
(2017) 05 AHC CK 0106
In the Allahabad High Court
Case No : 1560 of 2015

Vishwanath Tiwari and Ors.

APPELLANT

Vs

State of U.P. and Ors.

RESPONDENT

Date of Decision : 19-05-2017

Acts Referred:

Citation : (2017) 05 AHC CK 0106

Hon'ble Judges : Pradeep Kumar Singh Baghel

Bench : Single Bench

Advocate : L.P. Misra, Abhishek Misra

Judgement

1. This writ petition has been moved on behalf of twenty four petitioners. They have instituted this writ proceeding seeking quashment of the order passed by the State Government dated 16th July, 2014 whereby their claim for salary on the post of Assistant Teacher from the State Exchequer has been rejected.
2. The basic facts pertinent to the issue in question may be stated as follows; Nirmal Brahm Higher Secondary School, Maddhupur, Ambedkar Nagar (for short, "the Institution") is recognised by the Board of High School and Intermediate Colleges. The Institution imparts education up to the level of Xth standard. It was recognised in the year 1981 and was brought under the grant-in-aid scheme in November, 1991 (petitioner's claim w.e.f. 1.4.1991).
3. While taking the institution on grant-in-aid list the State sanctioned only 1 post of Headmaster, 6 posts of Assistant Teachers of C.T. Grade, 1 post of Clerk and 2 posts of class-IV employees. The strength of the students at that point of time is said to be 1085 students.
4. Indisputably, between 1981 to 1991 by various orders, additional sections from standard VIth to Xth were sanctioned by the competent authorities from time to time. At present 33 sections are running in the Institution.
5. The petitioners claim that they have been appointed following the procedure

and their appointments have been approved by the District Inspector of Schools.

6. The Committee of Management made repeated requests to sanction more posts of teachers in terms of the norms of State Government. It claimed that in view of the rising strength of students and infrastructure existing in the Institute, it needs more sanctioned posts of the teachers.

7. On 12.1.1995 the District Inspector of Schools, Faizabad sent a detailed report to the Deputy Director of Education, IXth Region, Faizabad giving the details of infrastructure, strength of students, name of teachers who were working in the Institution, their qualification, the date of appointment and the date of approval. The said report indicates that it was made after inspection of the Institution and is based on record. He made a recommendation that the Institution has sent a requisition to the U.P. Secondary Education Selection Board for 17 posts of Assistant Teachers and 1 post of Headmaster and his predecessor has approved the appointment of the teachers. He has also noted that in absence of the documents, some facts could not be verified. A copy of the said communication is on the record.

8. It appears that upon representations of the petitioners and the Management, the State Government has called the comments from the Additional Director, Education who also furnished details about the facts which have been mentioned by the District Inspector of Schools in his communication, mentioned above. It is apt to note that the Additional Director made a recommendation for sanction of the salary of 17 Assistant Teachers, 21 C.T. Grade Teacher, 1 clerk and 10 class-IV employees including Daftari. He has also mentioned the strength of the students from 1984 to 1990. A copy of the said report is also on the record.

9. When no action was taken for the sanction of the salary, the petitioners preferred the Writ Petition Nos. 1889 (SS) of 1997 and 1890 (SS) of 1997. In the said writ petition, an interim order was passed on 9.7.1999 but the same was not complied with and a contempt petition was also filed. Those facts are not relevant in these proceedings. The writ petition was allowed by this Court vide judgment dated 10.3.2006. The State was directed to pay salary to all the teachers from 1991.

10. Dissatisfied with the judgment dated 10.3.2006 Special Appeal No. 633 (S/B) of 2006 was filed and other special appeals were also tagged with the said special appeal. By a common judgment, the special appeals were allowed by the Division Bench vide its judgment and order dated 31.5.2011, whereby the order of the learned Single Judge was set aside.

