

(2015) 08 AHC CK 0232
In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 62780, 62782 and 70291 of 2013

Surya Kant Mishra and Others APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 9 ADJ 149 : (2015) 6 AWC 5621 : (2015) 3 UPLBEC 2405

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Anil Bhushan, for the Appellant; J.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J.—Heard learned counsel for the parties.

Since the controversy involved in all the three writ petitions are similar, they are being decided by this common order.

The facts of writ petition No. 62780 of 2013 are being taken as a leading case for deciding these writ petitions.

By means of present writ petition, the petitioners have prayed for following reliefs:

(a) "Issue a writ, order or direction in the nature of certiorari quashing the order dated 4.10.2013 (Annexure 25) passed by the Regularization Committee headed by Joint Director of Education.

(b) Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioners as substantive Assistant Teacher, L.T. Grade.

(c) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay arrears of salary from July 1995 till date and pay the aforesaid regularly month to month".

2. The institution in question namely D.A.V. Inter College, Aryapur, Khera District Mainpuri (in short Institution") is a recognized institution under the provisions of U.P. Intermediate Education Act, 1921 and Payment of Salary Act, 1971. Four substantive vacancies came into existence, hence the Committee of Management of the Institution has decided to make appointment of the aforesaid posts and in this regard a resolution was passed on 7.7.1991 resolving that the posts in question are required to be filled up. After the resolution, the Committee of Management has sent a requisition to the District Inspector of School on 20th August, 1991 for forwarding the same to the U.P. Secondary Education Service Selection Board. The vacancies have been published in the newspaper "Dainik Jantantra" on 3.10.1991 and the same was also pasted on the notice Board of the Institution. In pursuance of the aforesaid advertisement several candidates have applied and on the basis of quality point marks the petitioners were found suitable for appointment as "Assistant Teacher" LT Grade. On 20.10.1991 the Manager of the Institution has issued appointment letters to the petitioners. After appointment of the petitioners the papers have been forwarded to the District Inspector of Schools (D.I.O.S) for grant of financial sanction. The D.I.O.S. has refused to approve the appointment on 13.4.1992 on the ground that the ban has been imposed by the State Government and as such the approval cannot be granted. In pursuance thereof the Committee of Management had passed an order on 5.5.1992 removing the petitioners from service.

3. Against the aforesaid order the petitioners have filed a writ petition in which an interim order was passed on 22.5.1992 directing the respondents to pay all the arrears of salary to the petitioners for the period they have worked or to show-cause by filing a counter-affidavit. Pursuant thereto the District Inspector of Schools has passed an order on 7.7.1992 directing the Accounts Officer to act accordingly. On 15.7.1992 the Accounts Officer had directed the Manager of the Institution to send the salary bill of the petitioners. Pursuant to the order of the D.I.O.S. the petitioners have started getting their salary w.e.f. 1.11.1991 and continuously they have been paid the salary up to July 1995. Subsequently, thereafter the D.I.O.S. on 6.9.1995 has reviewed his own order.

4. Against the aforesaid order the petitioners have filed writ petition No. 28887 of 1995 which was dismissed by the Court on 16.10.1995 with liberty to the petitioners to file an amendment application in the pending writ petition No. 18381 of 1992.

5. During the pendency of the aforesaid writ petition, Section 33-C of U.P. Act No. 5 of 1982 came into force on 20.4.1998 which provides that the teachers appointed between 14.5.1991 to 6.8.1993 are entitled to be regularised under Section 33-C of the Act. After the provision of regularization having been brought in the statute the petitioners have submitted an application to the D.I.O.S. for payment of salary as well as for regularization. The Accounts Officer had submitted a report stating therein that the petitioners are entitled for salary as well as for regularization. The D.I.O.S. has passed a consequential order dated

6.6.1998 stating therein that if the petitioners are working they are entitled for salary.

6. On 4.2.1999 the writ petition No. 18381 of 1992 has been decided by the High Court directing the authorities to consider the case of the petitioners for regularization. In pursuance of the said order the D.I.O.S. has forwarded the papers of petitioners for regularization committee vide order dated 1.6.2000. The Selection Committee constituted under Section 33-C for regularization had considered the case of the petitioners and vide order dated 28.2.2001 had rejected the claim of the petitioners. It is averred that the order dated 28.2.2001 had been passed rejecting the claim of the petitioners primarily on the ground that the posts were not advertised in two newspapers.

