

Court No. - 35

Case :- WRIT - A No. - 13688 of 2023

Petitioner :- Vijay Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Seemant Singh, learned counsel for the writ petitioner and Sri Saurabh, learned Standing Counsel, who appears for Respondents 1, 2 and 3.

The case of the writ petitioner is that pursuant to the selections conducted for the post of Assistant Teacher in subject Mathematics in Upper Primary School, he was accorded appointment on 21.09.2015 by the District Basic Education Officer, and he was permitted to join in Upper Primary School, Ramnagra, Pachpedwa, District Balrampur on 22.09.2015. Thereafter a selection is stated to have been conducted pursuant to Advertisement No.1 of 2013 for appointment as Assistant Teacher (Trained Graduate), consequently, a communication was issued by the District Inspector of Schools, Saharanpur for placement of the writ petitioner in the fourth respondent institution, J.V. Inter College, Rajupur, Saharanpur. The writ petitioner was assigned in the pay-scale of Rs.9400-34,800 and in the Grade Pay of Rs.44,900.

Since the pay, which was accorded to the writ petitioner pursuant to the selection and the appointment on the post of Assistant Teacher (Trained Graduate Grade) in subject Mathematics in J.V. Inter College, Rajupur, Saharanpur was less than the pay-scale which the writ petitioner claims to have enjoyed as Assistant Teacher in Mathematics in Upper Primary School, Ramnagra, Pachpedwa, District Balrampur being Rs.9300-34800, Grade Pay 4600, so the writ petitioner espoused his cause for payment of the benefits relatable to the pay-scale 9300-34800, Grade pay 4600 while according pay-protection. The claim of the writ petitioner for according the said benefit came to be rejected by the third respondent, District Inspector of Schools, by virtue of the order dated 20.06.2023.

Questioning the said order, the writ petitioner had filed the present writ petition in so far as it denied the pay protection, pay-fixation in terms of the pay-scale of Rs.52000, Grade pay 4600, which he

was enjoying on the post of Assistant Teacher in Mathematics, in Upper Primary School, Ramnagara, Pachpedwa, Balrampur.

This court entertained the writ petition on 28.08.2023 and passed the following orders:-

"The contention of the learned counsel for the writ petitioner is that there is a vast anomaly in the payment of the monetary benefits to the writ petitioner particularly in view of the fact that when the writ petitioner was posted as Assistant Teacher (Trained Grade) in Upper Primary School in Ramnagra Pachpedwa, District Balrampur, he joined the Pay Scale of Rs. 52,000/- Grade Pay 4,600/- reference whereof has been made in page 45, however, consequent to his selection and appointment as an Assistant Teacher in Intermediate College, J.V. Inter College Rajupur, District Shaharanpur his pay scale is 9,400-34,800-44,900 which is below the same and when the writ petitioner staked his claim for pay protection then it has been turned down by virtue of the order dated 20.06.2023 which is already on record at page 47 of the paper book relying upon a Government Order dated 5th February, 1999 and a clarification of the Education Direction (Madhyamic) dated 14.02.2023 without considering the import and impact of the Government Order dated 28.01.1985 which is at page 60 of the paper book for reference para 2 of the same.

Sri Shailendra Singh, learned Standing Counsel seeks time to obtain instructions.

On his request, put up this case as fresh on 11.09.2023 on which date Sri Shailendra Singh shall obtain instructions or file affidavit specifically disclosing; (a) the Government Order, if any, entitling the writ petitioner for pay protection; (b) the issue with regard to the discrepancy and the variation in the pay scale as discussed above; (c) any other provision of law which entitled the writ petitioner for the said benefits and the forum where at the writ petitioner may raise his cause."

A counter affidavit has been filed on behalf of the Respondents No. 1, 2 and 3, sworn by Associate District Inspector of Schools, District, Saharanpur, dated 24.11.2023, to which a rejoinder affidavit has been filed.

