
(1998) 08 AHC CK 0154

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27672 of 1994

Sri. Shamshad Ali and Others

APPELLANT

Vs

District Basic Education Officer and Others

RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Citation : (1999) 2 UPLBEC 54

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Seth, J.—The Petitioners allege that they were appointed as Asstt. Urdu Teachers in various Junior High Schools some times around 1977. The Petitioner No. 1 alleges to have been appointed on last of February, 77 while the Petitioner No. 2 alleges to have been appointed in 1973. Thus, it appears that the Petitioners were appointed between the period 1973 and 1978. It is an admitted position that the Petitioners" were given appointment under the scheme for creation of half a million job subsequently, the Director of education , U.P. through his letter dated 14th December, 84 addressed to all the district Basic Education Officers, U.P. had informed that there was a scheme, teachers like the Petitioners, who are appointed in the primary teachers pay scale, were to be adjusted in the pay scale of High School Asst. Urdu Teachers from the earlier pay scale of primary school teachers on which they were initially appointed. Pursuant to the said order, the Petitioner were adjusted against the scale of Rs. 450-720/-. It appears that the Petitioners were adjusted against such posts on 22nd January" 85. Subsequently the Petitioners were allowed selection grade scale of pay w.e.f. 1st January 86 on the ground that had completed 12 years, of service in terms of paragraph 7 of the Govt. Order dated 8th June"89. After such grant of selection Grade Scale of Pay, the Petitioners were allowed to continue to draw such selection Grade of pay quite for some time. Thereafter, the Respondents has stopped payment in the scale of selection Grade pay to the Petitioners w.e.f..

June" 1994. Mr. A.D. Prabhaker" learned Counsel for the Petitioners submits that there was no written order issued in this respect. The said stoppage of payment in the scale of selection Grade Scale of pay has been effected without giving any notice or without hearing the Petitioners. According to him, after having guaranteed selection Grade scale of pay and having allowed to continue for such a long time, The same can neither be withdrawn nor the same can be stopped without giving any opportunity to the Petitioners. On these grounds, he claims that it is admitted in the counter affidavit that there is no order in this respect, which is apparent from Annexure R.A.I to the rejoinder affidavit, by which the Respondent themselves have admitted that no such order has been passed. Therefor, the Petitioners should be allowed to continue in the Selection Grade Scale of pay.

2. Mr. K.S. Shukla, learned Counsel for the Respondents on the other hand contends that grants of selection Grade scale of pay flow from the order dated 3rd June, 89, contained in Annexure IV. The Petitioners do not qualify to be eligible for such selection Grade scale of pay under the said Govt., order. The grant of selection Grade scale of pay was a mistaken grant through inadvertence. Under the law, the Petitioners are not entitled to such selection Grade scale of pay on account of their being ineligible under the said Govt, order. According to him, the Petitioners can seek enforcement of legal right through writ jurisdiction. The said legal right if alleged to have been on the basis of the said Govt. Order dated 3rd June,89. If under the said Govt. Order, the Petitioners are not eligible, in that event, there cannot be any legal right, which can be enforced through the writ jurisdiction. The Petitioners cannot claim their right on the basis of a mistaken step taken in this regard. According to him, persons, who have been in one post for more than the stipulated period of 12 years, he is eligible for Selection Grade Scale of pay. In the present case, the Petitioners were in the Scale of Rs. 195 Rs. 225/- when initially appointed. The scale of Rs. 450-720/- was sanctioned only by virtue of the order dated 14th December, 84 after creating the posts. Therefore, according to him, though the Petitioners were adjusted against the new posts and in the new scale, the same does not confer any right in them to claim a benefit in view of paragraph 7 of the said Govt. Order dated 3rd June,89. On this ground, he prays that the writ petition should be dismissed.

I have heard both the learned Counsel at length.

3. Admittedly, the Petitioners were appointed in the scale of Rs. 195-225/- pursuant to a scheme for half a million job. It is rightly contended by Mr. Shukla that these posts were Ex-Cadre-Posts. Therefore, it cannot be said that the Petitioners were holding regular posts. Admittedly, the posts were created by the order dated 14th December, 84 contained in Annexure-2, against which the Petitioners were adjusted. Scale for the said post were sanctioned as Rs. 450-720/-. Against these posts, and scale the Petitioners were adjusted by the order dated 22nd January, 85, contained in Annexure III. Thus the Petitioners,

who were not holding regular appointments or posts, were adjusted against regular posts by the said order dated 22nd January, 85 against a scale of Rs. 450-720/-. The order dated 14th December, 84 contains several clauses for the purpose of creation of posts after containing information's from different schools and then to adjust those persons, who were appointed pursuant to half a million job scheme, in the scale available to the Asstt. Teachers in the Junior High School from the scale of Primary Teachers.

