
(2016) 02 AHC CK 0024
In the Allahabad High Court
Case No : Special Appeal No. 778 of 2003

State of U.P. and Ors.

APPELLANT

Vs

Savitri Gupta

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Citation : (2016) 3 ADJ 262

Hon'ble Judges : V.K. Shukla;Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : S.C. and M.S. Pipersenia, Advocate, for the Appellant; R.C. Gupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. The State of Uttar Pradesh, through the Secretary, Secondary Education, U.P Lucknow and 3 others, are before this Court assailing the validity of the order dated 24.2.2003 passed by learned Single Judge in Writ Petition No. 38980 of 1999 (Smt. Savitri Gupta v. District Inspector of Schools, Fatehpur and others).

2. It appears from the record in question that during the pendency of the present special appeal, sole petitioner-respondent died on 14.4.2006 and this Court vide an order dated 2.12.2010 allowed the substitution application and her legal heirs and representatives have been brought on record.

3. Brief background of the case is that the petitioner (since deceased) rendered her services as Assistant Teacher in private educational institutions, recognised by the District Inspector of Schools. She retired as officiating Principal of the Government Girls Higher Secondary School, Malwa, District Fatehpur on 30.6.1998. By the order dated 31.7.1999 the petitioner was denied to count her services from 28.7.1962 on the ground that she was employed as temporary and untrained till 1972 when she joined the Government service. The order further stated that the Government order dated 15.10.1997 did not apply to the petitioner for counting her earlier services. Aggrieved with the order, she

approached this Court by means of a Writ Petition No.34477 of 1999. Learned Single Judge had proceeded to allow the writ petition on 17.8.1999 and directed the Joint Director of Education, IV Region, Allahabad to pass specific order within two months and after considering the Government Order as to why the Government Order does not apply to the petitioner and if the respondent no.1 is of the opinion that the Government order applies, the earlier services of the petitioner will be counted. She had not been paid the salary of head of the institution for the period she had worked. She made several representations before the District Inspector of Schools, Fatehpur but the same has not been considered. Thereafter, she filed second Writ Petition No.38980 of 1999 for a writ of mandamus commanding the respondent authorities to pay her salary as Principal of the institution and also pay revised pay scale on the post of Principal i.e. Rs. 6500-200-10500. Learned Single Judge has proceeded to allow the writ petition on 24.2.2003 with following observations:-

"(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 judgement of this Hon'ble Court in the case of Narbadeshwar Mishra v. District Inspector of Schools, reported in UPLBEC 1982 Page 171. The aforesaid judgement has been followed by the Hon'ble Single Judge in the case of Pushkar Singh Verma v. District Inspector of Schools, Meerut and others 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 a officiating Principal in the Government Girls Higher Secondary School, Saheli, Fatehpur from 1.10.93 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 laws 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 *Narbdeshwar Misra* (supra) in paragraph-6 it was observed that a perusal of the proviso to Regulation No.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 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.

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

4. A bare perusal of the impugned order passed by learned Single Judge of this Court would go to show that learned Single Judge, following the reasoning, as has been given in the judgment of Division Bench of this Court in *Narbadeshwar Mishra v. District Inspector of Schools* (supra) and *Pushkar Singh verma v. District Inspector of Schools, Meerut and ors.* (supra), has proceeded to examine the case of petitioner in the light of the provisions contained in Chapter-II Regulation 2 proviso and Chapter III Regulation 46 and allowed the writ petition in question.