Shri Seemant Singh, learned counsel for the writ petitioner, while assailing the order dated 20.06.2023, passed by the third Respondent, District Inspector of Schools, Saharanpur, has sought to contend that firstly, the order impugned is a non-speaking and unreasoned order, as the same does not advert to the crucial fundamental issues and, by passing a non-reasoned order without considering the claim of the writ petitioner, the claim has been rejected. He submits that once in the wake of the Government Order dated 05.02.1999, the writ petitioner has been made admissible to the pensionary benefits including the services

undergone as an Assistant Teacher in Mathematics in Upper Primary School, Ramnagra, Pachpedwa, District Balrampur. Then obviously, he is entitled to be accorded pay protection. Submission is that the pay which the writ petitioner is getting as an Assistant Teacher Trained Graduate in J. V. Inter College, Rajupur, Saharanpur is lower than what he enjoyed in the earlier assignment. In order to substantiate his claim, he has sought to rely on a Government Order dated 28.01.1985 so as to contend that Clause 1(2) of the same itself provides for pay protection on the premise that the pay which a teacher was enjoying in the previous assignment should be protected and the pay should be commensurate and in the same level. Shri Seemant Singh further submits that once the payment is to be made through State Exchequer referable to both the assignments, then obviously the writ petitioner cannot be denied the pay protection.

Countering the said submission, Shri Saurabh, learned Standing Counsel submits that the Government Order dated 28.01.1985 would not come to the aid and assistance of the writ petitioner, particularly when paragraph-2 clarifies sub-para (2) of Para-1, according to which pay protection is only to be accorded in those contingencies where an earlier assignment was an Institution, which was regulated under the provisions of U.P. Intermediate Education Act, 1921. Submission is that the Government Order dated 28.01.1985 would not apply in the case of the writ petitioner, as the earlier assignment/ working of the writ petitioner was Assistant Teacher in Upper Primary School, Ramnagra, Rajupur, District Balrampur, which was not regulated or governed under the U.P. Intermediate Education Act, 1921. Additionally, it is being sought to be argued that once the said Government Order is not applicable and it restricts to certain conditions and factors, then the writ petitioner, in absence of any other Government Order enabling such benefits, it would not come to the rescue of the writ petitioner. He seeks to rely upon the decision in Special Appeal No. 253 of 2020, State of U.P. v. Dr. Raj Kamal Singh, dated 21.04.2020.

Before delving into the tenability of the arguments of the rival parties, it would be apposite to extract the Government Order dated 28.01.1985 as under:-

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प्रेषक,

सेवा में,

श्री गोविन्द बल्लभ पन्त,

शिक्षा निदेशक,

उप सचिव,

उत्तर प्रदेश, इलाहाबाद।

उत्तर प्रदेश शासन।

शिक्षा अनुभाग -8

लखनऊ: दिनांक: 28

जनवरी, 1985

विषय: राज्य के सहायिक उच्चतर माध्यमिक विद्यालयों (हाईस्कूलों तथा इण्टरमीडिएट कालेजों) में शिक्षक, प्रधानाध्यापक व प्रधानाचार्य का वेतन निर्धारण व वेतन के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या 4484/पन्द्रह-8-2004(56)/1970, दिनांक 20 सितम्बर 1973 के क्रम में तथा इस आदेश के विसंगत पूर्व आदेशों को अतिक्रमित करते हुए यह कहने का निदेश हुआ है कि राज्य के सहायता प्राप्त अशासकीय उच्चतर माध्यमिक विद्यालयों (हाईस्कूलों तथा इण्टरमीडिएट कालेजों) में सक्षम अधिकारी के अनुमोदन से नियमानुसार नियुक्त तथा कार्यरत अध्यापकों, प्रधानाध्यपको तथा प्रधानाचार्यों जिनको उत्तर प्रदेश माध्यमिक शिक्षा सेवा आयोग द्वारा समकक्ष या उच्चतर पदों पर चयन के फलस्वरूप नियुक्त किया जाय उनके वेतन का निर्धारण इस शासनादेश के जारी होने की तिथि से जिला विद्यालय निरीक्षक तथा उनसे सम्बद्ध लेखाधिकारियों द्वारा संयुक्त रूप से निम्नलिखित कार्यकारी सिद्धान्तों के आधार पर किया जाय-

