrears of salary w.e.f 14.7.2007 for the post of Assistant Teacher in the aforementioned institution.