

(1973) 05 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5243 of 1972

Swami Devanand Inter College Mathlar, Deoria

APPELLANT

Vs

Dy. Director of Education, Gorakhpur and Others

RESPONDENT

Date of Decision : 15-05-1973

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16F

Citation : AIR 1973 All 587

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—Swami Devanand Inter College Math, Deoria through its Manager Sri Chandra Shekhar Giri, has filed the present writ petition under Article 226 of the Constitution. It is prayed that the orders dated 22nd September, 1971 and 31st July, 1972, passed by the District Inspector of Schools and the order dated 4th February, 1972 passed by the Deputy Director of Education, in connection with the salary payable to Sri Jai Ram Pathak (respondent No. 3), a Sanskrit teacher of the Institution, be quashed.

2. According to the allegations made in the petition the petitioner institution was established in the year 1930. On 1st August, 1946, respondent No. 3, Sri Jai Ram Pathak was appointed to teach Sanskrit to students of classes VI to VIII. However, in the year 1946, the Institution was upgraded to High School standard and was recognised as such by the Board of High School and Intermediate Education. "Subsequently, in the year 1950, the Board recognised the institution for teaching Intermediate Classes also. When in the year 1946 the Institution was upgraded to High School standard, respondent No. 3 who had originally been appointed to teach Sanskrit to students upto class VTTI, was promoted to teach Sanskrit to High School classes. In the year 1956 the U. P. Intermediate Amendment Act was passed. The procedure for making appointment for teachers

in the recognised institution came to be regulated by the provisions of the Act and the Rules framed thereunder. These regulations laid down the minimum qualifications for various categories of teachers who could be appointed to teach High School and Intermediate classes.

After the enforcement of the Intermediate Education Act, respondent No. 3 Sri Jai Ram Pathak was fitted in the Graduates Grade applicable to the teachers appointed to teach High School classes. Sri Jai Ram Pathak was an Acharya from the Government Sanskrit College Varanasi and he had not passed the Intermediate Examination. He was therefore not eligible for appointment as a Lecturer to teach Intermediate classes in recognised Institution and to be paid salary in Lecturer's grade. When in the year 1950 the Institution was recognised for teaching Intermediate classes, very few students, offering Sanskrit as a subject for their Intermediate Examination, took admission in the College. In the circumstances, the management of the Institution without making a formal appointment of a lecturer to teach Sanskrit to Intermediate classes, asked Sri Jai Ram Pathak to teach Sanskrit to the students of the first year and second year classes (Intermediate classes) as well. Sri Pathak, thereafter continued to teach Sanskrit to both High School and Intermediate students. At no point of time he was appointed as a Lecturer for teaching Sanskrit to intermediate classes.

The arrangement made by the institution continued till the year 1972-73 when the number of students offering Sanskrit in Intermediate classes, went up and then one Sri Ramji Tiwari, who was double M. A. in English and Sanskrit and was already working as a Lecturer in the College, was asked to take Sanskrit Classes of the Intermediate section (classes XI and XII) as well. It appears that respondent No. 3, Sri Jai Ram Pathak, sent some representation to the District Inspector of Schools claiming that as he had been teaching Sanskrit to the students of Intermediate classes, he should be given pay in the grade admissible to lecturers of the intermediate Classes (lecturers grade). The District Inspector of Schools Deoria, by his letter dated 17th August, 1970, asked the petitioner to send its comments on the representation made by Mr. Pathak. However on 5th July, 1971, the petitioner institution put in an advertisement, inviting applications for the post of Lecturer in Sanskrit, for teaching Intermediate classes. Thereupon the District Inspector of Schools wrote to the petitioner directing it not to appoint Sanskrit lecturer as per advertisement dated 5th July, 1971. On receipt of that letter, the petitioner Institution dropped the idea of appointing a lecturer in Sanskrit

The District Inspector of Schools issued a reminder on 10th August, 1971 and asked the petitioner to send its comments along with certain papers in respect of the representation made by Sri Pathak. Thereafter, on 30th August, 1971, the petitioner sent a reply to the District Inspector of Schools and explained that considering the number of students offering Sanskrit in the Intermediate Classes it did not consider it expedient of proper to appoint a Sanskrit Lecturer. It, without appointing him as a lecturer merely asked Sri Jai Ram Pathak to teach

Sanskrit to students of Intermediate classes as well. The District Inspector of Schools, thereupon, on 22nd September, 1971, informed the petitioner that after considering the entire circumstances of the case it had been decided that Sri Jai Ram Pathak should be given pay in the lecturer's grade, and that the Institution should take necessary steps within 15 days. On receipt of this letter, the petitioner again sent a representation to the District Inspector of Schools on 5th December, 1971 requesting him to reconsider the order communicated to it by the letter dated 22nd September 1971.