(1) माध्यमिक शिक्षा सेवा आयोग द्वारा समकक्ष पद हेतु नियमानुसार चयनित उन अध्यापको, प्रधानाध्यापको तथा प्रधानाचार्यों को जो अस्थाई अथवा स्थानापन्न रूप से सक्षम अधिकारी के अनुमोदन से कार्यरत है उस पद पर नियमानुसार प्राप्त अनुमोदित वेतन

को सुरक्षित किया जायेगा और उन्हें अगली वेतन वृद्धि उसी तिथि को देय होगी जिस तिथि को वे अनुमोदित पद पर अर्जित करते हैं।

(2) माध्यमिक शिक्षा सेवा आयोग द्वारा उच्चतर पद पर नियमानुसार चयनित किसी अध्यापक/प्रधानाध्यापक के पूर्व पद पर नियमानुसार आहरित अनुमन्य वेतन के आधार पर उच्च पद के वेतनमान के प्रारम्भिक सोपान (स्टेज) पर निर्धारित किया जायेगा यदि उसका वेतन उच्च पद के वेतनमान के न्यूनतम से कम है, अन्यथा उच्च पद के वेतनमान के अगले सोपान पर निर्धारित किया जायेगा।

(3) उच्चतर पद पर चयनित/प्रोन्नत होने की दशा में उच्चतर वेतनमान के उपर्युक्त उप प्रस्तर (2) के अनुसार वेतन विधारण के पश्चात यदि किसी स्थाई पद धारक का मौलिक वेतन पूर्व पद पर वेतन वृद्धि की तिथि को उच्चतर पद पर अनुमन्य वेतन के बराबर या उससे अधिक हो जाता है, तो उस तिथि से उसका वेतन उच्चतर पद के वेतनमान में अगले सोपान पर पुनः निर्धारित किया जायेगा।

2. उपर्युक्त कार्यकारी सिद्धान्तों पर वेतन निर्धारित करते समय उक्त अधिकारियों का पूर्ण दायित्व होगा कि वे इस बात का पूरा ध्यान रखे कि अध्यापक द्वारा पूर्व में की गयी सेवा माध्यमिक शिक्षा अधिनियम, 1921 तथा अन्य शासनादेशों के अन्तर्गत की गयी नियमित सेवा हो और उसमें किसी प्रकार का व्यवधान न हो। प्रथम नियुक्ति के समय उसे नियमानुसार ही वेतन दिया गया हो। प्रथम नियुक्ति पर उच्च प्रारम्भिक वेतन अथवा अतिरिक्त वेतन वृद्धियाँ न दी गयी हो और समय-समय पर वेतन पुनरीक्षण के फलस्वरूप वेतन नियमानुसार सक्षम अधिकारी द्वारा निर्धारित व प्रतिहस्ताक्षरित किया गया हो। उसमें किसी प्रकार की अनियमितता न हो।

3. उपरोक्त के अतिरिक्त मुझे यह भी कहने का निदेश हुआ है कि मा० शिक्षा सेवा

आयोग द्वारा चयनित किसी पूर्व संस्था में कार्यरत अध्यापक को यदि प्रथम नियुक्ति के समय उच्च वेतन अथवा अतिरिक्त वेतन वृद्धियाँ दी गयी हों , तो प्राप्त वेतन के आधार पर उनका वेतन तय तक निर्धारित नहीं किया जायेगा जब तक इस बात की पुष्टि न हो जाये कि उन्हें उच्च वेतन अथवा अतिरिक्त वेतन अथवा अतिरिक्त वेतन वृद्धियाँ शासन की पूर्व अनुमति से दी गयी है। यदि वे शासन की पूर्व अनुमति से नहीं दी गयी है तो उनकी वसूली उनसे कर ली जायेगी और उनके वेतन का निर्धारण उनकी प्रथम नियुक्ति के दिनांक से प्रारम्भिक वेतन मानकर नियमानुसार वेतन वृद्धियों का लाभ देते हुए जिस स्तर पर आये, निर्धारित किया जायेगा।

