
(1992) 05 AHC CK 0028

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20139 of 1992

Smt. Surjeet Kaur

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 18-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2, 5, 5
Uttar Pradesh Intermediate Education Act, 1921 — Section 16GG
Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975 — Section 22
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (1992) 4 AWC 369 Supp : (1992) 2 UPLBEC 1087

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : A.K. Yog, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Petition in hand having been filed under Article 226 of the Constitution of India, seeks a writ of certiorari to be issued for quashing the notice dated 25-3-1992 (Annexure 19 to the petition) given by the District Inspector of Schools Hardwar to the Manager, Committee of Management, Mahila Vidyalay Intermediate College, Sati Kund Kankhal, Hardwar (in short the "college") calling upon him to show cause why action be not taken u/s 5 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teacher and other Employees) Act, 1971 (U.P. Act No. 24 of 1971) owing to default of the management in submitting salary bills of teachers and other employees of the College A further prayer for a writ of mandamus commanding the Respondents to pay salary to the Petitioner, as may be admissible to him, Principal of the College, including increments and allowances perks besides arrears of salary from 28-10-91, has also been sought for.

2. The case in hand is marked by (sic) in its history. A brief resume of the backdrop, the same being essential to unfold the truth and to deliver the justice, may be narrated as below.

3. Smt. Kamla Lal was appointed as Adhoc lecturer in Economics on 12-9-1975 obviously under Clause (2) of the U.P. Secondary Education (Removal of Difficulties) Order, 1975 issued vide notification dated August 18, 1975 in exercise of power u/s 22 of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975. The appointment was made in a clear vacancy and approved of by the Regional Inspectress of Girls Schools. The post held by Smt. Kamla Lal was advertised on August 24, 1976 and the Petitioner was selected for appointment by the Selection Committee in its meeting held on 21-11-1976. Letter of appointment was issued in favour of the Petitioner and she Joined her duties. From the facts on record, it would transpire that a representation was made by Madhyamik Shikshak Sangh to the Director of Education U.P. Allahabad against the aforesaid selection on the posts held by Smt. Kamla Lal and other Adhoc Appointees, and the Director of Education after giving a hearing to the concerned teachers and the Management, passed an order on October, 13, 1977, quashing the selection dated 21st November 1976. By the aforesaid order, the Adhoc appointees including Smt. Kamla Lal were given benefit of section 16-GG of U.P. Intermediate Education Act, 1921. The Petitioner and other teachers selected for appointment by the Selection Committee in its meeting on 21-11-1976 filed a Writ Petition, it being Civil Misc. Writ Petition No. 2011 of 1977, in which an interim order was granted in their favour by virtue of that they continued on their respective posts. The Director of Education, however, by a subsequent order dated 6-10-1978 recalled his earlier order dated 13th October, 1977 and consequently, the writ petition aforesaid was dismissed as infructuous. Adhoc Appointees including Smt. Kamla Lal, then preferred writ petitions, being Civil Misc Writ Petition Nos 10484 of 1978 Smt. Sarla Chopra v. Director of Education, U.P. Allahabad and 10495 of 1978 Smt. Kamla Lal v. Km. Surjeet Kaur and others. The aforesaid petitions ended in being allowed by a Division Bench by means of the order dated 12-9-1980. The decision being Smt. Sarla Chopra v. Director of Education, U.P. Allahabad 1981 UP LB EC 203. While dealing with the case of Smt. Sarla Chopra, the Division Bench observed as under:

We therefore hold that there was no vacancy of the post which was held by the Petitioner and the Selection Committee which was convened on November 21, 1976, was not Competent to recommend any person to fill the alleged vacancy which did not exist,

The aforesaid proposition was equally applicable to the facts of the connected Writ petition filed by Smt. Kamla Lal as would be evident from para 23 of the report.

