

Court No. - 10

Case :- WRIT - A No. - 27494 of 1993

Petitioner :- Smt. Poonam Upadhyay and others

Respondent :- B.S.A.

Counsel for Petitioner :- T.P. Singh,D.P. Singh,Sunil Kumar
Srivastava

Counsel for Respondent :- S.C.,A. Mishra,Ashok Mehta,Sanjay
Chaturvedi,Saurabh Kumar

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Sunil Kumar Srivastava, learned counsel for the petitioners, Shri Deepak Chauhan, learned Additional Chief Standing Counsel for the State-respondents and Shri Saurabh Kumar, learned counsel or respondent-Committee of Management and perused the record.

2. After conducting preliminary hearing on the previous date, following order was passed on 04.08.2023:

"Heard learned counsel for the petitioner and learned Standing Counsel as well as learned counsel for the respondent- Committee of Management.

The salary of the petitioners was stopped and, therefore, the present writ petition was filed 30 years ago.

Pursuant to an interim order passed in this writ petition, the petitioners are being paid salary. It has been stated by the learned counsel for the petitioners that petitioner No.1 has retired on 31.03.2022, whereas remaining three petitioners are still working and are getting salary.

While passing the interim order, this Court directed that the

petitioners will be paid salary, however, payment of arrears shall be subject to final order to be passed in this writ petition.

When the reason for stopping salary was asked by the Court, learned Standing Counsel has referred to paragraph-3 of the counter affidavit and submits that only ten (10) posts were sanctioned in the institution out of which, one post was of Head Mistress, five posts of Assistant Teachers, one post of Clerk and three posts of Class-IV employees, all of whom were being paid salary w.e.f. July, 1984 since when the institution had come on the grant-in-aid list.

It is further being argued by the learned Standing Counsel that when the authorities demanded documents from the Management by letter dated 22.09.1993, no documents were made available to the authorities.

Learned counsel for the petitioners submits that there is no dispute with regard to the sanction of posts and in due course of time, prior to the appointment of the petitioners, additional posts were sanctioned and, therefore, there is no illegality in their appointment.

Be that as it may, thirty years have passed during pendency of the writ petition and for disposal of the same, the situation with regard to number of posts sanctioned at the time of appointment of the petitioners is the most important issue. Thus, following directions are being issued:-

- 1. The management shall submit documents in relation to sanctioned posts (subject-wise) on year to year basis w.e.f. 1980 till 1990, before the District Basic Education Officer,*

Ballia within a period of one month from today.

2. The Basic Education Officer shall examine the fact as to whether the petitioners' appointment was against the sanctioned/permisible post or beyond that and shall submit his order/report through the learned Standing Counsel on the next date fixed for hearing.

List on 12.09.2023 in the top ten cases of the Board."

3. The Court, therefore, wanted to ascertain the position with respect to sanction of posts (subject-wise and year-wise) w.e.f. 1980 to 1990 and called for the Committee of Management as well as the District Basic Education Officer to come up with clear stand in this regard.

4. A supplementary counter affidavit has been filed by the Committee of Management stating that certain communications were exchanged in between the Management and the then District Basic Education Officer and, during the course of time, certain additional sections were permitted to be run in the Institution and that the petitioner No. 1 retired on 31.03.2022, the petitioner No. 3 is going to retire on 31.03.2024. It is further contended that the Management, considering the shortage of teaching staff, proceeded to appoint teachers on temporary basis by constituting a Selection Committee and communicated its decision to the then District Basic Education Officer for granting approval, which was granted by the said officer and, therefore, the petitioners continued to work in the Institution and receive their salary, however, when it was stopped, the present writ petition was filed and the petitioners are getting salary pursuant to the interim order granted in their favour in 1993. As a matter of fact, the Committee is supporting the cause

of the petitioners.

5. Learned Additional Chief Standing Counsel has produced instructions, which are taken on record. The instructions have been furnished by the present District Basic Education Officer and the query raised by this Court in the order dated 04.08.2023 has been answered in clear terms, that is to say that clear stand was earlier taken in paragraph No. 10 of the counter affidavit filed in the present writ petition regarding only 10 sanctioned posts and beyond that payment of salary has been stopped. It is further mentioned that no additional posts have been sanctioned thereafter and that the reason for making payment of salary to the teachers is only the interim order dated 12.08.1993 granted by this Court in the present writ petition. It is further contended that when communication was sent to the office of Joint Director of Education (Secondary), Fifth Region, Varanasi on 29.04.2011, the officer informed that there was no order on record sanctioning posts.

6. With respect to sanction of posts, there is consensus between the parties that no posts over and above ten posts referred to in the previous order of this Court were ever sanctioned.

However, learned counsel for the petitioners has placed reliance upon the Government Order dated 31.01.2013 annexed as Annexure No. SA-11 to the supplementary affidavit dated 20.02.2023, which provides that the teachers, who were satisfactorily working in the Institutions on the basis of strength (Jan Shakti), the arrears of salary should be released on the basis of last drawn salary and in the Institutions where no posts are sanctioned and the teaching and non-teaching staffs are working over and above the sanctioned strength but their salary has not

been paid since May, 2010, no fresh appointments should be made so long as such staff is not adjusted. Learned counsel, therefore, submits that the petitioners' case is covered by protection granted under the said Government Order also and, hence, the arrears of salary be released in their favour.

7. Having heard the learned counsel for the parties, this Court finds that inter-se communications in between the then Management of the Institution and the then District Basic Education Officer regarding offering temporary appointments to the petitioners would not bind the State Government to release salary, as payment of salary in aided Institutions is dependent upon the sanctioned strength.

8. Insofar as the interim order dated 12.08.1993 passed by this Court in the present writ petition is concerned, it was clearly provided that payment of arrears shall be subject to final order to be passed in the present writ petition and the said interim order was passed by placing reliance upon the letter of approval granted by the District Basic Education Officer on 17.03.1990, vide Annexure No. 3 to the writ petition, in absence of defence of the Management or the State of U.P. Even the said letter of approval is in furtherance of a communication made by the Manager of the Institution and, under no circumstances, such a letter can be treated as a document or order creating or sanctioning of posts in the Institution. It appears that Management somehow impressed the then District Basic Education Officer to accord certain benefits to the teachers, who were appointed by the Management at its own, but after exchange of affidavits and latest instructions received, such an accommodation, when examined, the situation persuades this Court to form a considered opinion that State is under no

liability to release any benefits to the petitioners.

9. Insofar as the Government Order dated 31.01.2013 is concerned, it is well settled that all Government Orders are prospective in nature and unless retrospective effect is given to them. Further, the said Government Order was issued, the petitioners were working in the Institutions at the strength of interim order granted by this Court. Moreover, with regard to Institutions where posts are not sanctioned, even the said Government Order speaks that so long as such employees are not adjusted in the Institution, no appointment shall be made against any posts falling vacant in the Institution.

10. In the considered opinion of this Court, even the Government Order dated 31.01.2013 is of no help to the petitioners as it is not a case of adjustment or fresh appointment or otherwise and the Court has to examine only the fact as to whether merely because at the strength of interim order, the petitioners have been paid certain salary, whether any additional direction can be issued to them.

11. In view of above, no direction for making payment of any arrears of salary or other benefits can be issued to the petitioners.

12. The writ petition is **dismissed**, however with the observation that any amount paid to the petitioners at the strength of interim order shall not be recovered from them, but they shall not be entitled for any other further relief in relation to their services.

Order Date :- 16.11.2023

Sazia