The District Inspector of School forwarded the representation made by the petitioner to the Deputy Director of Education, who on 4th February, 1972 advised the petitioner that it should take into consideration old services of Sri Pathak and with the approval of the District Inspector of Schools promote him to lecturer's grade. Aforesaid letter of the Deputy Director of Education, was followed by a letter from the District Inspector of Schools dated 31st of July 1972, requiring the petitioner to immediately start making payment to Sri Pathak in accordance with the pay admissible in the lecturer's grade failing which the office of the Inspector of Schools would stop making direct payment to the staff teaching Intermediate Classes. The petitioner, thereafter, made a protest against the proposed action threatened to be taken by District Inspector of Schools and ultimately on 8th August, 1972 the District Inspector of Schools addressed a letter to the Agent, Central Bank of India, Lar, informing him that the accounts maintained in the Bank for distributing the salary of teachers would, henceforward be operated only under his signatures.

The petitioner then filed the present writ petition claiming that neither the Inspector of Schools nor the Deputy Director of Education had any jurisdiction to compel the petitioner to appoint respondent No. 3 as lecturer for Intermediate classes. Since respondent No. 3 had not been appointed as a lecturer to teach intermediate classes, it was not open to them to direct the petitioner to pay him salary in lecturer's grade. It accordingly, prayed that the order dated 22nd September, 1971 and 31st July, 1972 passed by the District Inspector of Schools and that dated 4th February, 1972 passed by the Dy. Director of Education, be quashed. It also claimed that the order dated 18th August, 1972, passed by the District Inspector of Schools, directing the Central Bank that henceforward the account meant for distributing teachers' salary would be operated only under his signatures, is invalid and is liable to be quashed.

3. According to Sri Jai Ram Pathak, he had been teaching Sanskrit to students of Intermediate classes ever since the year 1950 when the minimum qualification prescribed by the U. P. Board of High School and Intermediate Education for a Sanskrit teacher of Intermediate classes was Acharya either from Banaras Hindu University or Lucknow University, or Acharya from the Government Sanskrit College, Varanasi. He was accordingly fully qualified to teach classes XI and XII. At the time, the pay scale for teachers for Intermediate classes was Rs. 150-10-190-15-250 whereas that for High School Teacher was Rs.

120-6-168-8-200. Although he was the only teacher who was teaching Sanskrit to students of classes XI-XII, he was paid according to pay scale applicable to High School Teachers.

He therefore took up the matter with the management and the Principal of the Institution and was assured that the matter was receiving consideration. Although Sri Pathak started teaching Sanskrit to High School classes, in the year 1946, yet he was given his new scale of pay only in the year 1954 and the agreement as required by rules was executed in the year 1957. He took it that in due course he would be given the scale of pay prescribed for Assistant Teachers of the Intermediate classes which was his legitimate due. On 27th July, 1959 the State Government issued an order No. C-2806/XV-1723-59 stating the revised mandatory scale of pay for Assistant Teachers for Intermediate classes. According to that order, the scale for language teachers possessing one of the oriental qualifications, which included the Acharya degree was Rs. 175-10-215/EB-15- 350. Section 16-G of the Intermediate Education Act as well as Regulations framed thereunder came into force on the 18th February, 1959 and 24th November, 1959 respectively.

It was only then that the services of teachers were given statutory recognition" and it became possible for the teachers of private institutions to press their demand against the wishes of the management and to claim their legitimate dues. Accordingly, ever since the year 1960 Sri Pathak made repeated representations to the Management and the District Inspector of Schools for being paid his just dues. Even though the Management assured Sri Pathak that he would receive just emoluments but it did not do anything in the matter. It was as a result of the last two representations made by Sri Pathak on 25-12-1969 and 4-6-1971, that the order requiring the management to fix his salary in the lecturer's grade and other orders, impugned in the writ petition, were passed. Sri Pathak claims that the order passed by the District Inspector of Schools was, in the circumstances, a correct, fair, just and equitable order and the petitioner has not made out any case for getting the same quashed.