5. Learned Standing Counsel appearing for the appellants-respondents submitted that learned Single Judge had decided the present case without considering the relevant provisions of the Statute and the stand taken by the appellants in the counter affidavit. The petitioner was working in the Government School, whereas all the relevant provisions of the Government Orders, relied upon by learned Single Judge, are applicable in the case of institutions recognised by the State Government but they are not Government institutions and are privately managed institutions. According to the relevant Rules applicable in the State Government employees, no extra payment is admissible for officiating charge to any employee. The petitioner was only working on the officiating basis and has never been appointed as Principal of the institution. This aspect of the matter has not been considered by learned Single Judge. He has placed his reliance on *Uttar Pradesh Fundamental (Second Amendment) Rules, 1983* and submits that the petitioner-respondent was not entitled for salary as officiating Principal of the

Intermediate College and the judgment and order passed by learned Single Judge dated 24.2.2003 deserves to be set aside.

6. On the other hand, learned counsel appearing for the petitioner-respondent submitted that the petitioner was initially appointed as Assistant Teacher in private recognised institution. She worked as Assistant Teacher in Government Girls Higher Secondary School Saheli, District Fatehpur. In pursuance of the letter of Joint Director of Education, IV Region, Allahabad dated 27.9.1993, the petitioner was given the charge of head of the institution on 1.10.1993. She was allowed to continue as head of the institution upto 12.5.1995. By the order dated 30.7.1996 she was transferred to Government Girls Higher Secondary School, Malwa, Fatehpur, where she joined on 9.8.1996. On the retirement of head of the institution, the petitioner was allowed to officiate as Principal of the institution on 1.11.1995 by the letter dated 31.10.1996. She retired as officiating Principal of Government Girls Higher Secondary School, Malwa, District Fatehpur on 30.6.1998. The petitioner is entitled for salary as head of the institution and the rightful order has been passed in the matter, as such, no interference is required.

7. On 25.1.2016 learned Standing Counsel was directed to obtain requisite instructions, as to whether there is any delegation of authority by the Government in favour of Deputy Director of Education to make officiating arrangement for the post of Head Master of a Government College and under financial handbook of Chapter 4 and 6 there is a provision for ensuring payment in lieu of officiating arrangement then as to whether claim of the appellant falls in the said category or not. In this background, learned Standing Counsel has produced the requisite instructions dated 3.2.2016 sent by the Joint Director of Education, Allahabad Region, Allahabad. The same is re-produced hereinafter:-

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fdLh ,sls ljdkjh lsod dks ftls vU; in ;k inksa ds uSR;d drZO;ksa dk fuR; izfr dk dk;ZHkkj /k`r djus ds fy, fu;qDr fd;k tk;s] Hkys gh vfrfjDr dk;ZHkkj dk dk;Zdky fdruk gh D;ksa u gks] dksbZ vfrfjDr osru ugha fn;k tk;sxA blls ;g Li"V gksrk gS fd foRrh; gLriqfLrdk ds iSjk 4 ls izfrokn dk izdj.k vkPNkfnr gSA

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8. We have proceeded to examine the Uttar Pradesh Fundamental (Second Amendment) Rules, 1983. For ready reference, the same is reproduced hereinafter:-

Column-1

Present Rule

Column-2

Substituted Rule

49. The Government may appoint one Government servant to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time. In such case his pay is regulated as follows.

49and ljdkj fdLh ljdkjh lsod dks] tks ekSfyd ;k LFkkukiUu :i ls dksbZ in /kkj.k fd,

gq, gSa] jkT; ljdkj ds c/khu fdlh ,d le; esa ,d ;k mlls vf/kd vU; vyxandvyx inkSa ij vLFkk;h :i ls fu;qDr dj ldrh gSA ,sls ekeyksa esa mldk osru fuEufyf[kr izdkj ls fofu;fer fd;k tk,xkA

(a) The highest pay, to which he would be entitled in his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post;

(,Q) ;fn fdlh ljdkjh lsod dks mlds gh dk;kZy; ds vfrfjDr mPpre in ds drZO;ksa dks ?k`r djus ds fy, vkSipkfjd :i ls fu;qDr fd;k tk;] rks mls ogh osru feysxk tks rc vuqeU; gksrk tc mldh fu;qfDr mPprj in ij LFkkukiUu :i ls dh x;h gks] tc rd fd mldk LFkkukiUu osru fu;e 35 ds v/khu de u fd;k x;k gks] fdUrq fuEu in ds drZO;ksa dk ikyu djus ds fy, dksbZ vfrfjDr osru ugha fn;k tk;sxA