7. Being aggrieved by the aforesaid order dated 28.2.2001 the petitioners filed a writ petition being Writ Petition No. 24305 of 2001, which was allowed on 24.2.2005 and the order dated 28.2.2001 rejecting the claim of the petitioners for regularization was quashed with a direction to Joint Director of Education to constitute a committee for passing appropriate order for regularization of the petitioners under Section 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 (in short the "Act") within three months. The said regularization committee without considering the issue as per the observations made by the High Court rejected the claim of the petitioners for regularization on 17.8.2006.

8. Against the order dated 17.8.2006 the petitioners had filed Writ Petition No. 53709 of 2006 which was allowed by this Court on 2.7.2009. In pursuance of the said order dated 2.7.2009 a report was called from the Committee of Management which had given report in favour of the petitioners. Again the regularization committee had rejected the claim of the petitioners vide order dated 24.7.2010 by taking the same grounds which were taken in the order dated 17.8.2006.

9. Against the order dated 24.7.2010 a Writ Petition No. 69975 of 2010 had been filed by the petitioners which was allowed by this Court on 9.4.2013. The High Court while allowing the writ petition had clearly held that the regularization committee is passing the same order which was set aside by the Court. Pursuant thereto the regularization committee had again considered the claim of the petitioners and rejected the same by order dated 4.10.2013. Against the said order the present writ petition has been preferred.

10. Learned counsel for the petitioners submits that Section 33-C of the Act provides that if teachers are working on the date of Regularization Rules came into existence, they are entitled to be considered for regularization. It is averred that from the report of Accounts Officer dated 23.5.2008, 30.10.2009 and report dated 1.6.2000 it is evident that the petitioners have been working in the institution. The statute provides that working of teachers is essential ingredient for consideration of regularization but aforesaid consideration has not been made

by the Regularization Committee. It is also submitted that with regard to the salary of the petitioners a detailed report has been submitted by the Accounts Officer on 23.5.2008 stating therein that the petitioners are entitled for salary as well as regularization.

11. Aggrieved by the order dated 24.7.2010 the Writ Petition No. 69975 of 2010 had been preferred by the petitioners, the same was allowed vide an order dated 9.4.2013, the relevant portion is reproduced herein below:

"The appointment of the petitioners have been made on 20.10.1991 as recorded by this Court on 24.2.2005 in Writ Petition No. 24305 of 2001. Earlier when the petitioners regularization was rejected on the ground that the advertisement was not made in two newspaper this Court has rejected the said ground of the Screening Committee/Selection Committee in the following terms:

"In view of the aforesaid Division Bench judgement, the rejection of petitioner's claim by the Regional Committee on the ground that advertisement was not made in two leading newspapers does not survive, as the advertisement was made in the year 1991, i.e. prior to the date of judgement of the Full Bench in Radha Raizada's case."

From the aforesaid finding it is manifestly clear that this Court found that appointment of the petitioners was prior to the judgement of Radha Raizada's case (supra) and since the order of Radha Raizada's case (supra) was made prospective therefore, that ground was not in existence.

The Court is at loss to understand that inspite of clear finding recorded by this Court in Writ Petition No. 24305 of 2001 vide order dated 24.2.2005 when the matter was remitted to the Screening Committee/Selection Committee it rejected on the same ground and petitioners were forced to file another Writ Petition No. 53709 of 2006. Again this Court recorded a finding with reference to the finding of the earlier order of this Court that the spirit of the order passed by this Court is that it has found the direct recruitment process in order. The finding recorded in subsequent judgement of this Court reads as under:

The spirit of the order passed by this Court is that it has found the direct recruitment process in order. Thus, appointments of the petitioners were in order. The case was not applicable the judgement of the Full Bench in Radha Raizada's case. It appears that Regional Committee Agra in its impugned decision dated 17.8.2006 has excluded from consideration the above observations recorded by this Court."