4. So far as the impugned" order, dated 18-8-1972, passed by the District Inspector of Schools Deoria, and addressed to the Agent, Central Bank of India, Lar informing him that henceforth the salary disbursement account of the teachers of the Institution, maintained in that Bank would be operated only under his signatures, is concerned, parties are agreed that the same has since been withdrawn. It is accordingly not necessary for me to go into the question whether the District Inspector of Schools had jurisdiction to make that order or not.

5. So far as the impugned order dated 4th February, 1972, passed by the Dy. Director of Education is concerned, it appears that a representation was made by Sri Jai Ram Pathak to him bringing to his notice the injustice which was being meted out to him. The petitioners also placed their point of view before the Dy. Director and contended that in the circumstances it would be very hard on the

institution, if the representation made by Sri Jai Ram Pathak was accepted. The Deputy Director by his Letter dated 4th February, 1972, which is impugned in this writ petition, advised the petitioners that the problem could be solved if on the basis of his service, the Management fixed the salary of Sri Jai Ram Pathak in lecturer's grade after obtaining the sanction of the District Inspector of Schools. This letter merely suggested a via media for solving the problem. It was not intended to be an order and consequently it did not affect anybody's rights. In the circumstances, it is not necessary for me to go into the legality of the action of the Deputy Director and no question of quashing the order dated 4th February, 1972, arises.

6. Thus the arguments regarding the validity of the orders dated 22nd September, 1971 and 31st July, 1972 passed by the District Inspector of Schools alone remain to be considered. So far as the order dated 22nd September, 1971 is concerned, this was a direction given by the District Inspector of Schools to the petitioner, in response to a representation made by Sri Jai Ram Pathak. In this letter it was stated that Sri Jai Ram Pathak had been teaching Sanskrit to Intermediate Class ever since the year 1950-51, for which he was fully qualified, but still he was being paid salary according to graduates' grade and not according to lecturer's grade. It had therefore been decided that Sri Jai Ram Pathak should be paid salary in lecturer's grade and that the Management should complete all formalities in this connection within 15 days.

The order dated 31st July, 1972 merely reiterates that the management should comply with the directions issued in the letter dated 22nd September, 1971 specially when the Deputy Director of Education had affirmed the views of the District Inspector of Schools in that regard. The management was also informed that in case it did not start making payments to Sri Jai Ram Pathak, as indicated above, office of the District Inspector of Schools will take necessary steps for making the payment. It will thus be seen that the two impugned orders dated 22nd September, 1972 and 31st July, 1972 are complementary to each other and they are directed towards achieving only one object viz. that the Management should pay salary to Sri Jai Ram Pathak according to lecturer's grade.

7. In this case there is no dispute that Sri Jai Ram Pathak has been regularly teaching Sanskrit to Intermediate classes ever since the year 1950/51, and that the Management has not issued any formal appointment order appointing him as a lecturer for teaching Sanskrit to students of classes XI and XII. According to the petitioner, as per Board's regulation, Sri Jai Ram Pathak was not qualified to be appointed as a Sanskrit Teacher for Intermediate classes, and therefore the Management, although it asked Sri Pathak to take Sanskrit classes of Intermediate section as well, never appointed him as a lecturer in Sanskrit and the District Inspector of Schools had no jurisdiction to make that appointment and to issue a direction that he be paid salary in lecturer's grade,

8. It is common case of the parties that the petitioner-institution is an institution recognised by the Board of High School and Intermediate Education U. P.

According to Chapter XVII Regulation 2 of the Regulations framed under the Intermediate Education Act, the Rules of Education Code of U. P. are to apply to all institutions recognised by the Board in so far as they are not inconsistent with those Regulations. Paragraphs 24 and 25 of the Education Code empower the Inspector to regularly visit and inspect recognised Higher Secondary Schools and to submit a formal report amongst other matters, in respect of financial establishment of the Institution. While reporting with regard to financial establishment of the Institution, the Inspector is also required to enquire, whether the institution pays salary to its employees regularly and in full. Paragraph 143 lays down the Rules to be followed in connection with the appointment of teachers in all recognised institutions. Clause (j) thereof runs as follows :--

"The management shall furnish to the Inspector/Inspectress any information, explanation or records which might be requisitioned by the Inspector/Inspectress for a decision in any proceeding or appeal which might be filed by the Head Master/Principal/Teacher etc. of the Institution against the order of the Management affecting the service rights and emoluments of the Head Master/Principal/ Teacher etc. The Management shall furnish such information and comply with the directions of the Inspector/Inspectress within 15 days of the receipt of the requisition."