(b) for each other post he draws such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the Government may fix; and

(nks) tgka fdlh ljdkjh lsod dks mlh dk;kZy; esa] mlh laoxZ esa leku osrueku okys nks inkSa dk nksqjk dk;ZHkkj dh vof/k dk fopkj fd;s fcuk dksbZ vfrfjDr osru vuqeU; ugha gksxk(

ijUrq ;fn ljdkjh lsod dks ,sls vfrfjDr in ij ftlds lkFk dksbZ fo"ks"k osru gks] fu;qDr fd;k tk, mls ,slk fo"ks"k osru fn;k tk;sxA

(c) if compensatory or sumptuary allowances are attached to one of more of the posts he draws such compensatory or sumptuary allowances as the Government may fix, provided that such allowances shall not exceed that total of the compensatory and sumptuary allowances attached to all the posts.

(rhu) tgka fdlh ljdkjh lsod dks fdlh ,sls vU; in ij inkSa dk tks mlh dk;kZy; esa u gks ;k gks ;k mlh dk;kZy; esa gksrs gq, Hkh mlh laoxZ inksUufr dk dze esa u gks ;k gks] dk;ZHkkj ?k`r djus ds fy, vkSipkfjd :i ls fu;qDr fd;k tk;] ogka mls mPprj in dk ;k ;fn og nks ls vf/kd inkSa dk dk;ZHkkj ?k`r dj jgk gS rks mPpre in dk osru vfrfjDr in dk inkSa ds vuqekfur osru ds nl izfr"kr ds vykok fn;k tk;sxk ;fn vfrfjDr dk;ZHkkj rhl fnu ls vf/kd ?k`r fd;k tk;%

ijUrq ;fn fdlh fof"kv ekeys esa ;g vko";d le>k tk, fd ljdkjh lsod dh vfrfjDr in ;k inkSa dk dk;ZHkkj uCcs fnu ls vf/kd d fy, ?k`r djuk pkfg;s rks uCcs fnu dh vof/k ds i"pkr vfrfjDr osru dk Hkqxrku djus ds fy;s jkT; ljdkj ds foRr foHkkx dh lgefz izkIr dh tk;sxA

(pkj) fdlh ,sls ljdkjh lsod dks ftls uCcs in ;k inkSa ds uSR;d drZO;ksa dk fuR; izfr idk dk;ZHkkj ?k`r djus ds fy;s fu;qDr fd;k tk,] Hkys gh vfrfjDr dk;ZHkkj dk dk;Zdky fdruk gh D;ksa u gks] dksbZ vfrfjDr osru ugha fn;k tk;sxA

(ikap) ;fn fdlh ,d ;k mlls vf/kd inkSa ds lkFk dksbZ izfrdj ;k ljdkj HkRrk lEc) gS rks ljdkjh lsod ,slk izfrdj ;k ljdkj HkRrk vkqfjd djsxk tks jkT; ljdkj }kjk fu/kkZfjr fd;k tk, %

Audit instructions regarding Rule 49

1. This Rule requires that such pay as may be considered "reasonable" in the circumstances may be given; half the presumptive pay of the post is not therefore to be regarded as the amount therefore to be regarded as the amount normally permissible.

2. Presumptive pay for the purposes of Clause (b) of the rule should according to Fundamental Rule 9 (24), be taken to be what the Government servant, who is placed in additional charge will draw as initial pay in the time-scale of the additional post under Fundamental Rule 22, where he formally transferred to it. In cases, however, in which the maximum pay of the lower post is less than the pay of the Government servant in his substantive post, the application of Fundamental Rule 22 is not clear and accordingly.