The Screening Committee/Selection Committee was again asked to reconsider the matter. However, the Screening Committee/Selection Committee without looking the findings recorded by this Court again third time reiterated the same stand that the advertisement were not made in two newspapers.

As regards the submission of learned Standing Counsel that petitioners were not working at the time of the commencement of the amendment of Section 33-A of

the Act, 1982 no such finding has been recorded by the Screening Committee/ Selection Committee. The said averment has been made in the counter-affidavit. The Supreme Court in a long line of decision has settled the law that the reasons cannot be supplemented by affidavits. Reference may be made to judgement of Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Laxmi Kant Bajpai Vs. Hazi Yaqoob and Others, . The said reason is not mentioned in the impugned order.

The Court is constrained to note that an official of high rank i.e. a Joint Director of Education; District Inspector of Schools and Principal of the College are unable to comprehend and appreciate the true import of the judgements of this Court. In all the earlier judgements specific direction was made to the Screening Committee/Selection Committee to consider the regularization of the petitioners in terms of Section 33-C of the Act, 1982 ignoring the specific directions the Screening Committee/Selection Committee is harping on the same issues which have already been decided by the Court in its earlier orders.

After careful consideration and perusal of the record as well as submission made by respective learned counsel for the parties, I am of the view that the impugned order dated 24.7.2010 (Annexure -1 to the writ petition) is vitiated for the aforesaid reasons. It needs to be set aside. Accordingly, it is set aside.

The matter is remitted to the Screening Committee/Selection Committee again to comply the directions of this Court issued in the order 24.2.2005 passed in Writ Petition No. 24305 of 2001 and order dated 2.7.2009 passed in Writ Petition No. 53709 of 2006 and pass appropriate order within three months from the date of communication of this order strictly in the light of observation made herein above."

12. Thereafter, again by means of the present impugned order the claim of the petitioners had been rejected.

13. Shri Anil Bhushan, learned Senior Counsel submits that Section 33-C of U.P. Act No. 5 of 1982 provides that if the teachers are working on the date of Regularisation Rules came into existence, they are entitled to be considered for regularisation. He has placed his reliance to the order dated 4.2.1999 in Civil Misc. Writ Petition No. 18381/1992, which was finally disposed of by this Court with direction to the authorities concerned for consideration of regularisation and in pursuance thereto the D.I.O.S. had forwarded the papers of petitioners for regularisation to the Regularisation Committee vide his order dated 1.6.2000, wherein it was categorically averred that the petitioners were working in the institution and fulfilled all requisite qualification for their regularisation and admittedly their appointment was made between 14.5.1991 to 6.8.1993 (Cut off date), the relevant portion of the categorical finding of D.I.O.S. dated 1.6.2000 is reproduced herein below:

14. Shri Anil Bhushan, learned Senior Advocate, in this background submits that it was categorical finding, which have referred by the D.I.O.S. on 1.6.2000,

which has never been disputed by any of the party but the said recommendation was rejected by the Selection Committee constituted Section 33-C on 28.2.2001 primarily on the ground that the posts were not advertised in the two newspapers. Again aggrieved with the said rejection, another Writ Petition No. 24305 of 2001 was filed by the petitioners. After exchange of the affidavits, the writ petition was allowed on 24.2.2005 with following observations:

"Upon the promulgation of Section 33-C of the Act of 1982, the petitioners applied for the regularisation of their services which was rejected by the Regional Committee by an order dated 28.2.2001 on the ground that the procedure contemplated under Section 18 of the Act was not followed by the Committee of Management, namely, the advertisement was not made in two leading newspapers having wide circulation in the region.

Admittedly, no such procedure has been provided under Section 18 of the Act. This direction for making an advertisement in two leading newspaper was given by the Full Bench of this Court in Radha Raizada's case in 1994 (2) ESC 345 (AU) (FB) . In Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, , a division bench of this Court held that the direction of the Full Bench in Raizada's case with regard to the publication of the vacancies in two leading newspapers was prospective in nature and that the decision would apply to those cases coming after the decision of Full Bench and would not apply to a situation which had occurred prior to the date of the judgement of the Full Bench.

