

(2016) 01 AHC CK 0269
In the Allahabad High Court
Case No : Writ Petition No. 5956 of 2013

Vishun Kumar & Another

APPELLANT

Vs

State of U.P. Through Secy. Basic Edu. Lko. & Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 34 LCD 634 : (2016) 2 UPLBEC 891

Hon'ble Judges : Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Ram Ji Trivedi, Advocate, for the Appellant; C.S.C., Rajiv Singh Chauhan, Shobhit Mohan Shukla, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Devendra Kumar Arora, J.—; Heard Mr. R.J. Trivedi, learned Counsel for the petitioners, Mr. Shobhit Mohan Shukla, learned Counsel for the opposite parties Nos. 2 and 3 and learned Standing Counsel.

2. Petitioner No. 1-Vishun Kumar is working as Class-IV employee in Poorva Madhyamik Vidyalaya, Marsanda, District Sitapur, whereas petitioner No. 2 - Kanhaiya Lal is working in the same capacity in Poorva Madhyamik Vidyalaya, Chalakapur, district Sitapur since 1985.

3. Submission of the learned Counsel for the petitioners is that though petitioners were designated as part-time class IV employee and were paid Rs. 30/- per month but their services were not regularized. Therefore, they approached this Court along with other persons by filing writ petition No. 6300 (SS) of 1992, Ram Milan Singh and others v. District Basic Education Officer, Sitapur and others, seeking a direction to pay and place them on the post of Chowikdar and pay all admissible allowances under the Rules. In the said writ petition, initially, vide an interim order dated 4.9.1992, this Court directed opposite parties to consider the claim of petitioners for regularisation in service

and to make payment of salary in the regular pay-scale pending regularization. Ultimately, vide order dated 16.7.1999, the said writ petition was disposed of finally with a direction to the opposite parties to pay the petitioners a regular pay-scale of Class-IV employees as admissible under the law.

4. According to the petitioners, against the judgment and order dated 16.7.1999, the District Basic Education Officer, Sitapur had filed Special Appeal No. 248 of 2000 and a Division Bench of this Court, vide judgment and order dated 18.7.2000, while rejecting the application for condonation of delay, dismissed the Special Appeal. Feeling aggrieved, the District Basic Education Officer, Sitapur had approached the Hon''ble Supreme Court by filing Special Leave to Appeal (Civil) No. 13873 of 2000 and the Hon''ble Supreme Court, vide judgment and order dated 13.9.2000, dismissed the Special Leave Petition. Thereafter, in compliance of the order of the writ Court dated 16.7.1999, the Assistant Basic Education Officer, Sitapur regularised the services of petitioners w.e.f. 5.3.2001 in the pay-scale of Rs.2550-3200 vide order dated 5.3.2001.

5. Now, the grievance of petitioners is that the order dated 16.7.1999 passed in writ petition No. 6300 (S/S) of 1992, which was affirmed by the Hon''ble Supreme Court vide order dated 13.9.2000, has been given effect to w.e.f. 5.3.2001 by opposite parties, whereas it ought to have been given effect from the date of passing of the judgment and order dated 16.7.1999. Petitioners had also raised their grievance collectively on several occasions before the authorities concerned but no action has been taken. Therefore, petitioners have constrained to approach this Court by means of the present writ petition, seeking a direction against opposite party No.2 to grant regular pay-scale to them w.e.f. the date of passing the order dated 16.7.1999 passed in writ petition No. 6300 (S/S) of 1992.

6. Mr. Shobhit Mohan Shukla, learned Counsel for opposite parties Nos. 2 and 3, while opposing the prayer of the petitioners, has submitted that after the dismissal of Special Leave Petition against the judgment and order dated 16.7.1999 passed in writ petition No. 6300 (S/S) of 1992, steps were taken for creation of the post and after creation of post and allocation of funds for payment of salary to the incumbents, the State Government issued Government Order dated 13.2.2001 and consequently, the Secretary, U.P. Basic Education Board also issued order dated 20.2.2001. In compliance of the aforesaid orders, petitioners have been given regular appointment w.e.f. 5.3.2001 and were also being paid salary regularly. Therefore, the petitioners cannot be given pay-scale from the date of the judgment and order dated 16.7.1999 passed in writ petition No. 6300 (S/S) of 1992. Thus, the writ petition being misconceived is liable to be dismissed.

7. I have heard learned Counsel for the parties and perused the record.

8. It is not in dispute that the petitioners had approached this Court by means of writ petition No. 6300 (S/S) of 1992, seeking a direction against opposite parties

for payment of regular salary as well as for regularisation of their services. Initially, this Court, vide an interim order dated 4.9.1992, directed opposite parties to consider the issue of regularisation of petitioners as well as payment of regular salary. Ultimately, the aforesaid writ petition was disposed of finally vide judgment and order dated 16.7.1999 with the direction to opposite parties to pay petitioners regular pay-scale of Class-IV employees as admissible under the law. Against the judgment and order dated 16.7.1999, the District Basic Education Officer, Sitapur filed Special Appeal No. 248 of 2000, which was dismissed on 18.7.2000. Feeling aggrieved, the District Basic Education Officer, Sitapur had approached the Hon"ble Supreme Court by filing Special Leave to Appeal (civil) No. 13873 of 2000, which was dismissed vide order dated 13.9.2000.

9. It appears that after the dismissal of Special Leave to Appeal of the department, opposite parties have taken steps for complying the order of the writ Court dated 16.7.1999 and has passed the order dated 5.3.2001 giving appointment to petitioners on the post of Class-IV post from the date of issuance of the order i.e. 5.3.2001. This Court is of the opinion that since the judgment and order dated 16.7.1999 was affirmed by the Hon"ble Supreme Court, it was not open for the opposite parties to give its own interpretation and give them regular appointment arbitrarily w.e.f. 5.3.2001.

10. Accordingly, the writ petition is allowed. The opposite party No.2-District Basic Education Officer, Sitapur is directed to correct the date of appointment of the petitioners from the date of the judgment and order dated 16.7.1999 passed in writ petition No. 6300 (S/S) of 1992 and also pay the arrears from the date of the order dated 16.7.1999, expeditiously, say, within a period of three months from the date of receipt a certified copy of this order.

11. Costs easy.