4. Thus the fact remains that the Petitioners were adjusted against regular post in the scale of Rs. 450-720/- w.e.f. 1st January, 85. Therefore, the question as to whether the Petitioners had completed minimum qualifying service for grant of Selection Grade Scale of Pay, is a question to be determined. In order to come to a conclusion, it is to be decided as to whether the Petitioners service under the half a million job scheme in the scale of primary teacher right from the initial appointment should be taken into account for such purpose.

5. In order to appreciate the above questions, it would be necessary to refer to the relevant clause contained in the order dated 3rd June, 89, being Annexure IV to the writ petition, where from the right claimed by the Petitioners are alleged to be flowing. Paragraph VII of the said Govt. Order dated 3rd June, 89 is relevant. Paragraph 7 deals with grant of Selection Grade Scale of Pay to different groups of teachers. It is provided that primary school and Junior High School teachers would be entitled to Selection Grade Scale of Pay w.e.f. 1st June, 86, provided such teachers have completed 12 years of satisfactory service. The expression "teacher" has been qualified with the expression regular "teachers". Regular teachers means the teachers, who have been appointed following due process or in other words, who have been regularly appointed. If the teachers, who were appointed under the said half a million job scheme were regular teachers or could be treated so, in that event it would not have been necessary to create posts by the order dated 24th December, 84 or for providing a scale. Since the appointment was not a regular appointment and was made an Ex-cadre-Post pursuant to the scheme for half a million job, they were adjusted against the scale of primary teachers though they were working in junior High School. Thus by no stretch of imagination, it could be said that the appointment of the Petitioners as Asstt. Teachers in a junior High School with the scale of primary teacher under the said scheme, to be a regular appointment of a regular teacher. The adjustment against the posts and scale itself shows that those teachers, who were appointed under the said scheme, were regularised or became regular teachers by virtue of the order dated 14th December, 84 pursuant to which they were so regularized or appointed w.e.f. 1st June, 85, after being adjusted against regular posts and regular scale. If the appointments under the scheme were regular, in that event, there was no necessity of any granting them the scale of Asstt. Teacher of Junior High School and allowing the scale of primary teachers and post them against Ex-Cadre-Post and, therefore, there would have been no necessity of creation of posts and their adjustment against regular posts and scale.

6. Thus by no any stretch of imagination, the Petitioners could be said to be regular teachers. Unless they are regular teachers, the Petitioners cannot claim any right under paragraph 7 of the said Govt. Order dated 3rd June,89 which prescribes the eligibility criteria. In as much as in order to give the benefit of paragraph 7, the primary condition is that the teacher should be a regular teacher and have completed 12 years" of Service as such regular teachers and such service must be satisfactory and the such completion should have been made on 1st January, 86 or before or thereafter, as the case may be.

7. Admittedly, the Petitioners were appointed under the scheme in a scale of primary teachers. They served in junior High School and might have completed 12 years" of service, but the Petitioners not being regular teachers, they cannot derive benefit out of paragraph 7 of the said Govt. Order.

8. Therefore, it appears that the Petitioners were not eligible under the said criteria for Selection Grade Scale of Pay. But still then such scale was granted to them and they had continued to draw the same till 1994 without any objection. There is no order by which the said scale was stopped. It is also an admitted position that before stopping such payment in the scale, no notice was given to the Petitioners neither any opportunity was given to them. The stoppage of such scale has a civil consequence on the lights of the Petitioners. Such civil consequence cannot be inflicted on a person without giving them an opportunity.

9. In the present case, admittedly, there is no order by which the said grant was stopped. In such circumstances, it is incumbent upon the Respondents to give opportunity to the Petitioners as to why the grant of Selection Grade Scale of Pay should not be discontinued.

10. In that view of the matter, this writ petition is allowed in part to the extent that the Respondents shall issue notice and give opportunity to the Petitioners with regard to the decision that might be taken for discontinuance of Selection Grade Scale of Pay to the Petitioners and shall pass appropriate order in respect thereof. The Respondents had never asked for refund of the amount paid to the Petitioners till today. Therefore, it will not be open to seek refund of the said amount herein. However, the question of continuance of Selection Grade Scale of Pay after June,94, may be considered and decided by the Respondents in accordance with law, having regard to the observation made him above, after giving an opportunity to the Petitioners. Such decision is to be taken as early as possible, preferably within period of 3 months from the date a copy of this order is furnished to the Respondents. This order, shall, however, confine to the case of the Petitioners only. It will be open to the Petitioners to establish their case for eligibility and entitlement to Selection Grade Scale of Pay provided they are so eligible. It will be open to them to claim such eligibility on account of their completion of 12 years" of service after 1st June,85 alternatively. All these questions with regard thereto are kept opened.