** in such a case the maximum of the pay of lower post should be taken as the presumptive pay for the purposes of clause (b) of the rule.

3. Under this rule a Government servant is not entitled to overseas pay in respect of both the posts, that is, he cannot get the benefit of the overseas pay, ?... rupees, of the second post

ijUrq ,sls HkRrksa dh /kujkf"k lHkh inksa ls lEca) izfrdj vkSj ljdkj HkRrksa dh dqy /kujkf"k ls vf/kd ugha gksxkA

Orders of the Governor regarding Rule 49

1. This rule does not apply when a Government servant is not formally appointed to the additional post. When a post is vacant for a period of fourteen days or less, it should be carefully considered whether it is really necessary to fill it, particularly if the filling of it involves a transfer. If there will be no detriment to the public service by leaving the post unfilled, it should not be filled at all if on the other hand it is desirable or possible to entrust the current duties of the post to some other Government servant on the spot, this may be arranged, but then too no formal appointment should be made to the other post and no extra remuneration allowed to the Government servant for attending to the current duties of that post in addition to his own duties. It may be necessary for legal, technical or even administrative reasons to fill short vacancies of even less than fourteen days, but a careful and deliberate discretion should be exercised before vacancies of this duration are filled. Vacancies extending from fourteen days to one month require less strict treatment, but they, too, should not be filled as a matter of course, but.....

advisable on public (as opposed to private) grounds to do so. Short vacancies of longer than one month's duration may be normally filled unless it is considered unnecessary to do so. A formal appointment under Rule 49 should only be made when it is absolutely necessary that the Government servant should perform the full duties of the vacant post or posts in addition to his own duties.

fu;e 49 ls lacaf/kr jkT;iky ds vkns"k

1and ;g fu;e ,sls fyfid oxZ] v/khuLFk ;k fHkUu oxZ ds inksa ij ykxw ugha gksrk gS ftuds laca/k esa drZO;ksa dks deZpkjh oxZ ds vU; InL;ksa esa forfjr fd;k tk,xkA ;g fu;e ml n"kk esa Hkh ykxw ugha gksrk gS tc fdlh ljdkjh lsod dks vfrfjDr in(inksa) ij vkSipkfjd :i ls fu;qDr u fd;k tk;s vkSj u ,sls ekeyksa esa ykxw gksrk gS tgka ij vkSipkfjd fu;qDr izcU/k lekIr gks tkus ds i"pkr dh tk,A jkT;if=r ljdkjh lsod dh fLFkfr esa fu;qDr dh vkSipkfjd vf/klwpuk Hkh visf{kr gS ftls ;Fkk"kh?kz tkjh fd;k tkuk pkfg, rkfd vf/kdkjh dks ;g ekywe gks tk, fd mlh vfrfjDr in ;k inksa ds iwjs drZO;ksa vkSj mRrjnkf;Roksa dk ikyu djuk gSA ;fn dksbZ in rhl fnu ;k mlls de vof/k ds fy, fjDr gS rks bl ckr ij HkyhHkkafr fopkj fd;k tkuk pkfg, fd D;k mls Hkjuk oLrqr% vko";d gS] fo"ks"k :i ls ;fn mls Hkjus esa LFkkukUrj.k djuk iM+sA ;fn in dks fjDr NksM+ nsuk yksd lsok ds fy, vfgrdj u gks rks mls dnfki ugha Hkjuk pkfg;sA ;fn blds foijhr fdlh in ds fuR; izfr ds drZO; mlh LFkku ij fdlh vU; ljdkjh lsod dks lksaiuk okaNuh; ;k lEHko gS rks bldh O;oLFkk dh tk ldrh gSA fdUrq ,slk djus ij Hkh mlh in ds fy;s dksbZ vkSipkfjd fu;qDr ugha dh tkuh pkfg;s vkSj ljdkjh lsod dks vius drZO;ksa ds vfrfjDr in ds fuR; izfr ds drZO; ;k ikyu djus ds fy,s dksbZ vfrfjDr ikfjJfed ugha fn;k tkuk pkfg;sA fof/kd] izkfof/kd ;k iz"kklfud dkj.kksa ls Hkh rhl fnu ls Hkh de vof/k dh vYidkfyd fjdDr;ksa dks Hkjuk vko";d gks ldrk gS fdUrq ,slh vof/k dh fjdDr;ksa dks Hkjus ds iwoZ lko/kkuh ls vkSj foe"KZ iwoZd foosd dk iz;ksx fd;k tkuk pkfg;sA rhl fnu ls vf/kd dh fjdDr;ksa ds fy;s de dBksjrk cjruk visf{kr gS fdUrq mUgsa Hkh lkekU;rk ugha Hkjuk pkfg;s tc rd fd yksd vk/kkj ij (futh vk/kkj fHkUu) ,slk djuk mfpr u gksA fu;e 49 ds v/khu vkSipkfjd fu;qDr rHkh dh tkuh pkfg;s tc ;g le>k tk, fd ljdkjh lsod }kjk vius drZO;ksa ds lFkandlkFk fjDr in ;k inksa ds iw.kZ drZO;ksa dk ikyu fd;k tkuk ije vko";d gSA