Accordingly, if there is some difference of opinion between the management and the teacher about the emoluments payable to a teacher the Inspector can call for an explanation from the Management and to require it to produce any records that he thinks necessary and to issue directions in that regard which the Management is bound to comply within a period of 15 days. I am accordingly, of opinion that in this case the Inspector of Schools had full jurisdiction to go into the matter and if he came to the conclusion that Sri Pathak was not being paid emoluments to which he was entitled to, he could issue directions to the management to pay the same.

9. I now proceed to consider whether in the circumstances of this case, the direction issued by the Inspector requiring the management to pay Sri Pathak's salary according to lecturer's grade, was legal or not. Main contention of Sri S.C. Khare, appearing on behalf of the petitioner, is that at no stage did the management create a post of lecturer for teaching Sanskrit to intermediate classes, and it never appointed Sri Pathak to any such post. According to him, certain formality attaches to the creation of a post and to an appointment being made thereto. Since that formality has not been completed Sri Pathak who was appointed as a teacher in the graduate grade, was not entitled to claim the emoluments of lecturers grade as a matter of right merely because he had been asked by the management to informally teach Sanskrit to Intermediate classes. Moreover, Sri Pathak was at all relevant time, not qualified for being appointed to teach Intermediate classes and therefore he could not be given lecturer's grade. Moreover, the order passed by the District Inspector of Schools in substance,

amounts to a direction for creating a post in lecturer's grade and appointing Sri Pathak on that post, which under law he is not entitled to do.

10. It is not disputed that the petitioner asked Sri Pathak to teach Sanskrit to Intermediate classes and Sri Pathak has been performing that duty ever since the year 1950-51, i. e. for about 20 years when in the year 1972 the District Inspector of Schools directed the management to pay him in accordance with the salary payable to teachers in the lecturer's grade. Annexure C-6 to the rejoinder affidavit filed on behalf of the petitioner indicates that during the year 1969-70, the normal duty of Sri Pathak was to teach Sanskrit and Hindi to Classes X and XI and XII. Annexure C-9 to the counter affidavit is a copy of the time table for the session 1969-70, therein it is stated that Sri Pathak is to draw salary in the scale of lecturer's grade in permanent capacity and has been taking five periods of Intermediate classes every day.

Annexure C-10 to the counter affidavit is a copy of certificate furnished by the Principal of the Institution to the District Inspector of Schools showing that Sri Pathak has been teaching Intermediate classes in a permanent capacity. All these facts lead to an irresistible conclusion that even if the Management did not formally create a post of lecturer to teach Sanskrit to the Intermediate classes, it required Sri Pathak to teach Sanskrit to Intermediate classes not in a stopgap arrangement but on a regular basis and that Sri Pathak continued to teach Sanskrit to Intermediate classes regularly for a period of over 21 years when the management was asked to pay his salary according to the grade applicable to Sanskrit Teachers of Intermediate classes.

11. For the first time, it was in the year 1959 that the procedure for appointment of teachers came to be regulated by Regulations framed under the Intermediate Education Act, after introduction of Sections 16-B and 16-F in the Act. Prior to it, there was no statutory provisions which regulated the appointment- of teachers for intermediate classes. Sri Khare did not bring to my notice any provision of law according to which a person could be appointed as a lecturer only after a post had been formerly created or that the appointment had to be made by a formal order. In my opinion if a person was assigned to do a particular job on a regular basis, it can be said that he had been appointed to perform that job. It follows that Sri Pathak had been appointed to teach Intermediate classes in Sanskrit and there was no procedural defect in making that appointment.

12. Sri S. C. Khare learned counsel for the petitioner then contended that according to the minimum qualifications laid down by the Board of High School and Intermediate Education, an Acharya from the Government Sanskrit College, Varanasi is qualified to be appointed as a lecturer in Sanskrit for Intermediate classes, only if he has also passed the Intermediate Education. Since, in this case Sri Pathak had merely obtained the Acharya degree from the Government Sanskrit College, and had not passed the Intermediate examination he was not qualified for appointment as a lecturer. His appointment as lecturer was, therefore, irregular. In the circumstances the management cannot be asked to

pay salary to Sri Pathak in a grade for which he is not qualified. In this connection, he relied upon Board's calendar for the year 1966-69 wherein it has been laid down that Acharya from the Government Sanskrit College Varanasi would be eligible to teach Sanskrit to Intermediate classes only if he has passed the Intermediate examination of the Board of High School and Intermediate Education U. P.

