
(2014) 10 AHC CK 0150
In the Allahabad High Court
Case No : Writ-A No. - 38255 of 2000

Vineet Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 AHC CK 0150

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Advocate : Arun Tandon, A.K. Sharma, Anil Sharma and P.K. Sharma, Advocate for the Appellant; A.K. Sharma, M.M.D. Agarwal and P.K. Mishra, Advocate for the Respondent

Judgement

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Narayan Shukla, J.—Heard Mr. Anil Sharma, learned counsel for the petitioners as well as Mr. M.M.D. Agarwal, learned counsel for the respondents.

2. The petitioners have prayed for issuing a writ of mandamus commanding the respondents to pay salary under the provisions of Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 (in short Act, 1978). The petitioners are imparting education to the students of Primary Sections of Sri Daya Nand Arya Madhyamik Vidyalaya (Jr. High School) (in short School). The school has received the recognition from the District Inspector of Schools, Etawah on 03.07.1965. The school is run and governed under the control of Committee of Management of the School i.e. opposite party No. 4. It is stated that after enforcement of the payment of salaries Act 1978, the teachers and other staff of the senior primary section i.e. Junior High School of the Institution are being paid salary under the Act, 1978, but the petitioners who are imparting education to the students of Class I to V are being deprived from salary from the State Exchequer whereas their appointments are approved by the Competent Authority.

3. The District Basic Education Officer, Etawah has filed the counter affidavit stating therein that the Institution in question is a private institution, therefore, the salaries of the teachers and other employees of the Institution are being paid by the own resources of Committee of Management of the Institution. The Payment of Salaries Act, 1978 is applicable only to the teachers and employees of the Junior High School. Though the approval of the appointment of the petitioners granted by the District Basic Education Officer, Etawah has been admitted, yet it is stated that only on account of approval of their appointment they are not entitled to get the salary from the State Exchequer. Since no financial grant has been extended by the State Government to the Primary Section of the Institution, the petitioners, who are teachers of Primary Section, are not entitled to get the salary from the State Exchequer.

4. The learned counsel for the petitioners Mr. Sharma drew attention of this Court towards the decision of Hon''ble Supreme Court rendered on the appointments of Primary School Teachers. Firstly, he cited a case of Vinod Sharma and others Vs. Director of Education (Basic) and others 1998 SC 127, in which the Hon''ble Supreme Court has allowed the appeal with the direction to the respondents to pay the salary to the appellants under the Payment of Salary Act, 1978. The next judgment cited by him is the State of U.P. and others Vs. Pawan Kumar Divedi and others, Civil Appeal No. 3989 of 2006 decided by the Hon''ble Supreme Court. In this case one question for consideration of the Hon''ble Supreme Court was whether teachers of privately managed primary schools and who are teaching in primary sections of privately managed high schools are eligible to receive their salaries from the State Government? In this case the Hon''ble Supreme Court observed that "We find merit in the argument of Dr. M.P. Raju that schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High Schools necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government".

5. With the aforesaid view the Hon''ble Supreme Court has affirmed the view taken by the three-Judge Bench of the Hon''ble Supreme Court in Vinod Sharma's case (Supra).

6. In the case on hand, it is not in dispute that the teachers imparting education from Class VI to VIII are getting salary under the provisions of 1978 Act. It is not in dispute that the Institution in question is a recognized institution and the petitioners appointments have been approved by the Competent Authority.

7. Therefore, I am of the view that in the light of the judgment of the Hon''ble Supreme Court, as above, there is no occasion to separate the teachers, who are

imparting education to Class I to V in the same very school in the matter of payment of salary. So, I hold that the petitioners, who are teaching in the primary section from Classes I to V in the same very school, are entitled to get the salary under the 1978 Act.

8. In the aforesaid terms the writ petition is allowed.