4. The matter was taken to Hon. Supreme Court by means of Special Leave Petitions which were admitted and registered as Civil Appeals No. 239394 of 82 and Civil Appeal No. 6263 of 83. These appeals were decided by the Supreme

Court by means of the order dated 13-10-87 which runs as follows:

Heard learned Counsel for the parties. In the facts of the case, we consider it unnecessary to go into the legal aspect as we are inclined to agree with the counsel that all the teachers concerned should be given employment irrespective of the fact whether they are recruitees of the year 1975 or 1976. We have also no intention to disturb the judgment of the High Court. We direct the State of U.P. to make appropriate adjustments and give employment to both the groups of teachers. Our direction shall be confined only to the parties to these proceedings. The appeals are disposed of accordingly. No costs.

It appears that one of the teachers, having not been adjusted in the college pursuant to the aforesaid order, was posted in another college, but feeling aggrieved the said teacher approached the High Court by means of a writ petition and obtained stay in respect of posting. The writ petition, was, however, transferred to Hon. Supreme Court and it was registered there as Transfer Case No. 152 of 1988. The Hon. Supreme Court took up the afore said Transfer Case No. 152 of 1988 along with Civil Appeals described in the preceding part of this judgment, on 21st October 1988 and passed the following order.

We have heard counsel for all parties including the State of Uttar Pradesh. We direct the Respondent authority to examine the matter afresh keeping the following guide-lines in view:

1. An attempt should be made to accommodate all the parties in the same institutions if possible.
2. The length of service of all the teachers involved in these appeals to be fixed. In case accommodating ail of them in the same institution is not possible, and the services are transferable, teachers who have rendered the longest period of service out of this group should be transferred. In case transfer is not permissible the senior teachers should be continued and the junior ones may be posted in other institutions.
3. Even if transfer is to be done, care should be taken to see that the teachers are not posted at places far away from the institution where they are not working. The salaries of teachers who have been absorbed under our order should be disbursed soon. This exercised should be completed by the Deputy Director of Education or any other competent authority as the case may be within six weeks from now. We are adjourning the matter to 10th of January, 1989. when Mrs. Shobha Dikshif will place the latest order made by the Deputy Director in compliance of our today's direction.

Smt. Sarla Chopra was found by the High Court to be qualified. The Deputy Director of Education shall, therefore, treat her as qualified teacher and pay her dues.

5. In pursuance of aforesaid directions issued by Hon. Supreme Court, the Deputy Director of the Region made an order dated January 5, 1989 whereby he

posted Mithlesh Kumari Gaur and the Petitioner Smt Surjeet Kaur as teachers in the neighbouring district, while the remaining teachers were accommodated in the college in question at Kankhal. Smt. Mithlesh Kumari Gaur and the Petitioner Surjeet Kaur felt aggrieved by the order dated 5th January 1989 passed by the Regional Deputy Director of Education and approached the Supreme Court. The following order was passed on 5th January 1989 by the Supreme Court:

The orders dated 1987 and November 21, 1988 made by this Court shall stand suspended and the appeals and the transferred case will be listed for hearing on March 28, 1989.

Pursuant to the aforesaid order, the matter was again taken up by Hon. Supreme Court and final orders were passed on September 17, 1991. The relevant portion of the order dated 17th September 1991 is quoted below for ready reference.

We have examined the entire matter in the light of the previous orders made by this Court and also the orders made by the Department. We are of the opinion that it would be futile to examine the merits of the appeals at this stage. The only question that remains to be considered is whether all the teachers in the appeals should be posted in the institution at Kankhal and if that is not possible where else they should be accommodated. For the present it is not disputed that in the institution at Kankhal (here are not enough vacancies to accommodate all the teachers Some have to be posted elsewhere.

Since the Respondent have succeeded before the High Court, they have preferential light to have them posted at Kankhal. They are satisfied with the order made by the Department on January 5, 1989. But unfortunately the said order could not be implemented by the Department in view of this Court's order dated January 5, 1989. It is now nearly two and half years since the Department made that order. One does not know whether the same vacancy position continues in the institution to which two of the teachers were posted outside Kankhal.