11. However, the Division Bench observed that the State shall consider the representation of the Management for creation/ sanction of the posts. As per the norms prescribed under the Rules/ Government orders it was further observed that the competent authority shall consider about absorption/ regularization/ fresh appointment of the petitioners, if the posts are created as per rules.

12. In compliance of the judgment of the Division Bench dated 31.5.2011 the Committee of Management made a representation along with all the relevant documents to the District Inspector of Schools. On 1.10.2013 the District Inspector of Schools in his communication to the Joint Director of Education made a recommendation that according to the norms in the Institution 24 posts of Assistant Teachers, 1 clerk, 2 class-IV employees; total 27 posts may be created.

13. The Joint Director in his communication to the Director of Education reiterated the same facts and he endorsed the recommendation of the District Inspector of Schools.

14. Regard being had to the fact that when these exercises were undertaken by the authorities in compliance of the order of the Division Bench, a Special Leave Petition being Special Leave to Appeal (Civil) No(s). 1564-1567/2012, Vishwa Nath Tewari v. State of U.P. and Ors. preferred by the petitioners was pending in the Supreme Court. It was disposed of vide order dated 7.1.2014. While disposing of the S.L.P., the Supreme Court directed the State Government to examine the matter.

15. In compliance of the said order, the State Government has considered the claim of the petitioners and has rejected their claim for salary from the State Exchequer amongst other grounds that earlier the Institution has filed fake papers regarding creation of posts; they have not produced any document to establish that the posts on which they worked have been created by the competent authority; they have not been appointed following the procedure under the law. The State has also doubted the strength of students and found the infrastructure is not according to the norms.

16. Aggrieved by the said order, the instant writ petition has been preferred.

17. The State contested the matter. A counter affidavit has been filed, wherein the stand of the State is that the Institution was taken on the grant-in-aid by the State Government up to Junior High School and after coming to the school on the grant-in-aid up to High School level, the dispute regarding appointment of the teachers and non-teaching staff arose and it was found that the Committee of Management neither had applied for creation of posts nor the posts were created by the State Government but fraudulently they prepared a fake order relating to approval of appointment of the teachers and non-teaching staff.

18. It is stated that for the first time the Committee of Management of the School has moved an application for creation of posts on 20.2.2006.

19. I have considered the submissions of learned counsel for the parties and perused the record.

20. The Supreme Court while sending the matter back to the State Government had taken note of a letter of the D.I.O.S. dated 12.1.1995 to the Deputy Director. In the said letter the D.I.O.S. has referred some important facts regarding

infrastructure, strength of students and teachers. The letter has an important bearing on the issue involved.

21. However, from a perusal of the impugned order it is evident that there is not even reference of the said letter. It is regrettable that the respondent has not given due attention to the order of the Apex Court. In fact the findings and the tenor of the order indicates that the Principal Secretary has done an empty formality and has not applied his mind at all to the facts of the case. His some of the findings are completely perverse and without taking into consideration the material on record.

22. The first respondent has recorded that the strength of the students of the last several years do not appear to be correct. The said finding is not based on material on record. The petitioner has sought certain information under the Right to Information Act from the State Government including the office note. The said office note is on the record as annexure-17 to the petition. In the office note at page 34 (Page 172 of the Paper-book) it is mentioned that in the special appeal, the Court has issued a direction to decide the representation of the Committee of Management in respect of creation of posts according to norms/ rules.

23. The Director of Education (Secondary) in his comments has found that according to the norms the Institution requires; 1 Headmaster, 24 Assistant Teachers, 1 Clerk, 3 posts of class-IV employees. This document bears the signatures of Secretary, Secondary Education and other officials.

24. The office note of the Under Secretary, at page 46, (Page 176 of the Paper book) also indicates that the Institution was earlier Junior High School and it was upgraded up to the High School and there is reference of various letters issued by the District Inspector of Schools for creation of the additional posts. All those letters of the District Inspector of Schools dated 1.2.1982, 6.10.1983 and 12.2.1985 have been mentioned in the office note. It has been mentioned that 33 sections were sanctioned by the aforesaid orders. This fact has been completely ignored by the first respondent in his order.

