

Court No. - 21

Case :- WRIT - A No. - 10603 of 2019

Petitioner :- Vakil Chand Jain

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- J.P. Singh

Counsel for Respondent :- C.S.C.

Hon'ble Donadi Ramesh,J.

1. Heard Sri J.P. Singh, learned counsel for the petitioner and Sri Saurabh, learned Standing Counsel for the State-respondents.
2. The instant writ petition has been filed questioning the impugned order dated 20.06.2019 passed by the District Inspector of Schools, Baghpat, and for further direction to the District Inspector of Schools, Baghpat to ensure refund of the deducted amount of Rs.1,57,772/- to the petitioner within specified time.
3. The petitioner being senior most lecturer of the Digambar Jain Inter College, Baraut, Baghpat was considered for the post of officiating Principal by the Committee of Management. He was appointed as officiating Principal under the Management's resolution dated 29.06.2015 as Sri Panna Lal Sharma was retiring on 30.06.2015. Digambar Jain Inter College, Baraut, Baghpat is an aided and recognized college and the said college was declared minority institution in 2004. Since the college was admitted to be declared as minority institution, the provisions of the U.P. Intermediate Education Act, 1921 and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 are applicable.
4. Consequent to the resolution passed on 29.06.2015, the District Inspector of Schools, Baghpat attested the signature of the petitioner as officiating Principal of the college on 04.07.2015. In view of same, the

petitioner was entitled to the salary of the officiating Principal but he was not paid the salary. Left with no option, the petitioner filed Writ-A No.12727 of 2018 before this Court, for a direction to pass appropriate orders in respect of the claim of the petitioner for payment of salary. In view of the settled legal proposition, the writ petition was disposed of on 25.05.2018 permitting the petitioner to approach the District Inspector of Schools, Baghpat in respect of his grievance. In case such a claim is raised, the same shall be examined by the Authority concerned, after affording an opportunity of hearing to the Committee of Management and the petitioner, in accordance with law. Accordingly, the petitioner has made application on 07.06.2018. Thereafter, he made a reminder to the the District Inspector of Schools, Baghpat on 03.08.2018.

5. After hearing both the petitioner and management, the District Inspector of Schools, Baghpat passed a detailed order on 28.08.2018 sanctioning pay scale of the Principal to the petitioner w.e.f. 01.07.2015 till appointment of permanent Principal or retirement of the petitioner whichever is earlier. Accordingly, the petitioner has been paid pay scale of the Principal and continued to be paid till February, 2019.

6. That being the situation, surprisingly, for the salary bills of the month of March and April, 2019, the college has passed an order on 13.05.2019 showing the deduction of Rs.1,57,762/- from the salary account of the petitioner at the behest of the District Inspector of Schools, Baghpat without giving any opportunity of hearing to the petitioner. Subsequently, the petitioner has approached the District Inspector of Schools, Baghpat through various representation and requested to revisit the issue and to release the amount which was deducted by the Authority concerned from his salary. On representation made by the petitioner, the District Inspector of Schools, Baghpat has passed an order on 20.06.2019 wherein he cancelled the previous order sanctioning the payment of salary for the post of officiating Principal.

7. In reply to the said averments, counter affidavit has been filed by Sri Brijendra Kumar, the District Inspector of Schools, Baghpat on 23.09.2019 wherein it has been stated that after making payment to the petitioner for the post of officiating Principal, office of audit department has raised an objection that as the Institution is minority institution, hence the petitioner cannot be paid salary on the pay scale of the officiating Principal. At the time of appointment of Sri Panna Lal Sharma as officiating Principal to the said Institution, he was given pay scale of the post of the officiating Principal on 16.08.2002 because the said Institution was not declared as minority Institution at that point of time. Hence the provisions of the U.P. Secondary Education Services Selection Board Rules, 1998 were not applicable. Hence, the pay scale given to the petitioner on 28.08.2018 has been cancelled on 20.06.2019 as the the U.P. Secondary Education Services Selection Board Rules, 1998 are not applicable to the minority Institution. Hence the impugned order has been rightly passed cancelling the pay scale which was granted to the petitioner on 28.08.2018 declaring the said order contrary to the provisions of the Rules, 1998.