There are now four vacancies at Kankhal against which four of the teachers could be conveniently posted. The remaining two are to be posted in some other institutions. Out of the four persons three are the Respondents in these appeals. They shall be posted at Kankhal itself. Their posting at Kankhal has been necessitated in view of the judgment of the High Court which has been kept undisturbed by the previous order of this Court. Out of the remaining, Smt. Raj Bala is already at Kankhal. She may be also allowed to continue at Kankhal. There remains two other teachers Smt. Mithlesh Kumari Gaur and Smt. Surjeet Kaur. They may be posted in the neighbouring districts as far as possible .

We also direct that in the event of the reassessment of the vacancy position at Kankhal in future if any further post in the category to which Smt. Mithlesh Kumari Gaur or Smt. Surjeet Kaur belong is needed, they should be brought back to Kankhal.

This Court by order dated November 21, 1988 has given certain directions in respect of the Respondents in these appeals, namely, Smt. Sarla Chopra, Smt. Kamla Lal and Smt. Yadhodra Rani. The directions contained in the said order with regard to these teachers are kept undisturbed.

In the meantime, it appears that the permanent Principal of the college namely Smt. Kamla Varma had proceeded on leave and the Management, treating the Petitioner as the Seniormost lecturer appointed her as the Officiating Principal of the College vide resolution dated 12-2-1985. The appointment aforesaid was approved by the Regional Inspectress of Girls School by order contained in letter dated 3-10-1985 (Annexure 2 to the writ petition)for the period between 1-2-1985 to 30-6-85, but by reason of the fact that the permanent incumbent did not report back from leave, the Committee passed another resolution on 2-6-1985 . extending the officiating arrangement made in favour of the Petitioner which was approved by the Regional Inspectress of Girls Schools by means of the order contained in letter dated 19-11-1985. By a subsequent order dated 5-2-86, the Regional Inspectress of Girls Schools, extended officiating arrangement to a further period from 1-1-85 to 31-1-86. By the same order dated 5-2-1986, Vinod Sharma a permanent L. T. grade teacher, as borne out from the record, was given adhoc promotion in place of the Petitioner Smt. Surjeet Kaur from 18-11-85 to 31-1-86 Smt. Kamla Varma. Permanent incumbent on the post of Principal of the college, in a later development, resigned which resulted in the occurrence of a substantive vacancy. In the wake of substantive vacancy,, the Committee of Management passed a resolution in favour of the Petitioner in its meeting held on 30-3-86 for giving promotion to her on the footing that she was the Seniormost lectures in the college. The Regional Inspectress of Girls School approved tie Adhoc promotion by order contained in letter dated 6-11-1986 subject to the postulates that the Petitioner would continue on the post until a regularly selected candidate came forward to claim the post.

6. To pick up the threads, after the decision of the aforesaid Civil Appeals and Transfer Case by Hon. Supreme Court by means of the judgment and order dated 17-9-1991, the District Inspector of Schools passed an order on 8-11-91 with a view to implementing the directions given by the Supreme Court, By the said order of the District Inspector of Schools, the Petitioner was adjusted with effect from his taking over the charge as lecturer (Economics/Sociology) in H. R. Intermediate College Gangoh Saharanpur, while Smt. Mithilesh Kumari Gaur was adjusted as Lecturer (Sanskrit/Hindi) in Barla Intermediate College Barla, Muzaffarnagar. The Petitioner was, however, not satisfied and she came up with a petition bearing No. 1319/91 to the High Court challenging the order dated 8-11-91 passed by the District Inspector of Schools and in the petition following interim order was passed.

Notice on behalf of Respondents no. 2 & 3 has been accepted by the standing counsel. The Petitioner is also directed to serve a copy of the Respondents alongwith copy of this order. The Respondents will file counter affidavit within 3

weeks.