25. In the same report it has been found that according to the norms 24 posts of Assistant Teachers are required to be created. As regards the strength of students it has been noted that from 1984 to 1986 the average strength of students was 1078 and this note also bears the signatures of Special Secretary, Secondary Education; Secretary, Higher Education and other officials. It further indicates that the file was sent for approval to the Law Department. The recommendation, which has been approved by the aforesaid officials, reads as under: "VERNACULAR MATTER OMITTED"

26. In the counter affidavit it is admitted that for the first time the Committee of Management has moved an application for creation of posts on 20.2.2016. The letter of the District Inspector of Schools dated 12.1.1995 and the information sent by the Additional Director, Secondary Education clearly indicate regarding strength of the students, infrastructure and the number of teachers who are

working. A careful reading of the details sent by the District Inspector of Schools in his report dated 12.1.1995 and the communication of the Additional Director to the State Government indicates that the information with regard to the strength of the students, infrastructure, the teachers working in the institution, their qualification, the date of their approval are similar. In his comments he has noted that the orders regarding creation of the posts are genuine. He has also recorded that true copy of the orders relating to sanction of new sections have been sent to the Directorate but their original could not be made available by the regional office.

27. A careful reading of the details sent by the District Inspector of Schools in his report dated 12.1.1995 and the communication of the Additional Director to the State Government indicates the information with regard to the strength of the students, infrastructure, the teachers working in the institution, their qualification, the date of their approval have been totally ignored by the respondent no. 1.

28. In the impugned order the above-mentioned material has been completely ignored which has been approved by the Secretaries concerned and there is nothing on the record to indicate about any adverse opinion furnished by the Law Department in response to office note mentioned above.

29. The aforesaid facts clearly indicate that the order of the State Government which is skeletal and bereft of reasons is totally perverse as it has not taken into consideration the important material on record. It is apt to note that the said office note has been signed by the Special Secretary and the Secretary, Higher Education but while rejecting the claim of the petitioners no fact mentioned in the office note has been taken note of. It is worthwhile to mention that the office note is based on the report of the D.I.O.S. which was endorsed and recommended by the Additional Director.

30. In addition to above, in the Special Appeal of the State Government, which was allowed, the Division Bench has made the following observations: Before parting, we would like to observe that in view of the request made by the management of the School for creation and sanction of posts, the competent educational authorities may consider the same and if no such request has yet been sent, it would be open for the management of the School to make the same. The educational authorities including the Director of Education, on such a request being made, may consider the requirement of creation of additional posts and sanction thereof as per the norms prescribed and the rules/ Government Orders, if any, applicable and while doing so, it be also considered whether any of the private respondents or all of them can be absorbed or regularized/appointed afresh on the posts if any created and sanctioned as per rules. The Special Appeals stand allowed.

31. In compliance of the said order the petitioners have made a representation and the District Inspector of Schools and the Director, as mentioned above, have

found that in the Institution according to the norms is 24 posts are required to be created, thus the reasons mentioned in the impugned order for rejecting the claim of the petitioners on the ground of strength of students, infrastructure and the appointment of the teachers, is completely perverse.

32. The District Inspector of Schools in his communication has also noted that the strength of the students are increasing for the reason that the results of the Institution have been excellent. He has also noted that the good result of the Institution is the result of the hard work and sincerity of the teachers (petitioners).

33. In the light of the discussion made above, I find that the order of the State Government dated 16.7.2014 is illegal and perverse. It needs to be set aside. Accordingly, it is set aside and the matter is remitted to the State Government to decide the matter afresh in the light of observations made herein above and taking into consideration the material on record, expeditiously preferably within two months from the date of communication of this order.

34. The writ petition is, accordingly, allowed.

35. No order as to costs. Petition Allowed.