

Neutral Citation No. - 2023:AHC:223786

Reserved on 21.9.2023

Delivered on 24.11.2023

Court No. - 36

Case :- WRIT - A No. - 748 of 2023

Petitioner :- Sanjeev Kumar Mishra

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Anuj Bajpai

Counsel for Respondent :- C.S.C.,Rakesh Pathak

Hon'ble Manjive Shukla,J.

1. Heard Sri Radha Kant Ojha, learned Senior Advocate assisted by Sri Anuj Bajpai, learned counsel appearing for the petitioner, Sri Ashish Kumar Nagwanshi, learned Additional Chief Standing Counsel appearing for the Respondents No.1 to 4 and Sri Rakesh Pathak, learned counsel appearing for the Respondents No.5 and 6.

2. Petitioner through this writ petition has sought a direction from this court thereby commanding the Respondents No.5 and 6 to allow him to join on the post of Assistant Teacher in Baba Ram Das Junior High School, Rambagh, District Shahjahanpur and to pay him salary regularly along with arrear of salary.

3. Facts of the case, in brief, are that Baba Ram Das Junior High School, Rambagh, District Shahjahanpur (hereinafter referred to as school) is run by a Society registered under the Societies Registration Act, 1860 through duly elected Committee of Management. The school is recognized by U.P. Basic Education Board, Prayagraj and is receiving grant-in-aid from the Government of U.P.

4. Terms and conditions of the service of teachers working in the school are governed by the provisions of Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "Rules of 1978"). School is also receiving grant-in-aid from the Government of U.P. and thus, provisions of The U.P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 (hereinafter referred to as "Act of 1978") are applicable in respect of the payment of salary to the employees working in the school.

5. Petitioner was appointed on the post of Assistant Teacher in the school after following due procedure prescribed under the Rules of 1978. Petitioner's appointment on the post of Assistant Teacher was duly approved by the District Basic Education Officer, Shahjahanpur vide order dated 11.03.1996. Petitioner pursuant to his appointment joined on the post of Assistant Teacher in the school but since Head Master of the school was adamant to harass the petitioner, as such, in spite of petitioner's working in the school, he did not allow him to sign on attendance register. Since petitioner was not allowed to sign on the attendance register by the Headmaster of the school, as such, he filed an application before Respondent No. 3 i.e. the District Basic Education Officer, Shahjahanpur and in response thereof District Basic Education Officer, Shahjahanpur wrote a letter on 8.5.1997 to Headmaster of the school whereby he directed the Headmaster to submit his reply within three days on the point as to why is he not allowing the petitioner to sign the attendance register.

6. The Director Education (Basic), U.P. also passed an order on 9.05.1997 whereby he granted sanction for payment of salary to

the petitioner. Finance and Accounts Officer, Basic Education, Shahjahanpur also issued direction to Respondents No. 5 and 6 vide his letter dated 1.08.1997 for allowing the petitioner to sign on attendance register. The Headmaster of the school in spite of directions issued by the higher authorities did not permit the petitioner to sign the attendance register, therefore, the District Basic Education Officer, Shahjahanpur vide his letter dated 24.01.1998 again directed Respondents No. 5 and 6 to allow the petitioner to sign the attendance register in the school. The District Basic Education Officer again vide his letter dated 14.08.1997 directed Respondents No. 5 and 6 to allow the petitioner to sign on attendance register.

7. Since in spite of repeated directions given by the Respondents No. 3 and 4, petitioner was not allowed to sign attendance register in the school by Respondents No. 5 and 6, as such, the District Basic Education Officer, Shahjahanpur vide order dated 17.2.1998 directed the Finance and Accounts Officer, Basic Education, Shahjahanpur to pass necessary order under the provisions of the U.P. Junior High Schools (Payment of Salaries of Teachers and other Employees) Act of 1978 and to ensure the payment of salary to the petitioner w.e.f. the month of September, 1997 and further vide order dated 7.9.1998 attached the petitioner on the post of Assistant Teacher in Rajkiya Adarsh Vidyalay, Kila (Shahjahanpur).

8. Petitioner pursuant to aforesaid orders continued to work as Assistant Teacher in Rajkiya Adarsh Vidyalay, Kila (Shahjahanpur) and also continuously received salary from the State exchequer. Director General, School Education, U.P., Lucknow vide order dated 29.06.2022 directed the District Basic Education Officers of all the districts of State of U.P. to cancel

the orders of attachment of the teachers. In compliance of the aforesaid order dated 29.06.2022, the District Basic Education Officer, Shahjahanpur passed an order on 20.10.2022 whereby petitioners attachment in Rajkiya Adarsh Vidyalay, Kila (Shahjahanpur) has been cancelled and petitioner has been directed to join in his original School.