8. Based on the above pleadings, learned counsel for the petitioner has assailed the impugned order on three grounds; (i) the Authority has not followed the principles of natural justice before passing the impugned order. Initially, based on the directions issued by this Court in Writ-A No.12727 of 2018 after providing an opportunity of hearing to the petitioner as well as the Institution, the District Inspector of Schools, Baghpat has passed an order on 28.08.2018 allowing pay scale of the Principal to the petitioner. Accordingly, arrears were also paid from 01.07.2015. While granting the said pay scale w.e.f. 01.07.2015, the District Inspector of Schools, Baghpat has considered the representation made by the petitioner as well as records of the Institution and passed a detailed order on 28.08.2018 but surprisingly, while passing the impugned order dated 20.06.2019, no opportunity of hearing was extended to the

petitioner or the Committee of Management, hence the impugned order is said to be passed in violation of the principles of natural justice and, therefore, it is liable to be set aside; (ii) The authority has no power or jurisdiction to review the order dated 28.08.2018. After considering the orders passed by this Court in Writ-A No.12727 of 2018 and going through the records of the Institution, the District Inspector of Schools, Baghpat has rightly passed a detailed order on 28.08.2018. Once the order has been passed by the said Authority, it has no power to review its own order. At the most, if any erroneous order is passed by the competent Authority, it has to be reviewed by the Director of the Education or the State represented through its Secretary. Once the order dated 28.08.2018 passed by the District Inspector of Schools, Baghpat lacks jurisdiction to pass the impugned order; (iii) finally, learned counsel for the petitioner has submitted that the impugned order is contrary to the law laid down by this Court in various judgments, more specifically the case reported in **[2014 (8) ADJ 617 Full Bench], Dr. Jay Prakash Narayan Singh Vs. State of U.P.**

9. To support his argument, learned counsel for the petitioner has placed reliance on the decision of this Court in the case of **Dhaneshwar Singh Chauhan Vs. District Inspector of Schools, Ballia** reported in **1980 UPLBEC, 287**, paragraph 2 whereof is extracted herein below:

“2. The petitioner is a teacher in aided and recognized institution and the liability for the prejoint his salary is on the State Government under the U.P. High School and Intermediate College (Payment of Salary of Teacher and other Employees) Act, 1971. The salary of a teacher in aided and recognized institution is regulated by the regulation framed under the U.P. Intermediate Education Act and the order issued by the State Government from time to time. Regulation 46 in Chapter III lays down that employees of an aided and recognized institution shall be given the pay scale of sanctioned by the State Government from time to time. The State Government has prescribed the scales of pay for teachers. The State Government issued an order on 18th January 1974 accepting the recommendations of the U.P. Pay Commission prescribing scales of pay for teachers. Paragraph 5 (2) of the Government order lays down that a teacher while officiating on the post

carrying higher grade is entitled to officiating salary in the higher grade and it further prescribed procedure for determining the salary of officiating teacher in the higher grade. A copy of the Government order was before us by the petitioner. Respondents do not deny the petitioner's averment that the State Government issued orders sanctioning officiating pay to a teacher in the higher grade. The petitioner's claim for salary in Principal's grade was sanctioned by the District Inspector of Schools in pursuance of the aforesaid Government order. Respondents have failed to show any subsequent Government order or rule superceding the direction contained in Government order dated 24-1-74. The respondents have further failed to place any material before the court showing that the petitioner was not entitled to the salary in the Principal's grade while officiating on the post of Principal. The order of the District Inspector of Schools dated 31-8-77 is therefore not sustainable in law."

10. Learned counsel for the petitioner has further placed reliance on the decision of this Court in the case of **Narbdeshwar Misra Vs. District Inspector of Schools, Deoria and others, 1982 UPLBEC 0 171**, relevant paragraph nos.4, 5, 6 and 8 are extracted herein below:

"4. Having heard learned counsel for the parties, we are clearly of the opinion that the contention of the petitioner is well founded. Regulation 2 of Chapter II of the aforesaid Regulations reads as follows:

"2 (1) The posts of the Head of Institution shall, except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee under Sub-section (1) of section 16-F or, as the case may be, under Sub section (1) of Section 16-FF.

