

Court No. - 35

Case :- WRIT - A No. - 16882 of 2023

Petitioner :- Kanhaiya Lal Jha

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Abhishek Kumar

Counsel for Respondent :- C.S.C., Shesh Kumar Srivastava

Hon'ble Vikas Budhwar, J.

1. The instructions filed today are taken on record.
2. Heard Sri Abhishek Kumar, learned counsel for the writ petitioner, Sri P.K. Shahi, learned Additional Chief Standing Counsel who appears for respondents No. 1, 2, 3 and 5 and Sri Shesh Kumar Srivastava, learned counsel who appears for respondent No. 4.
3. In view of the order which is being proposed to be passed today, notices are not being issued to respondents No. 6, 7 and 8.
4. The case of the writ petitioner is that he was appointed on the post of Archarya Sahitya on 28.05.1993 approval whereof was accorded on 18.05.1998. It is also the case of the writ petitioner that he was allowed to officiate as Principal in the institution Sri Nimbark Sanskrit Mahavidyalaya, Mathura on 05.01.1998 signature whereof was attested by Deputy Inspector of Sanskrit Institution, Agra on 12.05.1998. It is also the case of the writ petitioner that Committee of Management of the institution in question accorded promotion to the writ petitioner on the post of Principal on 03.06.2000 for the pay scale of Rs. 8000-275-13,500, since the writ petitioner was not being paid salary so he preferred Writ A No. 16993 of 2011 (Dr. Kanhaiya Lal Jha Vs. State of U.P. & Others) which came to be decided on 17.02.2020 while passing the following orders.-

"This Writ Petition has been filed by the petitioner, who was initially engaged as a teacher in an Institution by the name of Shri Nimbark Sanskrit Mahavidyalaya, Vrindavan, District Mathura. The Institution is affiliated with Sampurnanand Sanskrit Vishwavidyalaya, Varanasi and is receiving grant-in-aid from the State Government. All the employees of the Institution are getting their salary under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, hereinafter referred to as the Payment of Salary Act, 1971.

It has been submitted that the petitioner was appointed as Officiating Principal at the Institution on 7.1.1998 and since then he had been regularly working on the said post. His signature was attested by the competent officer by an order dated 12.5.1998. The Deputy Inspector of Sanskrit Schools, Agra Region, Agra had issued the said order, a copy of which has been filed as Annexure-2 to the Petition. The Petitioner having worked for long as Officiating Principal was getting salary for the post of Lecturer and wrote a letter on 25.11.2010 to the District Inspector of Schools claiming salary for the post of Principal. Learned counsel for the petitioner has submitted that in response to the letter written by the petitioner, impugned letter was issued by the District Inspector of Schools, Mathura dated 3.1.2011 by which it was informed to him that as per the Statutes of Sampurnanand Sanskrit University namely, Statute No.37(2) and 49(5) (12.22), Officiating Principal may be appointed on the post of Principal on substantive vacancy occurring on the post, but he shall not be allowed salary for the post of Principal.

Learned counsel for the petitioner has submitted that Regulation 3(3) of Chapter II of the Regulations framed for Sanskrit Education under the U.P. Board of Sanskrit Education Act, 2000 provided that the Acting Head of the Institution is entitled to salary in the scale higher than the scale of pay in which he was drawing salary after six months of his service. Regulation 3(3) of Chapter II of the Regulation has been quoted in the Writ Petition in paragraph 14, which is reproduced hereinbelow:

"(3), where the temporary vacancy in the post of the Head of Institution is for a period not exceeding six months, the senior-most teacher in the highest grade may be allowed to work as acting Head of institution, but he shall not be entitled to pay in a scale of higher than the scale of pay in which he is drawing as such teacher."

*It has been submitted further that with respect to State Universities Act a Division Bench of this Court has already held that Acting/Officiating Principal is entitled to salary in the pay scale of a regular Principal. However, another Division Bench came to different view and the matter was referred to the Full Bench of this Court in **Dr. Jai Prakash Narayan Singh Vs. State of U.P. and others, 2014 (8) ADJ 617** where this Court compared the provisions of U.P. Higher Education Services Commission Act, 1980 and U.P. State Universities First Statutes (Age of Superannuation, Scales of Pay and Qualifications of Teachers) 1975 and came to conclusion that prior to enforcement of Commission Act w.e.f. 20.8.1981 management was duly empowered under the Statutes of the University to appoint as Officiating Principal a teacher, upon the office of the Principal falling vacant in an affiliated college until a regular appointment was made. The condition was only to the effect that for a period of three months any teacher can be appointed as Officiating Principal, whereas beyond a period of three months, only a senior-most teacher can be appointed to officiate as Principal. With the enforcement of Section 16 of the Commission Act and the First and the Second Removal of Difficulties Orders, 1982 and 1983, the power to appoint ad hoc Principal, which existed in the management, was not taken away. If such power is held to be taken away, serious prejudice would be caused in the functioning of educational institutions including affiliated colleges. If cause of education is not to suffer, some arrangement would have to be made during the period when there is a vacancy in the office of a Principal. It is, therefore,*

held that any provisions in the Statutes of the University, which provided for power to appoint Officiating Principal, is preserved even after coming into force of the Commission Act. It was also held that where a person had been appointed as an Officiating Principal until a regularly selected candidate takes charge, it involves an assumption of duties and responsibilities of a greater importance than those attached to the post of a teacher, therefore, an officiating Principal appointed under the Statutes of the University would be entitled to claim payment of salary in the regular grade of Principal for a period during which he or she has worked until a regularly selected candidate has been appointed and has assumed charge of the office.

