

(2000) 09 AHC CK 0088
In the Allahabad High Court
Case No : C.M.W.P. No. 3742 of 1998

Surya Kumar Tripathi and others

APPELLANT

Vs

District Basic Education Officer, Etawah and others

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Citation : (2001) 1 AWC 199 : (2001) 1 UPLBEC 84(1) : (2001) 1 UPLBEC 84

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : A.K. Singh and Yashpal Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

A. K. Yog, J.—Heard learned counsel for the petitioners and learned standing counsel.

2. Vide order dated 19.2.1998 learned standing counsel was granted time to file counter-affidavit but no counter-affidavit has been filed and there is no prayer for grant of time. Perused the record of the case and heard learned counsel for the parties, particularly, in view of the interim order dated 19.2.1998.

3. The petitioners claim to be duly appointed members of the teaching staff of a recognised Junior High School on "grant-in-aid" list and getting salary in accordance with law under U. P. Junior High School (Payment of Salaries to Teachers and other Employees) Act, 1978. The institution was upgraded upto High School level. Salary of the Staff of the College has been stopped on the pretext that the institution has gone out of the purview of Act, 1978 and is governed by U. P. Intermediate Education Act and since it does not get grant-in-aid, payment of Salaries Act, 1971, is not applicable to it.

4. Identical question arose in the case of Radhey Mohan Pandey and others v. State of U. P. and others, 1991 (18) ALR 302. Learned single Judge discussed respective contentions of the parties. In para 4, it noted that State cannot shirk

its responsibility on the ground that proceedings are not yet over. If such proceedings are likely to take time, the Government can bring the Institution within the purview of that Act on provisional basis subject to adjustment when final order is passed. But the Government cannot deny the benefit conferred by the payment of Salaries Act to the teachers and the employees of the recognised institution on the ground of pendency of the proceedings. In cases where the institution is upgraded from Junior High School to High School, the change over from 1978 Act to 1971 Act should also be automatic. In such cases also, the Government can initially act on provisional basis subject to final adjustment. It is not the intention of the law that teachers, who were getting their salaries upto the date of upgradation, should be deprived of the only source of their livelihood, namely, salaries, for no fault of theirs. Liability for payment of salaries undertaken by the State under the 1978 Act will continue even after the upgradation with only one difference that the liability of the State after upgradation is under 1971 Act.

5. I find that decision in above case squarely apply to the facts of the present case and, accordingly, this petition is allowed on same terms.

6. A writ of mandamus be issued to the respondents to treat the petitioners as validly appointed and to continue to give them benefit of increment, etc. while making payment of salary month by month in future. Arrears of salary, if due, shall be paid within three months from the date of production of a certified copy of this judgment.

7. Petition stands allowed. No order as to costs.