Provided that in the case of any instruction not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period no exceeding six months, or by death, retirement or suspension of any incumbent occurring during an educational session in the pest of the Head of Instruction shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in institution."

5. The next relevant provision is clause (3) of Regulation No.2 of Chapter II which reads thus:-

"Where the temporary vacancy in the past of the head of institution is for a period not exceeding thirty days, the senior most teacher in the highest grade may be allowed to work as acting head or institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher."

6. *A perusal of the proviso to Regulation No.2 (1) shows that the petitioner's case was squarely covered by it. The petitioner was appointed in the vacancy caused by the retirement of Banshidhar Dixit, to officiate as the Principal of the College. The petitioner was the senior most teacher. He was, therefore, lawfully appointed as the officiating Principal contemplated by the proviso.*

8. *The same conclusion also flows from clause (3) of Regulation No.2 quoted above. The provision that where the temporary vacancy in the post of the Head of the Institution is for a period exceeding thirty days, the senior most teacher may be allowed to work as acting head of the Institution but that he would not be entitled to pay in a scale higher than that in which he was drawing his salary as a teacher clearly suggests that where the vacancy in the post of Principal lasts more than 80 days, the teacher appointed to officiate as the Principal under the aforesaid proviso would be entitled to the salary admissible to a Principal."*

11. Learned counsel for the petitioner has submitted that the aforesaid decision was reconsidered by the Full Bench of this Court in the case of **Dr. Jay Prakash Narayan Singh Vs. State of U.P. and others [2014 (8) ADJ 617 (FB)]**, paragraph nos. 45, 46 and 57 are extracted herein below:

45. *We may again note that several decisions have taken the view that a person who has officiated on the post of a principal of a secondary school would be entitled to the salary of a principal. These decisions were in:*

(i) *Dhaneshwar Singh Chauhan v. District Inspector of Schools (supra);*

(ii) *Narbdeshwar Misra v. District Inspector of Schools (supra); and*

(iii) *Soloman Morar Jha v. District Inspector of Schools (supra)*

46. *We have noted the four propositions which emerge from the judgment of the Division Bench in Daljeet Singh (supra) which form the basis of the decision to hold that an officiating principal is not entitled to the salary payable to a principal. In our respectful view, each of the four propositions suffers from a legal error.*

57. *We, accordingly, dispose of the reference in the following terms:*

(i) *The decision in Daljeet Singh (supra) does not lay down the correct proposition in law; and*

(ii) An officiating principal appointed under the Statutes of the University, which are pari materia to the provisions of Statute 10-B of the First Statutes would be entitled to claim the payment of salary in the regular grade of principal for the period during which he or she has worked until a regularly selected candidate has been appointed and has assumed charge of the office.”

12. Learned counsel for the petitioner has submitted that the issue was already decided by this Court and the same was confirmed by the Full Bench of this Court holding the claim for the payment of salary in the regular grade of principal for the period during which he or she has worked until a regularly selected candidate has been appointed. In view of the same, the petitioner is entitled for payment of salary to the period he worked as officiating Principal of the Institution.

13. Finally, in reply to the averments made in the counter affidavit, learned counsel for the petitioner has submitted that the said issue was decided by this Court in the case of **Soloman Morar Jha Vs. District Inspector of Schools, Deoria and others [1985 UPLBEC 113]**, holding that though the provisions of Regulation 2 of Chapter II of the Regulations does not prohibit the payment of salary to a lecturer in the Principal's grade, for the period during which he officiates on that post, but the view taken by the District Inspector of Schools, Baghpat is unjustified.

14. Learned counsel for the petitioner has extended his argument that the impugned order is not only violation of the principles of natural justice but also it is contrary to the observations made by this Court in the above referred judgments, more particularly law laid down by the Full Bench of this Court in the case of Dr. Jay Prakash Narayan Singh (supra) and the law laid down by this Court in the case of Soloman Morar Jha (supra). Therefore, the impugned order dated 20.06.2019 may be set aside with direction to the District Inspector of Schools, Baghpat to pay the deducted amount of Rs.1,57,772/- to the petitioner.

