

Court No. - 33

Case :- WRIT - A No. - 10827 of 2015

Petitioner :- Shyam Narain Dixit

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

Counsel for Petitioner :- Rajesh Kumar Pal,Dharmendra Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

1. Parties have exchanged affidavits.
2. Admit.
3. Heard forthwith.
4. Hear Mr. Dharmendra Kumar Pandey, learned counsel for the petitioner and Mr. Dinesh Kumar Singh, learned Additional Chief Standing Counsel appearing for all the respondents.
5. This writ petition has been filed praying for a *mandamus* to be issued to command the respondents to pay arrears of the petitioner's salary on account of award of selection grade and promotion pay scale.
6. The petitioner was appointed as an Assistant Teacher, LT-Grade at Sri Kashiraj Mahavidyalaya Inter College, Aurai, District Varanasi on 21.11.1981. The petitioner was promoted to the post of a Lecturer pursuant to an order passed by the District Inspector of Schools. The said vacancy was notified to the Commission for the purpose of being filled up by direct recruitment. The petitioner filed Civil Misc. Writ Petition No. 10886 of 1984, wherein an interim order was passed on 12.11.1984, followed by another interim order on 12.02.1985, directing that no one will disturb the petitioner's functioning as a Lecturer in Sanskrit on *ad hoc* basis and he would receive his salary. This writ petition came to be heard and allowed by a judgment and order of this Court dated 23.11.2006 in terms of the following orders:

"In view of the aforesaid facts, the writ petition is allowed and the respondents are directed not to interfere

with the working of the petitioner as Lecturer in Sanskrit in the institution in question. Consequently, the advertisement issued by the Commission dated 10th December, 1983 for direct recruitment on the post in question is also quashed. The petitioner shall be treated as a duly promoted Lecturer on the post in question and is entitled for all the consequential benefits."

(Emphasis by Court)

7. The petitioner, in due course, retired from service on 30.06.2008. While still in service, the petitioner claimed that he was entitled to arrears on account of difference of salary for the period 04.12.1991 to 31.12.2003 and promotion pay scale with effect from 31.01.2004 to 30.06.2008, which have not been paid to him. The sum of money on account of the difference is asserted to be a sum of Rs. 1,71,610/-. There appears to be some inaccuracy about the period during which the petitioner would be entitled to salary in the selection grade and promotion pay scale. But what is not in dispute is that the petitioner came forward with a claim of that kind, and, if the petitioner were a regularly appointed Lecturer, he would be entitled to the said sum of money.

8. A counter affidavit has been filed on behalf of respondent nos. 1, 2, 3 and 4, that is to say, all the State-respondents. It is an affidavit filed by Nand Lal Gupta, the then District Inspector of Schools, Bhadohi. The affidavit is one dated 20.05.2022. In paragraph no. 5 of the counter affidavit, it is averred that fifteen posts of Lecturer were sanctioned for the Institution and the dispute about these has been settled. It is the respondent's case that earlier, the post of a Lecturer in Sanskrit was deemed to be one under the direct recruitment quota and requisition for the purpose was issued to the U.P. Secondary Education Service Selection Recruitment Board, Allahabad (now Prayagraj). However, the petitioner, being promoted to the said post on an *ad hoc* basis, challenged initiation of the process of direct recruitment by instituting Civil Misc. Writ Petition No. 10886 of 1984 before this Court.

9. It is admitted to the respondents that an interim order was passed in the said writ petition and it was finally allowed *vide* judgment and order dated 23.11.2006. It is also acknowledged that pursuant to the said judgment, and, may be, the earlier interim orders passed, the advertisement and requisition for direct recruitment was cancelled. It is also averred in paragraph no. 5 that the petitioner was treated as a duly promoted lecturer. There is a further averment in paragraph no. 5 that the petitioner was sanctioned his selection grade and promotion pay scale on 21.05.2007 in compliance with judgment order dated 23.11.2006 passed by this Court in Civil Misc. Writ petition No. 10886 of 1984. Thereafter, a bill for arrears of salary due to the petitioner on account of the difference due to award of the selection grade and promotion pay-scale was presented before the State-Authorities by the College. It is also acknowledged that no action was taken by the respondents, that is to say, the respondent-Authorities regarding payment of arrears. The petitioner filed a writ petition being Writ-A No. 37840 of 2012, which this Court disposed of with a direction to the District Inspector of Schools to decide the petitioner's representation within three months.

