

(2004) 02 AHC CK 0073
In the Allahabad High Court
Case No : Writ Petition No.201 (S/S) of 2004

Vishram Lal and Another

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 06-02-2004

Acts Referred:

Citation : (2004) 02 AHC CK 0073

Hon'ble Judges : N.K.Mehrotra, J

Final Decision : Allowed

Judgement

N.K. Mehrotra, J.—This is a writ petition for issuing a writ of mandamus commanding the opposite parties to allow the petitioners to work on the post of Peon on which they were discharging their duties on the basis of the decision taken by the State Planning Director as contained in the letter dated 6.9.2003 Annexure1 and for payment of arrears and monthly salary regularly each month.

2. The case of the petitioners is that they were initially appointed on 31.3.2000 under District Primary Education Programme (DPEP) by the opposite party No.2 State Project Director, U.P. Education for All Project and prior to that they were given appointment on daily wages on 31.3.1999 under the said scheme. It was on the recommendations of the District Magistrate that they were given appointment on contract basis as per appointment Setter dated 31.5.2000 as contained in Annexure2. Although the scheme was completed in June 2003 but the petitioners were allowed to continue by the opposite parties in compliance of the letter dated 3.7.2003 in which it was stated that the employees working under DPEP may be allowed to continue till 31.7.2003 as there is a proposal for absorbing he said staff under Education for All Scheme. Copy of the letter dated 3.7.2003 issued by the opposite party No.2 State Project Director is Annexure3. It is alleged that the petitioners working till second week of December, 2003 but they have been paid salary by the opposite parties. They made representations to the opposite party No.2 for payment of salary and copy was given to the District Magistrate. It is because of their request for making payment of salary

that opposite party No.2 is not allowing the petitioners to work. It is also alleged that in similar circumstances in writ petition No.5042 (S/S) of 2003, Dilip Kumar Gupta v. State then court passed an interim order on 19.8.2003 directing the opposite parties to utilize the services of the petitioners in the Sarva Shiksha Abhiyan who allowed them to work as they were earlier working in DPEPII.

3. All the opposite parties are represented through their Standing counsel. They were directed to file counter affidavit. Out of four opposite parties, only opposite party No.4 Expert Basic Education Officer, Lakhimpur Kheri has filed the counter affidavit. Copy of the counter affidavit filed by the opposite party No.4 is vague and there is no denial of the allegations made in the writ petition specifically on the basis of which the petitioners claimed their absorption in Sarva Shiksha Abhiyan Scheme.

4. The only contention of the opposite party No.4 is that the Director under Sarva Shiksha Abhiyan directed to adjust the staff working in the District Primary Education School but under the second Programme of District Education Programme. It has not been made compulsory to adjust the whole staff and as such the petitioners cannot be adjusted. This contention of the opposite party No.4 is incorrect per se only by the mere perusal of the above memorandum issued by State Project Director on 3.7.2003 Annexure3 and another office memorandum dated 6.9.2003 as contained in Annexure1.

5. It is further contended by the opposite party No.4 that the petitioners were engaged for one year as daily wager and after completion of the scheme, their services automatically came to an end. This fact also appears to be incorrect because it is not denied that the initially the petitioners were appointed on daily wages on 31.3.1999 and later on they were given appointment on contract basis vide Annexure1 and 2 dated 31.5.2000. This contractual appointment was for one year but it is not denied that the petitioners continued to work after the expiry of one year and it is also not denied that they continued to work even after the completion of the DPEP on 30.6.2003. It is further contended by the opposite party No.4 that there is no need of Class IV employees as twelve Class IV employees are working and they are regular and permanent employees of the Basic Shiksha Parishad. This averment in the counter affidavit is of no relevance because the dispute is otherwise. The petitioners were working in DPEP and there was a decision by Executive Committee of Shiksha Pariyojana Parishad in its meeting dated 20.8.2003 that the staff of the DPEPII Scheme shall be absorbed in Education for All Project.

6. In the instant case, I find that there was a decision that only suitable staff of DPEP shall be absorbed in Education for All Scheme but in the instant case, the suitability of the petitioners have not been considered at all and their service have been terminated orally without making the payment of salary for the period after 30.6.2003 and this fact is not denied that they have worked upto second week of December, 2003.

7. In view of the above, the writ petition is allowed and the opposite party No.2 State Project Director, U.P. Education For All Project is directed to consider the absorption of the petitioners in Education for All Project in view of the decision as contained in Office Memorandum dated 6.9.2003 Annexure1 if they are found suitable before taking any other Class IV employees in the said Project expeditiously within a period of four weeks from the date a certified copy of this judgment is served on the opposite party No.2.

8. It is further directed that the petitioners shall be paid salary for the period upto second week of December, 2003 and thereafter they shall be paid after absorption, if they found suitable, from the date of absorption.

(Petition allowed)