It is significant to note that the Regulations providing for the qualifications for appointment as Sanskrit teacher for Intermediate classes has been changing from time to time. According to Board calendar for 1949-50 an Acharya from Government Sanskrit College, Banaras could be appointed as a Sanskrit teacher for Intermediate classes only if he also had working knowledge of English i. e. he had passed the Board High School Examination in English or some other equivalent examination. A booklet entitled "list of Minimum qualifications Prescribed for Teachers in Recognised Higher Secondary Schools", corrected upto December, 1956 shows that an Acharya of the Government Sanskrit College Varanasi without anything more was qualified to be appointed to teach Sanskrit to Intermediate Classes.

The further qualification which was there in the Board's calendar for the year 1950-51, that he should have passed High School examination in English, was not there. Similar is the position according to Board's calendars for the years 1958-59 and 1960. This shows that some time after the year 1949-50 the qualification that the Acharya from the Government Sanskrit College Varanasi should also have passed High School Examination in English was relaxed and it was only after about 13 years, that in the year 1963 it was provided that Acharya of Government Sanskrit College Varanasi should also have passed Board's Intermediate Examination or other equivalent examination. It has not been shown that when in the year 1950 or 1951 Sri Pathak was entrusted with the job of teaching Sanskrit to Intermediate classes, there was in fact a requirement that he should have passed the High School Examination in English or that he should have passed the Intermediate Examination.

Even if there was some such requirement, and there was irregularity in entrusting Sri Pathak with the job of teaching Sanskrit to Intermediate classes in the year 1950-51 that disability certainly disappeared some time before the year 1956 when a Sanskrit Teacher to teach Intermediate classes could be appointed if he was merely an Acharya from the Government Sanskrit College, Varanasi.

Since, in the year 1956 Sri Pathak had been entrusted to take Intermediate classes in Sanskrit on regular basis, any defect in his appointment stood cured and there was no irregularity in his working as a Sanskrit Teacher for teaching Intermediate classes thereafter.

13. The restriction contained in Sections 16-E and 16-F, against appointment of a teacher who is not qualified in accordance with the regulations, applies to appointment of teachers made after the coming into force of those provisions.

Accordingly when, in the year 1963, additional qualification, that an Acharya from the Government Sanskrit College Varanasi should also have passed Board's Intermediate Examination, was laid down, it was meant to be applied in respect of appointments which were made subsequently. These sections did not contemplate that the appointment of teachers already made by the educational institutions although fulfilling the minimum qualifications as laid down at the time they were made, will become invalid or inoperative in case they were not in conformity with the minimum qualification laid down subsequently.

I am, accordingly, of opinion that further qualifications laid down in the year 1963 that for being appointed as a Sanskrit Teacher for Intermediate classes, an Acharya from the Government Sanskrit College, Varanasi should also have passed Board's Intermediate Examination, did not in any way affect the appointment of Sri Pathak which was quite regular at the time when it was made. I am, accordingly of opinion that there is no substance in petitioner's argument that Sri Pathak was not qualified to teach Sanskrit to Intermediate classes and that his appointment was invalid on that ground.

14. Now I proceed to consider whether the petitioner is entitled to receive salary in the lecturer's grade, as laid down by the State Government. According to Chapter III, Regulation 46 it is incumbent on the petitioner to allow to its teachers the scales of pay sanctioned by the State Government from time to time. On 27th July, 1959 the mandatory scales of pay for the teachers employed by Higher Secondary Schools was sanctioned as per Government Order No, C-2308/ XV-1723/59. Annexure C to the counter affidavit is an extract from that Government Order which states that those mandatory scales are applicable to constitutional staff of Secondary Schools. It mentions that Assistant Teachers Teaching Intermediate classes possessing oriental qualifications of Acharya are to be paid salary in the scale of Rs. 175-10-215-15-315 (lecturer's grade). There can be no manner of doubt that Sri Pathak has been teaching Intermediate classes in Sanskrit. In the circumstances, as directed by the Government Order the petitioner was bound to fix Sri Pathak's salary in the lecturer's grade.

15. I am accordingly of opinion that the District Inspector of Schools did not commit any error in requiring the petitioner to pay salary to Sri Pathak in accordance with the lecturer's grade. I see absolutely no justification in the conduct of the Management in depriving Sri Pathak of the emoluments of lecturer's grade when he had been teaching Sanskrit to intermediate classes regularly for about 21 years. The petition has therefore not made out any case for interfering with the order passed by the District Inspector of Schools in exercise of extraordinary powers of this Court, under Article 226 of the Constitution.

16. In the circumstances, I find no force in this writ petition which is dismissed with costs.