10. It is indeed surprising that after all these admissions carried in paragraph no. 5 of the counter affidavit, there is a somersault in paragraph no. 6. It is averred in paragraph no. 6 that while deciding the petitioner's representation in compliance with this Court's order dated 06.08.2012, it was found that services of the petitioner were *ad hoc* and he was working on the post of Lecturer in Sanskrit on *ad hoc* basis. It is also averred that the petitioner was receiving salary in the selection grade-promotion pay-scale without being regularized on the post of lecturer. It is next said that a direction has been issued by the Director, Secondary Education on 17.01.2011 to all the District Inspector of Schools of the State that selection grade and promotion pay scale can be provided to the teachers after regularization of their

services. Since the services of the petitioner were not regularized and he retired on 30.06.2008, he was not entitled to arrears on account of salary in the selection grade or promotion pay scale. It is also averred in paragraph no. 7 that the Principal of the College, through a letter dated 17.11.2012, had informed, presumably the respondent-Authorities that the proposal to promote the petitioner from the post of an Assistant Teacher to a Lecturer in Sanskrit was never sent to the Regional Level Committee by the Committee of Management nor any approval sought in that regard. It is also averred that Civil Misc. Writ Petition No. 10886 of 1984 that was filed by the petitioner and decided on 23.11.2006 led the then District Inspector of Schools to act in compliance and grant selection grade and promotion pay-scale to the petitioner. In fact, it is asserted that the said benefit regarding the award of selection grade and promotion pay scale can be given to a Lecturer after regularization.

11. There is a further stand in paragraph no. 8 by the District Inspector of Schools that an order dated 19.11.2012 was passed by the then District Inspector of Schools, Bhadohi saying that the petitioner will not be paid arrears of salary on the basis of earlier order passed by the District Inspector of Schools regarding sanction of promotion pay scale etc., unless services of the petitioner are regularized.

12. Upon hearing the learned Counsel for the parties, this Court finds that the stand taken by the respondents, including the District Inspector of Schools, is manifestly illegal and the petitioner can never be regarded as a Lecturer, who was working on an *ad hoc* basis. The reason is that the petitioner has been declared to be a duly promoted Lecturer on the post held by him and entitled to all consequential benefits by a *mandamus* issued by this Court on 23.11.2006 in Civil Misc. Writ Petition No. 10886 of 1984.

13. It is not the respondents' case that the *mandamus* issued by this Court on 23.11.2006 has been set aside on appeal preferred by the respondent-Authorities or the Management or anyone else. The judgment and order dated 23.11.2006 has become final *inter partes*, and, no party, whether the State-Authorities, the Management or the petitioner have a right to ask for construing their rights contrary to the *mandamus* issued by this Court. Any decision or order passed contrary to the *mandamus* dated 23.11.2006 by any Authority, even the State Government, is a nullity; it is void. The rights of the petitioner would, therefore, be governed by the *mandamus* issued on 23.11.2006 that is admittedly final between parties. This being the position of the rights of parties, the petitioner cannot be held to be a Lecturer in Sanskrit, who was not regularized in service or functioning on an *ad hoc* tenure. He must be held to be a duly promoted lecturer as ordered by us *vide* judgment and order dated 23.11.2006 passed in Civil Misc. Writ Petition No. 10886 of 1984. He is, therefore, entitled to the benefit of selection grade as well as promotion pay scale. In consequence, he is also entitled to receive all arrears reckoned on that basis. The respondent-Authorities are ordered not to question the status of the petitioner as a regularly promoted Lecturer and to faithfully comply with the *mandamus* dated 23.11.2006, earlier issued.

14. In the result, the writ petition succeeds and is **allowed**. A *mandamus* is issued to the respondents to forthwith pay arrears due to the petitioner on account of difference as a result of the grant of selection grade and promotion pay scale admissible to him, treating him to be a regularly appointed Lecturer. A report regarding compliance with this order shall be submitted by the District Inspector of Schools, Bhadohi before the Registrar General, within three weeks. The matter shall be placed before the Registrar General

for orders on compliance on **23.11.2023**, and, on that date, the Registrar General will make a report on the order sheets.

15. Let this order be communicated to the District Inspector of Schools, Bhadohi by the Registrar (Compliance) **within 48 hours**.

Order Date :- 2.11.2023

Deepak