The Respondent shall not give effect to the order(Annexure 8) dated 8-11-91 for a period of six weeks and within this period, shall take a decision about the second aspect of the order of the Hon. Supreme Court regarding possible absorption of the Petitioner in Manila Inter College Sati Kund Kankhal.

List in the third week of Feb. 1992.

The Committee of Management also filed a writ petition challenging the validity of the order dated 8-11-91 and praying for a consequential relief through a writ of mandamus directing the Respondents not to disturb the arrangement made by the Committee by resolution dated 29th May 1981 whereby the Petitioner and Smt. Mithlesh Kumari Gaur were allowed to continue in the college. That writ petition was disposed of with certain observations and directions. The relevant part of the order is quoted below for ready reference.

In view of the facts and circumstances of the case proper forum for raising aforesaid grievance is the Director of Education who has the jurisdiction to re-fix the strength of the teachers in the college in accordance with the Government order, referred to above. Under these circumstances the Petitioner should make fresh representation before the Director of Education and the D.I.O.S. for increasing the strength of the teachers in the college in accordance with the Government Order, mentioned above. This representation will be made within ten days from today. The D.I.O.S. will transmit the representation of the Petitioner alongwith necessary records to the Director of Education within a week thereafter. The Director of Education will decide the question of strength of the teachers in the college within two weeks thereafter. In case the strength of the teachers in the college is increased by the Director of Education, both the teachers, mentioned above, namely Smt. Mithlesh Kumari Gaur and Smt. Surjeet Kaur will be accommodated against the newly created posts. However, if the Director of Education comes to the conclusion that there is no ground for increasing the strength of the teachers in the college both the aforesaid teachers will comply with the order of transfer dated 8-11-1991 mentioned hereinbefore.

Pursuant to aforesaid direction of the High Court, the Additional Director of Education (Women) Allahabad by her order dated 23-1-1992 revived two posts which had earlier lapsed by efflux of time some time after the separation of Inter section of the college from its Degree Section in 1976. The strength of lecturer in the college was again raised from 4 to 6. This order was obviously made with a view to adjusting the Petitioner and Smt. Mithlesh Kumari Gaur pursuant to the directions given by the Supreme Court and the High Court. The Regional Deputy Director of Education by his order dated 12-2-1992 adjusted the Petitioner and Smt. Mithlesh Kumari Gaur, against the aforesaid two posts sanctioned by the Additional Director (Women) vide order dated 23-1-1992. The District Inspector of Schools was accordingly informed by the Regional Inspectress of Girls Schools, 1st Region Meerut by letter dated 20-2-1992 with the request to pay salary to

the Petitioner and Smt. Mithlesh Kumari Gaur. The letters dated 20-2-1992 6-3-1992 and 10-3-1992 were issued by the Regional Deputy Director of Education to the District Inspector of Schools Hardwar for payment of salary to the Petitioner in view of the fact that she had been adjusted in the college as a lecturer vide order dated 12-2-1992.

7. The District Inspector of Schools was not sure as to whether in the facts and circumstances of the case, the Petitioner was entitled to salary admissible to the post of Principal or she was entitled to salary admissible to the post of lecturer to which she was adjusted with effect from 12-2-1992 and as such the District Inspector of Schools wrote a letter to the Regional Deputy Director of Education asking for latter's specific direction in regard of payment of salary to the Petitioner. It appears that salary bills of the teachers and other employees of the colleges were not submitted to the District Inspector of Schools for disbursement of salary and therefore, the District Inspector of Schools issued impugned show cause notice dated 25-3-1992 calling upon the Manager to show cause why action u/s 5 of the Payment of Salary Act, 1971, be not taken. It is this show cause notice which has been impugned by the Petitioner in the present petition.