2. The above instructions apply not only to dual appointments but also to single officiating appointments and should be carefully observed in making officiating appointments or in recommending such appointment to Government in vacancies lasting for short periods. If some delay occurs in the arrival of a successor already appointed to a vacant post, the current duties of the post should be carried on by a Government servant on the spot till the arrival of the successor and no extra remuneration should be paid to that Government servant for carrying on the current duties of the vacant post. As already explained in paragraph 1 above, no extra remuneration is admissible for performance of current duties of a vacant post. In the case of short vacancies, only the current duties of the vacant post can be attended to and bigger and intricate problems have necessarily to be left over till the return of the absent Government servant from leave of till the arrival of the new incumbent of the post.

3. Before any recommendation for the grant of a special pay is made to Government in any case, it should be carefully examined with due regard to the general principles laid down in paragraph 3 of the orders Rule 9 (25), whether the grant of extra remuneration is really justified. Unless full and clear justification has been given for the grant of special pay in accordance with those principles, no such proposal will be entertained.

4. In case a formal appointment is justified and made the amount of additional pay that may be allowed under clause (b) of rule to will be regulated as follows:

(a) If the period of dual charge does not exceed as such, the amount of additional pay not to be fixed at a suitable amount which should not exceed one-fifth of the presumptive pay of the post of Rs. 10 per diem, whichever is less.

2and ftl fnukad ls bl fu;e ds micU/k ykxw gksaxs ml fnukad ls bl fo"k; ij ljdkjh vkns"k la[;k thand1and172@nland534(97)69] fnukad 14 ebZ] 1970 esa tkjh fd;s x;s vkns"k vfrdzfer le>s tk;saxsA

9. We have proceeded to examine the record in question and find that in the present matter, learned Single Judge has proceeded to allow the writ petition only on the basis of judgements of this Court in Narbadeshwar Mishra v. District Inspector of Schools (supra) and Pushkar Singh verma v. District Inspector of Schools, Meerut and ors (supra). The said judgements were passed when the incumbent was officiating as Headmaster in a private aided and recognised institution whereas in the present matter the petitioner-respondent was working and retired as Officiating Principal of Government Girls Higher Secondary School and as such learned Single Judge has erred in law in relying on provisions of Chapter II Regulation 2 proviso and Chapter III Regulation 46 and the same is not applicable in the present case. The petitioner-respondent was not liable to be accorded any extra payment as admissible for officiating charge as Principal.

10. Accordingly, the Special Appeal is allowed and the order impugned passed by learned Single Judge is set aside.