

Court No. - 10

Case :- WRIT - A No. - 8141 of 2002

Petitioner :- Divakar Shukla

Respondent :- Zila Basic Shiksha Adhikari Maharajganj And Others

Counsel for Petitioner :- R.S. Mishra, Arun Kumar, Somesh Khare

Counsel for Respondent :- C.S.C., B.P. Singh, S.C., S.M. Tripathi, Sher Ali

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Somesh Khare, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Narendra Kumar Chaubey, learned counsel for the Committee of Management.
2. Having heard the learned counsel for the parties but in absence of Committee of Management, this Court passed following order on 24.07.2023:-

"1. Considering the stand taken in the counter affidavit, this Court before proceeding further wants to know about the stand of the Committee of Management of the institution inasmuch as the issue involved in the present case as to whether the appointment of the petitioner having been made prior to 13.2.1978 before the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment And Conditions of Service of Teachers) Rules, 1978 had come into force, there would be a deemed approval to the appointment of the petitioner.

2. Although, an inquiry report is also on record, which shows that appointments were made in the institution without creation of post, submission of Shri Somesh Khare, learned counsel for the petitioner, is that the said inquiry has nothing to do with the petitioner as it was in relation to those teachers, who were appointed subsequent to 1978 and there being an approval to the petitioner's appointment and regularization with effect from 13.6.1990, he cannot be denied salary, which according to him, has not been paid since 2001.

3. Learned Standing Counsel has also raised dispute that on the date when the petitioner was appointed, he was not having intermediate qualification.

4. Issue notice to respondent No.3.

5. Steps be taken within a week. In addition to normal mode of service, learned counsel for the petitioner shall also personally serve the respondent No.3 by dasti mode and summons to that effect shall be handed over to learned counsel for the petitioner by the office within one week itself.

6. List this case on 24.8.2023.

7. In the meantime, Committee of Management shall file detailed counter affidavit."

3. The Committee of Management has put in appearance through learned counsel and has filed counter affidavit which supports the case of the petitioner with respect to his appointment and approval.

4. The petitioner's case is that while U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 came into force in February-March, 1978, the appointment made on the post of Assistant Teacher would be governed by the Director of Education (Basic), U.P., Allahabad's Patrank dated 12.03.1985 annexed as Annexure R.A.1 to the rejoinder affidavit. Reliance has been placed upon Clause 12 of the said Patrank, which reads as follows:-

"12. अनुलग्नक में उल्लिखित विद्यालयों में उत्तर प्रदेश मान्यता प्राप्त बेसिक स्कूल जूनियर हाई स्कूल अध्यापकों की भर्ती और सेवा की नियमावली 1978 के प्रतिपादित होने से पूर्व नियुक्त अध्यापकों को स्वतः ही अनुमोदित मान लिया गया है तथा सेवा नियमावली 1978 के पश्चात नियुक्त अध्यापकों को अनुमोदन सेवा नियमावली में उल्लिखित प्रक्रिया अपनाये जाने के उपरान्त ही प्रदान किया जाये।"

5. The submission of Sri Khare is that the petitioner was appointed in the institution on 20.12.1977 and he joined the post on 01.01.1978 while he had passed High School and Class-XI examination but was also studying in Class XII and also cleared the same in March-April, 1978 and certificate was issued in May, 1978. According to Sri Khare, there being no specified qualification for Assistant Teachers prior to the promulgation of 1978 Rules, as per the Patrank dated 12.03.1985, there would be deemed approval to the appointments made prior to February-March, 1978 and, therefore, the petitioner's appointment would be deemed to have been approved.

6. He has placed reliance upon the appointment letter dated 20.12.1977, joining letter, letter dated 13.06.1990 issued by the District Basic Education Officer, Gorakhpur whereby the regularization of petitioner's services was approved observing that he was appointed prior to Rules of 1978 came into force, the certificates granting exemption from training and letter dated 24.06.1996 issued by the District Basic Education Officer, Maharajganj to the Manager of the Institution stating that since the petitioner is continuously working as Assistant Teacher with effect from 01.01.1978 but his salary has been obstructed, in the event of non payment of salary, the responsibility would lie upon the management. Certain other documents have also been referred to demonstrate that in every Government record, the status of the services of the petitioner as regularized and approved was recognized by the respondents, though salary was paid to the petitioner upto 2001, but without passing any order, salary was stopped and, therefore, the present writ petition has been filed.

7. In this case, an interim order was passed on 22.02.2002 directing the respondents to ensure payment of salary to the petitioner or show cause by filing counter affidavit.

8. A counter affidavit has been filed by the State-respondents and the main defence taken therein is that Intermediate being essential qualification for the post of Assistant Teacher and the petitioner having passed Intermediate in 1978, was not qualified to be appointed as an Assistant Teacher in December, 1977 or in January, 1978. Further stand has been taken that even prior to the Rules of 1978, provisions of U.P. Basic Education Act, 1972 and U.P. Basic Education Staff Rules, 1973 were in force and, hence, it cannot be said that there was no law prescribing qualification for the post of Assistant Teacher. It has additionally been stated in the counter affidavit that letter No.1335

dated 13.06.1990 was never issued from the office of Basic Education Officer, Maharajganj and it has been vaguely observed that the documents relied upon by the petitioner are forged, fabricated and concocted because the documents are not available in the records of the office of the Basic Education Officer.