8. Having given my thoughtful consideration to the facts of the case as aforesaid and having heard the learned Counsel appearing for the petitioner I am of the opinion that so far as the relief regarding quashing of the show cause notice dated 25-3-92 is concerned the Petitioner has no right to challenge the show cause notice issued to the Manager of the college u/s 5 of the Payment of Salary Act, 1971. It may be recalled that second proviso to section 5 of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, stipulates that the District Inspector of Schools may direct the single hand operation of the salary account if he is satisfied that due to default on the part of the Management, difficulty has arisen in disbursement of salary to the teachers and other employees. The Petitioner cannot be said to have any grievance against the show cause notice issued to the Manager. I find no valid ground to interfere with the impugned show cause notice. If there was a dispute regarding the payment of salary to the Petitioner and Smt. Mithlesh Kumari Gaur, the management ought to have submitted salary bill of other teachers and employees of the college.

9. So far as the relief regarding payment of salary to the Petitioner as Principal of the college is concerned I am of the opinion that the Petitioner's appointment as officiating or Adhoc Principal against the short term vacancy occurring due to permanent incumbent Smt. Kamla Varma going on leave, was void and non-est for the reasons that the Petitioner did not acquire the status of a lecturer in the college prior to 12-2-1992 on which date she was adjusted to a post revived vide order dated 23-1-1992. Her selection on 21-11-76 was held to be void by the Director of Education vide order dated 13-10-77 and by the High Court vide order dated 12-9-80. As such she could not have been appointed as officiating Principal by promotion either under the provisions of section 18 of the U.P. Secondary

Education Commission and Selection Board's Act (U.P. Act No. 5 of 1992) or under the provisions of U.P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981. Section 18 is attracted in the case of adhoc appointment against a substantive vacancy and that too after expiry of sixty days from the date of intimation of the vacancy to the Commission. The section has no application to a case of short term vacancy occurring due to permanent incumbent going on leave. Appointment of the Petitioner by promotion as officiating Principal cannot be sustained under the provisions of U.P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 either. Clause 2 (1) empowers the Management to fill up a short term vacancy caused by grant of leave or on account of suspension duly approved by the District Inspector of Schools or otherwise, by promotion of the permanent seniormost teacher of the Institution in the next lower grade. As noticed hereinbefore, the selection of the Petitioner having been quashed by the Director of Education by order dated 13-10-1977, the Petitioner cannot claim to have acquired the status of a teacher so as to become eligible for ad hoc promotion, under the provisions of paragraph 2 (i) of the said Removal of Difficulties Order. It is true that she continued either on the basis of the interim order passed by the High Court or on the basis of the order dated 6-10-1978, passed by the Director of Education recalling his earlier order dated 13-10-77 but she lost all claim to continue on the post of lecturer in the college after the judgment of the High Court dated 12-9-80 in Smt. Sarla Chopra's case reported in 1981 UP LB EC 203. There is nothing on the record to demonstrate that the operation of the judgment of the High Court dated 12-9-80 was stayed by Hon. Supreme Court. The orders dated 13-10-87, 21-11-88 and 17-9-91 passed by Hon. Supreme Court as noticed hereinbefore, do not make the Petitioner lecturer in the college until she was adjusted by the Deputy Director of Education vide order dated 12-2-92 against a post created by the Additional Director of Education (Women) by means of order dated 23-1-92. Prior to the order dated 23-1-92, there was no vacancy in the college as held by the High Court in Smt. Sarla Chopra's case (supra). The order dated 6-11-86 giving adhoc promotion to the post of Principal after the resignation of the permanent incumbent does not improve the situation for this order too proceeds on the footing that the Petitioner was the seniormost lecturer in the college which cannot be accepted in view of the above discussion and this being not in accordance with law, the Petitioner is not entitled to claim the benefit of section 3, 3-A of the U. P. Act 5 of 1982 as amended by U.P. Act No. 26 of 1991. The appointment to the post of Principal was void in view of section 16 (2) of U.P. Act 5 of 1988.