In view of the aforesaid Division Bench judgement, the rejection of petitioner's claim by the Regional Committee on the ground that advertisement was not made in two leading newspapers does not survive, as the advertisement was made in the year 1991, i.e. prior to the date of judgement of the Full Bench in Radha Raizada's case.

Consequently, the impugned order dated 28.2.2001 is not sustainable and is quashed. The writ petition is allowed and a mandamus is issued to the Joint Director of Education to constitute a Committee which will pass appropriate orders for the regularisation of the petitioners under Section 33-C of the Act, 1982 within three months from the date a certified copy of this judgement is produced before respondent No. 1."

15. Shri Anil Bhushan, learned Senior Advocate, in this background submits that so far as the earlier objection was concerned regarding the advertisement that had been rejected while allowing the writ petition with categorical finding and as such there was no discretion was given to the Regularisation Committee to again interpret the order as per their own whims and fancy but in most arbitrary manner again the claim of the petitioners were rejected only on the ground that the salary of the petitioners were not paid since 7.9.1995 and as such they are continuously working on the said post and no regularisation order could be passed in their favour.

16. In this background, Shri Anil Bhushan, learned Senior Advocate submits that

the D.I.O.S. himself passed an order dated 6.9.1995 to stop the salary and once the Hon"ble Court had allowed the writ petition on 24.2.2005, therefore, this technical objection cannot be sustainable in the eye of law.

17. Aggrieved with the same, again the petitioners were compelled to approach this Court by means of Writ Petition No. 53709 of 2006, the same was also allowed vide an order dated 2.7.2009. In spite of categorical report submitted by the Committee of Management to the D.I.O.S. in favour of the petitioners, the regularisation committee in most arbitrary manner again rejected the claim of the petitioners on 24.7.2010 moreover on the same grounds, which were taken earlier. Against the order dated 24.7.2010 a Writ Petition No. 69975 of 2010 was filed, which was also allowed by this Court vide an order dated 9.4.2013 and in compliance of the order passed by this Court the present impugned order has been passed.

18. Shri Anil Bhushan, learned Senior Advocate in this background submits that the aforementioned facts would eventually led to this Court that time to time in most arbitrary manner the regularisation committee had turned down the claim of the petitioners for regularisation on unsustainable grounds, whereas the only requirement for regularisation as per Section 33-C of the Act was that the teachers must be working since 14.5.1991 to 6.8.1993 (Cut off date). He submits that it is also not disputed that the petitioners do not possess the qualification prescribed under the Intermediate Education Act, 1921. No objection has been made at any point of time by the respondents that the petitioner did not have the requisite qualifications prescribed under the Intermediate Education Act, 1921 or they were not appointed against the substantive vacancies.

19. Per contra learned Standing Counsel submits that the impugned order has been passed strictly in accordance with law and there is no infirmity in it. He submits that as the petitioners were not being paid salary after August 1995, therefore, they are not entitled for regularization and their claim was rightly rejected by the selection committee.

20. Heard rival submissions and perused the record.

21. In order to decide the present controversy, it is necessary to refer Section 33-C of the Act, which for ready reference is reproduced hereunder:

"33-C. Regularisation of certain more appointments.--(1) Any teacher who--

(a) (i) was appointed by promotion or by direct recruitment on or after May 14, 1991 but not later than August 6, 1993 on ad hoc basis against substantive vacancy in accordance with Section 18, in the Lecturer grade or the Trained Graduate grade;

(ii) was appointed by promotion on or after July 31, 1988 but not later than August 6, 1993 on ad hoc basis against a substantive vacancy in the post of a Principal or Head Master in accordance with Section 18;

(b) possesses the qualification prescribed under, or is exempted from such qualification in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the Institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998;

(d) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2);

shall be given substantive appointment by the Management.

(2) (a) For each region, there shall be a Selection Committee comprising,-

(i) Regional Joint Director of Education of that region, who shall be the Chairman;

(ii) Regional Deputy Director of Education (Secondary) who shall be member;

(iii) Regional Assistant Director of Education (Basic) who shall be a member.

In addition to above members, the District Inspector of Schools of the concerned district shall be co-opted as member while considering the cases for regularisation of that district.