15. Considering the submission of the learned counsel for the petitioner, this Court has passed the following order on 18.07.2019 and the said interim direction was extended till today, the relevant paragraphs are extracted hereinbelow:

*“...Learned counsel for the petitioner has relied upon a Division Bench judgment of this Court in the case of **Soloman Morar Jha Vs. District Inspector of Schools, Deoria and others, reported in 1985 UPLBEC 113** in which it has been held that even the Institution is a Minority Institution yet the provisions of Chapter II, Regulations 2(1) of the Regulations framed under the U.P. Intermediate Education Act would not prohibit the salary of Principal to an Officiating Principal.*

Learned Standing Counsel represents respondent nos. 1,2,3 and 4.

At this stage, no notice is required to be issued to the Committee of Management.

Let a counter affidavit be filed for which learned Standing Counsel prays for and is allowed three weeks' time.

List thereafter.

Till the next date of listing, as an interim measure it is directed that in case the petitioner is still Officiating as Principal of the Institution and there is no other legal impediment, he shall be entitled for the salary that of the Principal. It is further directed that the payment of salary to the petitioner as Principal would be subject to the final decision of this writ petition.”

16. In reply to the said contention, learned Standing Counsel for the State-respondents has submitted that as far as the facts are concerned, it is not in dispute that the petitioner has worked an officiating Principal of the Institution. Upon perusal of the records of the Institution as well as the representation of the petitioner, the District Inspector of Schools, Baghpat granted pay scale of the Principal w.e.f. 01.07.2015. Accordingly, arrears for amount of Rs.1,17,984/- was also granted to him. But based on the objection raised by the Audit Department, the District Inspector of Schools, Baghpat has reviewed the order passed by it based on Rules, because the Institution has been declared as minority Institution, the provisions of U.P. Secondary Education Services Selection Board Rules, 1998 are not applicable to the said Institution. Once the benefit which was

granted to the petitioner by order dated 28.08.2018 by the District Inspector of Schools, Baghpat, if the said orders are contrary to the Rules, the said orders can be withdrawn by the very same authority. Based on the provisions of the Act, the District Inspector of Schools, Baghpat has power to review its own order whether it is erroneous or illegal. Accordingly, the impugned order has been passed by the District Inspector of Schools, Baghpat in accordance with law. Hence the writ petition may be dismissed.

17. Considering the submissions made by both the counsels as well as perusal of the record as issue involved in the present case is that the petitioner was considered to be appointed on the post of Principal by the Committee of Management on 29.06.2015, the same was consented by the District Inspector of Schools, Baghpat on 04.07.2015. The petitioner is entitled for payment of salary from the said date and the same was not granted to him. Therefore, the petitioner had approached this Court earlier and as directed by this Court, his case was considered and he was granted pay scale of the post of Principal w.e.f. 01.07.2015 by the District Inspector of Schools, Baghpat vide order dated 28.08.2018.

18. It is also not in dispute that while granting the said benefit to the petitioner, the District Inspector of Schools, Baghpat has given opportunity of hearing and by verifying the record of the Institution. While passing the impugned order dated 20.06.2019, no such opportunity was given to the petitioner and there is no denial in the counter affidavit filed by the State-respondents. Apart from the said fact, it is also not in dispute that the said issue was considered by this Court way back in 1979 in the case of Dhaneshwar Singh Chauhan (supra). In 1985, the core issue with regard to the applicability of the Rules to the minority Institution and entitlement of the person who officiates to the post of the Principal in the minority Institution was also decided in the case of Soloman Morar Jha (supra). All the judgments were taken into account by the Full Bench of this Court in the case of Dr. Jay Prakash Narayan Singh (supra) wherein

it has been categorically held that the officiating Principal is entitled for payment of salary in the Principal's grade, for the period during which he / she worked.

19. In view of the aforesaid law laid down by the Full Bench of this Court and also the principles laid down in the case of Soloman Morar Jha (supra), the impugned order is not only contrary to the principles of natural justice but also the law declared by this Court. Hence the impugned order dated 20.06.2019 passed by the District Inspector of Schools, Baghpat is set aside, with direction to the District Inspector of Schools, Baghpat, to release the deducted salary of the petitioner forthwith.

20. Accordingly, the instant writ petition is disposed of.

(Donadi Ramesh, J.)

Order Date :- 28.11.2023

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