9. From perusal of the rejoinder affidavit, I find that the contents of paragraphs no.6 and 7 of the counter affidavit have not been suitably replied to.

10. In view of the above, the Court proceeds to deal with the material available on record.

11. The first dispute raised by the respondents is with regard to the essential qualifications for the post of Assistant Teacher at the time of petitioner's appointment.

12. Though, there is no dispute that under the Rules of 1978, Intermediate is the essential qualification, reliance placed by the learned Standing Counsel on the provisions of U.P. Basic Education Act, 1972 and U.P. Basic Education Staff Rules, 1973 appears to be misplaced. The Act of 1972 does not contain any provision prescribing essential qualification for the appointment of Assistant Teacher. Similar is the position in Rules, 1973 which, in fact, relate to disciplinary proceedings against the concerned staff.

13. There being nothing in relation to the essential qualification in the year 1977 or prior to February-March, 1978 and in view of the Patrank dated 12.03.1985 by which the Director of Education (Basic) attached deemed approval to the services of those Assistant Teachers who had been appointed prior to promulgation of Rules of 1978, this Court is not in a position to accept the submission of the State that the petitioner lacked essential qualification at the time of his appointment.

14. Even by any stretch of imagination it is assumed that since immediately after appointment of petitioner, Rules prescribing Intermediate as essential qualification were promulgated, in the facts of the case in hand I find that when the Rules had come into force in February-March 1978, the petitioner had appeared in Intermediate Examination and passed the same and certificate was issued in May, 1978. There being difference of only 2-3 months in relation to acquisition of alleged essential qualification even as per the Rules, 1978 would not be fatal to the claim of the petitioner to get salary in view of Patrank of 12.03.1985, subsequent approval granted by the Basic Education Officer, regularized status of the services of the petitioner as recognized by the respondents themselves and continuous payment of salary for many years after the date of appointment. I do not find any justifiable reason as to why the salary was stopped after 2001 if the stand taken in the counter affidavit is the reason behind stoppage of salary.

15. In so far as alleged fabrication of documents is concerned, I have carefully examined the contents of counter affidavit in which it has been stated that the documents relied upon by the petitioner are totally forged, fabricated and concocted as documents are not available in the record of the office of Basic Education officer. The Court expresses its surprise over the stand taken in the counter affidavit as to when the record allegedly is not available in the office of Basic Education Officer as to how a conclusion with regard to alleged fabrication or forgery has been drawn. It appears that without annexing any sufficient material, just to deny the claim of the petitioner, a vague stand regarding fabrication has been taken.

16. Regarding letter No.1335 dated 13.06.1990, reliance has been placed upon Annexure No.C.A.2 to the counter affidavit which is a

copy of relevant extract of some dispatch register. The dispatch register shows that certain documents were dispatched from the office on 12.06.1990 and 14.06.1990 and there is no entry with regard to any dispatch made on 13.06.1990. I have perused the pleadings contained with reference to Annexure No.C.A.2 which shows that the Patrank No.1335 has been issued with regard to some other institution and not to the institution of the petitioner. I do not find anything from Annexure No.C.A.2 in this regard as there is no reference of letter No.1335 and it is not found that letter bearing the said number was dispatched to some other institution. Even otherwise, the date contained on any letter may be different from the date of its dispatch as a document can be retained by the office even after putting a date thereon and any subsequent dispatch would not nullify the genuineness of the document. The counter affidavit does not inspire any confidence in the Court with respect to allegation of forgery as there is voluminous evidence annexed to the writ petition regarding positive status of services of the petitioner.

17. Learned counsel for the petitioner, in addition to aforesaid, has also relied upon the interim order dated 11.01.2002 passed by this Court in Writ Petition No.787 of 2002 (Ram Samujh Yadav Vs. Zila Basic Shiksha Adhikar, Maharajganj and others) in which the date of appointment of Ram Samujh Yadav as 01.07.1977 was taken into consideration and an interim order was passed regarding continuance in service and payment of salary.

18. It is contended that the Basic Education officer passed an order dated 20.03.1996 in favour of Ram Samujh Yadav and the said order annexed as Annexure No.C.A.5 to the counter affidavit filed by the Committee of Management clearly shows that Ram Samujh Yadav having been appointed prior to Rules, 1978, deemed regularization and

approval was rightly accorded and even in respect of qualification, it was clearly decided by the Basic Education Officer that prior to promulgation of 1978 Rules, High School being the essential qualification, Ram Samujh Yadav was entitled to remain posted as Assistant Teacher and also receive salary.

19. Considering the entire facts and circumstances of the case, I find that there is no justifiable reason denying payment of salary to the petitioner after 2001. Regarding continuance of petitioner in service, Committee of Management has come up with a stand that he continued to serve the institution till the date of his superannuation which he attained in 2017.

20. In view of the above, the writ petition succeeds and is **allowed**.

21. A writ of **mandamus** is issued to the respondents no.1, 2 and 5 to ensure payment of salary along with its arrears to the petitioner with effect from the date it was stopped till the age of superannuation and also compute and release the post retiral benefits admissible to the services of the petitioner on the basis of last drawn salary which the petitioner would have been entitled to, as per this order.

Order Date :- 18.10.2023

AKShukla/-