(b) The Procedure of selection for substantive appointment under sub-section (1) shall be such as may be prescribed.

(3) (a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(4) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(5) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(6) Nothing in this Section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Ordinance referred to in clause (c) of sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act."

22. So far as the facts are concerned, almost they are all admitted by the respondent counsel. In the present matter for the selection of teachers on substantive vacancy in the institution, the same is required to be moved before the commission under Section 18 of the U.P. Secondary Education Services

Selection Board Act, 1982 and when such eventuality happens in institution and regular Assistant Teacher is not made available by the board, the Committee of Management after due advertisement may appoint assistant teacher in L.T. Grade. In pursuance to the advertisement they have applied for the post and selected for the post of Assistant Teacher vide appointment letter dated 20.10.1991 and on the basis of interim order granted by this Court on 22.5.1992 they have been paid salary. After Section 33-C of the Act 1982 came into existence, the petitioners demanded for their regularisation of their services which was eventually rejected by the Regional Committee vide an order dated 28.2.2001 precisely on the ground that the procedure prescribed under Section 18 of the Act was not followed by the Committee namely advertisement had not taken place in two leading newspapers which have wide circulation in the region. Hon'ble Court while deciding the writ petition No. 24305 of 2001 had categorically come into conclusion that no such procedure has been provided under Section 18 of the Act but this direction for making an advertisement in two leading newspapers was given by the Full Bench of this Court in Radha Raizada's case in 1994 (3) UPLBEC 1551 and subsequently in Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, , a Division Bench of this Court held that the direction issued by the Raizada's case (supra) was with prospective in nature and would be applicable in case where the person is appointed subsequent to the decision of this Full Bench and as such the same would not be applicable in the case of the petitioners. Therefore, the first objection initially taken by the regularisation committee does not have any ground to stand and consequently the earlier impugned order dated 28.2.2001 was quashed by this Court with direction to the Joint Director of Education to constitute a committee for regularisation of the petitioners under Section 33-C. Therefore, it is apparent that whatever the objection taken by the respondents had been rejected by this Court while allowing the Writ Petition No. 24305 of 2001. But unfortunately again the respondents have taken a plea while rejecting their claim for regularisation on the ground that the petitioners were not paid salary since 1995, therefore, their claim do not fall under Section 33-C of the Act. The records clearly give an impression that the D.I.O.S. while forwarding the papers on 06th June, 2000 had clearly held that the appointments of the petitioners were made in between 14.5.1991 to 6.8.1993 and they were working continuously in the institution and subsequently it had also brought on record that the salary of the petitioners were paid on the basis of interim order passed by this Court in the year 1991. Therefore, subsequently, the objection raised by the Regularisation Committee that the petitioners were not paid since 1995 is not sustainable in accordance with the provisions of Section 33-C. It is suffice to say that it is not disputed that initial appointment of the petitioner in the institution was in accordance with law. The Accounts Officer submitted a detailed report dated 23.5.2001 stating therein that the petitioners were entitled for the salary as well as for regularisation but unfortunately the records would lead to the conclusion that the claims of the petitioners were rejected on the basis on non-existence grounds and at no point of time the department had taken any decision

strictly in accordance with the law but time to time they have changed the ground for rejecting the claim of the petitioners. The statute clearly provides that working of a teacher is essential ingredients for consideration of regularisation and the petitioners' cases also fall under the cut off date but the aforesaid consideration had not been made by the regularisation committee. It is evident from the record that the petitioners were working in the institution and if it is admitted situation that the petitioners were working on the date when regularisation rules came into existence they are entitled to be considered for regularisation. Unfortunately the petitioners in spite of their best effort, their services had not been regularized till date, even though their rights accrued 1992. In spite of various directions issued by this Court their future is still at stake. In view of the aforesaid facts and circumstances, the order impugned dated 4.10.2013 passed by the Regularisation Committee headed by the Joint Director of Education cannot be sustained and is hereby set aside. The writ petitions are allowed. The matter is remitted to the Regularisation Committee headed by the Joint Director of Education to consider and decide it within two months, in view of the observations made hereinabove.