4. इस सम्बन्ध में मुझे यह भी कहने का निर्देश हुआ है कि उक्त अधिकारियों द्वारा प्रस्तर-1 में उल्लिखित विधि से किये गये वेतन निर्धारण के आदेश शिक्षा निदेशक व शासन को भी पृष्ठांकित किये जायेंगे व निर्धारण की जाँच समय-समय शिक्षा निर्देशालय के वरिष्ठ लेखाधिकारी द्वारा की जायेगी और यदि उनके द्वारा किसी मामले में कोई अनियमितता पाई जायेगी तो उनका यह उत्तरदायित्व होगा कि वे उसे तुरन्त शिक्षा निदेशक की जानकारी में लाये जिसे वे ठीक करने हेतु सम्बन्धित शिक्षाधिकारियों को निर्देशित करेंगे तथा उसकी सूचना यथाशीघ्र शासन को भी देगा।

5- अतः आपसे अनुरोध है कि आप कृपया उक्त स्थिति से अपने अधीनस्थ समस्त अधिकारियों को तुरन्त अवगत कर दें और इस शासनादेश के अधीन शीघ्रता से कार्यवाही किया जाना सुनिश्चित करें।

6- यह आदेश अशासकीय संख्या/ई-11-189/दस-1985 दिनांक 24 जनवरी, 1985 में प्राप्त वित्त विभाग की सहमति से निर्गत किये जा रहे हैं।

भवदीय,

उप सचिव।"

I have heard learned Counsel for the parties and perused the record carefully.

It is not in dispute that the writ petitioner was earlier working as an Assistant Teacher in subject Mathematics in Upper Primary School, Ramnagara, Pachpedwa, District Balrampur since 22.09.2015. It is also not in dispute that pursuant to the recruitment exercise taken against Advertisement No. 1 of 2013, the writ petitioner was selected and appointed as an Assistant Teacher, Trained Graduate in J.V. Intermediate College, Rajupur, Saharanpur. Parties are also in agreement that the working of the writ petitioner in the earlier assignment as an Assistant Teacher, Mathematics, in Upper Primary School, Ramnagra, Pachpedwa, Balrampur was not regulated or governed under the provisions of U.P. Intermediate Education Act, 1921.

In the opinion of the Court, the Government Order dated 28.01.1985 provides for pay protection, however, the same is subject to various conditions. Sub-Paragraph (2) of paragraph- 1 provides for the pay protection. However, Para 2 clarifies the same while restricting it to the contingency that for availing pay protection, the earlier assignment or services undergone should be under U.P. Intermediate Education Act, 1921 and the Government Orders issued from time to time. Thus, the underlined principle would be that the earlier assignment, which is being claimed to be included for pay protection should be under U.P. Intermediate Education Act 1921. Since, in the present petition, the erstwhile working of the writ petitioner was in Upper Primary School, which is not regulated or governed under the U.P. Intermediate Education Act 1921. Thus, the writ petitioner cannot be accorded pay protection. Moreover, it is for the rule making authority or the framers of the government orders to prescribe the conditions according to which the pay protection is to be provided. It is not open for an incumbent to claim it as a matter of right. Additionally, the Court finds that the said Government Order has not been put to challenge in the present petition, nor any of the provisions of the same are being prayed to be read down. Apart from the same, mere inclusion of the earlier services for payment of pension is a separate aspect of the matter, which cannot be intermingled with the issue of pay protection.

As regards the objection raised by the learned Counsel for the writ petitioner that the order of the District Inspector of Schools, Saharanpur dated 20.6.2023, is unreasoned and non-speaking, this Court is not convinced with the said argument, as the order negates the claim of the writ petitioner on a valid ground. Moreover, it is for the writ petitioner to claim his right independently on the basis of statutory provision of the Government Orders, if they seek to endorse his claim. Since nothing has been brought on record to substantiate the fact that the writ petitioner is entitled to be accorded pay protection on the basis of any statutory scheme or Government Order, the writ petitioner is not entitled to any relief.

No other point has been pressed by the learned Counsel for the writ petitioner.

Resultantly, the writ petition being wholly devoid of merits is **dismissed**.

Order Date :- 13.12.2023

N.S.Rathour