9. Petitioner pursuant to aforesaid order dated 20.10.2022 appeared before the In-Charge Headmaster of the school for joining on his post of Assistant Teacher but he was not allowed to join and then he submitted application to In-Charge Headmaster through registered post on 23.11.2022 and copy of the said application was also sent through registered post to the Assistant Director Education (Basic), IIIrd Region, Bareilly and the District Basic Education Officer, Shahjahanpur.

10. Since petitioner was not allowed to joint on the post of Assistant Teacher in the School, petitioner again submitted application to the District Basic Education Officer, Shahjahanpur and thereby requested him to issue necessary direction to officiating Headmaster/Manager of the School to allow the petitioner to join on his post of Assistant Teacher.

11. Since the District Basic Education Officer, Shahjahanpur did not pass any order thereby directing the Head Master/Manager of the school to permit the petitioner to join on the post of Assistant Teacher in the school, as such he has filed the present writ petition.

12. Counter affidavit has been filed in this matter on behalf of Respondent No.6 wherein it has been pointed out that petitioner's appointment has not been made after following due procedure

prescribed under the Rules and in respect of petitioner's appointment, inquiry was conducted by the Assistant Basic Education Officer, Block Kalan, District Shahjahanpur and inquiry report dated 14.8.1997 was submitted to the District Basic Education Officer, Shahjahanpur, wherein it has been categorically pointed out that appointment of the petitioner has not been made as per the Rules of 1978. In the counter affidavit, it has further been pointed out that a report was submitted by the District Basic Education Officer, Shahjahanpur to the Director, Education (Basic), U.P. Lucknow vide letter dated 9.5.2000, wherein it has been categorically pointed out that petitioner's initial appointment was not in accordance with law.

13. Respondent No.6 in his counter affidavit has also pointed out that the Committee of Management of the school filed Writ Petition No.33508 of 1997, wherein order dated 6.9.1997 passed by the District Basic Education Officer, Shahjahanpur whereby direction was given for allowing the petitioner to join on his post in the school and to pay him salary, has been challenged. This court while entertaining the said writ petition passed an interim order on 1.10.1997 whereby order dated 6.9.1997 directing the Committee of Management of the school to pay the salary to the petitioner, was stayed.

14. Petitioner in response to the counter affidavit filed by the Respondent No.6 has filed rejoinder affidavit and thereby has brought on record the final order passed by the District Basic Education Officer, Shahjahanpur on 30.5.1997, wherein on the basis of detailed inquiry, appointment of the petitioner has been declared to be valid. In the rejoinder affidavit, it has further been pointed out that the ex-parte inquiry report dated 14.8.1997 has also been considered by the District Basic Education Officer,

Shahjahanpur in his order dated 10.9.1997 and he has rejected the said ex-parte inquiry report. In respect of inquiry report dated 9.5.2000 submitted by the District Basic Education Officer, Shahjahanpur to the Director, Education (Basic), U.P. Lucknow, it has been pointed out in the rejoinder affidavit that subsequently the District Basic Education Officer, Shahjahanpur has submitted another report on 28.6.2004 to the Deputy Director, Education Directorate, U.P. Lucknow, wherein it has been categorically mentioned that appointment of the petitioner is valid appointment. So far as the interim order dated 1.10.1997 passed in Writ Petition No.33508 of 1997 is concerned, it has been pointed out that later on the said writ petition has been withdrawn by the petitioner and thereby the writ petition has been dismissed as withdrawn vide order dated 28.3.2001.

15. Learned Senior Advocate appearing on behalf of the petitioner has argued that petitioner's appointment on the post of Assistant Teacher was made way back on 1.3.1996 and the said appointment of the petitioner was duly approved by the District Basic Education Officer, Shahjahanpur and further petitioner pursuant to the said appointment has continued to work till 31.10.2022 and has received salary from the State exchequer, as such, after petitioner has been relieved from the school where he was attached, there cannot be any occasion for the Respondents No.5 and 6 not to allow him to join in the school and not to pay him salary. Learned Senior Advocate appearing for the petitioner has further argued that so far as the order dated 1.10.1997 passed in Writ Petition No. 33508 of 1997 is concerned, petitioner withdrew the said writ petition and thereby this court has dismissed the writ petition as withdrawn vide order dated 28.3.2001. Therefore, now there is no reason for the respondents not to allow the petitioner to join and work on the post of

Assistant Teacher in the school and not to pay him salary. Learned Senior Advocate appearing for the petitioner has vehemently argued that validity of the petitioner's appointment has already been tested by the District Basic Education Officer, Shahjahanpur and he has passed an order on 30.5.1997 whereby petitioner's appointment has been declared to be valid appointment and till date the order dated 30.5.1997 stands intact and has not been challenged by any party, therefore in absence of any challenge to the order dated 30.5.1997, which is contained in Annexure-RA-1 to the rejoinder affidavit, there cannot be any reason not to allow the petitioner to join on the post of Assistant Teacher in the school and not to pay him salary.