10. Having examined the matter in all its bearings, I am of the opinion that the judgment and order dated 17-9-91 of the Hon. Supreme Court and. their Lordships" earlier orders referred to hereinbefore at the most only entitled the Petitioner to claim for adjustment in any other college with a right to come back in the college as and when a vacancy occurs or post is created. As seen above, the post was created by order dated 23-1-92 and the Petitioner was adjusted by

order dated 12-2-92 against the post so created. The Petitioner in my opinion, never acquired the status of a lecturer in the college prior to 12-2-92 in view of the fact that her selection was quashed by Director of Education vide order dated 13-10-77 which order, though recalled by the Director by means of the order dated 6-10-78, was restituted by the High Court by means of the judgment and order dated 12-9-1980. The orders dated 23-1-92 and 12-2-92 do not appear to have been given retrospective effect so as to regularise the past services rendered by the Petitioner. The liability of the Respondents 1 and 2 to pay the salary under the provisions of U. P, Act No. 24 of 1971 arises only in respect of a teacher in regard of whose employment maintenance grant is paid by the State Government to the Institution and includes any other teacher employed in fulfilment of the conditions of recognition of the instigation etc. as defined in section 2 (e) of U.P. Act No 24 of 1971. In view of Director's order dated 13-10-77 and the High Court's judgment and order dated 12-9-80, the Petitioner cannot be said to be a teacher within the meaning of section 2 (e) of the said Act, until she acquired the status of a teacher by virtue of the order dated 12-2-92 of the Regional Deputy Director of Education adjusting the Petitioner against one of the two posts created by the Additional Director of Education vide order dated 23-1-92. As such, I am of the opinion that the Respondents 1, 2 and 3 cannot be adjured by means of a writ under Article 226 of the Constitution of India, to pay any salary to the Petitioner for any period prior to 12-2-1992 for that would be tantamount to giving retrospectivity to order dated 23-1-92 and 12-2-92 which can be done by the authorities passing the above orders and not by this Court under Article 226 of the Constitution of India in absence of a statutory rule. None was brought to my notice. The orders passed by the Regional Inspectress of Girls School approving the resolution passed by the Committee of Management ratifying the officiating/ad hoc appointment of the Petitioner on the post of Principal against short term vacancy as one above or against substantive vacancy as the one made vide order dated 6-11-86 are void in view of section 16 (2) of U.P. Act 5 of 1982 and the Petitioner is not entitled to claim salary on the basis of these orders.

11. Having regard to the above discussions, I veer round to the opinion that the Petitioner acquired the status of lecturer in the college with effect from 12-2 -92 on which date, sha was adjusted to the directions of the Hon. Supreme Court contained its judgement dated 17-9-91 against one of the posts created by the Additional Director vide order dated 23-1-91. It is not permissible to accord to the petitioner the status of a teacher at least for purposes of payment of the salary Act. 1971. from a date prior to 12-2-1992. I am also of the opinion that the Committee of Management and Regional Inspectress of Girls Schools may now make adhoc appointment on the post of Principal in accordance with law after considering the claims of the eligible teachers. It may however be clarified that no observations in this judgment would be interpreted as entitling the Respondents to claim refund of salary already paid to the Petitioner period to 12-2-92 for, in my opinion ,if the Respondents allowed the Petitioner to work

even in the wake of the judgment of this Court dated 12-9 80, it would unjust and outrageous to the sense of justice to call upon the Petitioner to refund the salary paid to her for the actual duties performed by her though on the basis of illegal and void orders. It is further made explicit that if the Petitioner is actually continuing and working as officiating Principal after she was adjusted in the college as a lecturer with effect from 12-2-90, she would be entitled to continue as such and get salary admissible to the post of Principal until she is replaced by any other suitable candidate in accordance with law. However, nothing in this order would preclude the authority to give retrospectivity to the post creation order dated 23-1-92 and appointment order dated 12-2-92 so as to regularise the de-facto service rendered by by Petitioner prior to 12-2-92 and if it is so done by the competent authority, the Petitioner may become entitled to consequential relief as to seniority, salary post-retrial benefits.

12. In the result, the petition fails and is dismissed in limine subject to the above observations.