16. Learned Senior Advocate appearing for the petitioner has emphatically argued that even otherwise petitioner has been continuing to discharge duties as Assistant Teacher for about 25 years and he has received salary from the State exchequer, therefore now when the petitioner has been relieved from the school where he was attached, it is obligatory on the Respondents No.5 and 6 to allow the petitioner to join on the post of Assistant Teacher in the school and to pay him salary.

17. On the other hand, learned counsel appearing for the Respondents No.5 and 6 has submitted that petitioner has not been appointed after following due procedure prescribed under the Rules of 1978 and further the Assistant Basic Education Officer, Block Kalan, District Shahjahanpur vide his report dated 14.8.1997 has pointed out the irregularities in the petitioner's appointment, therefore he cannot be allowed to join on the post of Assistant Teacher in the school and he is also not entitled for payment of salary.

18. Learned counsel appearing for the Respondents No.5 and 6 has also argued that the Committee of Management of the school filed Writ Petition No.33508 of 1997 in which an interim order was passed on 1.10.1997 whereby order dated 6.9.1997 directing the Committee of Management of the school to pay the salary to the petitioner, was stayed, therefore petitioner is not entitled for joining in the school and is also not entitled for payment of salary.

19. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that petitioner was appointed on the post of Assistant Teacher in the school on 1.3.1996 and his appointment was duly approved by the District Basic Education Officer, Shahjahanpur vide order dated 11.3.1996. I further find that in respect of petitioner's appointment, matter was inquired into and District Basic Education Officer, Shahjahanpur has passed an order on 30.5.1997 whereby petitioner's appointment has been declared to be a valid appointment and he has been held to be entitled for payment of salary.

20. It is to be noted that the order dated 30.5.1997 passed by the District Basic Education Officer, Shahjahanpur, which is contained in Annexure-RA-1 to the rejoinder affidavit, has not been challenged till date, therefore in absence of challenge to the order dated 30.5.1997 the respondents cannot raise questions regarding validity of the appointment of the petitioner at this stage.

21. This court finds that since petitioner was not allowed to sign the attendance register in the school though the District Basic Education Officer, Shahjahanpur issued various directions

to the Respondents No.5 and 6, the Finance and Accounts Officer, Basic Education, District Shahjahanpur vide order dated 7.9.1998 attached the petitioner in Rajkiya Adarsh Vidyalaya, Shahjahanpur and by resorting single operation of salary account of the school, petitioner was paid salary. Petitioner since year 1998 has continuously received salary till 31.10.2022 i.e. till date on which petitioner has been relieved from Rajkiya Adarsh Vidyalaya, Shahjahanpur for joining in his original school.

22. It is not disputed that appointment of the petitioner has already been declared to be a valid appointment by a detailed order passed by the District Basic Education Officer, Shahjahanpur on 30.5.1997 and petitioner since year 1998 till 31.10.2022 has worked and received salary from the State exchequer, therefore once petitioner has been relieved from Rajkiya Adarsh Vidyalaya, Shahjahanpur, it is obligatory for the Respondents No.5 and 6 to allow the petitioner to join on his post of Assistant Teacher in the school and to pay him salary regularly along with the arrears.

23. So far as Writ Petition No.33508 of 1997 filed by the Committee of Management of the school is concerned, it is to be noted that the said writ petition has been withdrawn by the Committee of Management of Baba Ram Das Junior High School, Rambagh, District Shahjahanpur and thereby this court vide order dated 28.3.2001 has dismissed the said writ petition as withdrawn.

24. In view of the aforesaid reasons, this writ petition is allowed. Respondents are directed to allow the petitioner to join on the post of Assistant Teacher in Baba Ram Das Junior High School, Rambagh, District Shahjahanpur and to pay him salary

along with the arrears forthwith. Respondents No.3 and 4 are also directed to ensure that petitioner is allowed to join on the post of Assistant Teacher in the aforesaid school forthwith and salary is paid to him.

Order Date :- 24.11.2023
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