In Writ Petition No.1590 of 2008, Dr. Bramhanand Shukla Vs. State of U.P. through Secretary, Higher Education, a Coordinate Bench of this Court at Lucknow was considering a challenge to Statute 12.22 of the First Statutes of the Sampurnanand Sanskrit University and after placing reliance upon the Full Bench Decision in *Dr. Jai Prakash Narayan Singh (supra)* it held that the provisions of the First Statutes of Purvanchal University and Statutes 12.22 of the First Statutes of the Sampurnanand University are *pari materia* except for the bar indicated in the Statute of not giving salary for the post of the Officiating Principal. This Court set aside the clause in the Statute 12.22, which related to not giving of salary for the post of Principal to a person, who is appointed to officiate on it.

The Judgment dated 29.5.2019 passed by the coordinate Bench in **Dr. Bramhanand Shukla (supra)** was considered by the Division Bench of this Court in **Writ-A No.35341 of 2007, Moti Lal Shukla Vs. State of U.P. and others** and this Court on 27.11.2019 allowed all the Writ Petitions in the Bunch after referring to both the Full Bench and Coordinate Bench decision in its order and directed that the petitioners shall be entitled for salary for the period they have worked as Officiating Principal.

In view of the law settled by this Court in **Dr. Bramhanand Shukla (supra)** and **Moti Lal Shukla (supra)**, this Writ Petition is allowed.

The Communication dated 3.1.2011 sent by the District Inspector of Schools to the petitioner is quashed. Direction is issued to the District Inspector of Schools, Mathura, respondent No.3 to pay regular salary in the pay scale of Principal to the petitioner for the period for which he has worked on the said post within a period of three months from the date a certified copy of this order is produced before him."

5. According to the writ petitioner the Registrar of Sampurnanand Sanskrit University, Varanasi, fourth respondent proceeded to issued a communication dated 03.01.2017 to the Manager of the institution in question according approval to the promotion of the writ petitioner as per the provisions contained under the Statute in the light of the order dated 01.02.2017. It is also the case of the writ petitioner that he continued to work on the said post came to be superannuated on 30.06.2022 and the last salary would be drawn by him was Rs. 1,22,900 post retirement, communications were made by the writ petitioner for payment of the post retiral

benefits which entailed issuance of a communication by the District Inspector of Schools, Mathura addressed to the Divisional Deputy Director of Education, Agra on 11.08.2022. As per the writ petitioner on 30.08.2022, the Divisional Deputy Director of Education (Mathura, Agra) issued a communication to District Inspector of Schools, Mathura followed by another communication dated 12.09.2022. Since the writ petitioner stood superannuated but he was not made admissible to the pension on the basis of last pay drawn with regard to the status which the writ petitioner claims to have enjoyed so the writ petitioner preferred Writ A No. 4905 of 2023 which came to be decided on 29.03.2023 orders whereof is quoted hereunder.-

"The petitioner before this Court has retired as Principal of Nimbark Sanskrit Mahavidyalay, Mathura. He was initially appointed as officiating Principal on 5.1.1998 but subsequently got promoted as a regular Principal of the said institution and approval to his promotion came to be done by the Vice Chancellor in purported exercise of power under statute No. 31 (11) of the first Statute of the University on 30th January, 2017.

Petitioner attained the age of superannuation on 20.06.2022, however, while his pension has been calculated on the basis of last pay drawn as Principal of institution in the pay-scale of Rs. 1,22,900/- but for the period he officiated as Principal of the institution, no benefit has been conferred regarding fixation of pay as Principal of the institution and consequential arrears.

It is well settled law that Principal of the institution is entitled to the same salary as regular Principal of the institution as has been held by full bench of this Court in the case of Dr. Jai Prakash Narayan Singh v. State of U.P. and Others, 2014 (8) ADJ 617 and this judgment still holds the field and has been followed repeatedly in various subsequent authorities of this Court.

Sri Sesh Kumar, learned counsel for the respondent does not dispute the status of the petitioner initially as officiating Principal and then regular Principal of the institution, which is affiliated to the University.

In the circumstances, therefore, the Court is of the prima facie view that the education authorities have no no reason to keep the matter pending regarding decision to revise pension as prayed for.

The petitioner has drawn the attention of the Court to three letters, he has already sent by registered post to the District Inspector of Schools on 8.12.2022, 2nd January, 2023 and reminder thereof on 2nd February, 2023.

In the circumstances, therefore, this petition stands disposed of with direction to the District Inspector of Schools to take appropriate decision in the matter immediately as expeditiously as possible preferably within a period of two months from the date of production of certified copy of this order in the light of observations made hereinabove and the law laid down by full bench of this Court."

6. Post remand, now the order impugned has been passed by the District Inspector of Schools, Mathura, fifth respondent on 31.07.2023 on the premise that since the writ petitioner had lien on the post of Acharya, thus, he is not entitled to the pensionary benefits as an Officiating Principal/Regular Principal.

7. Questioning the said order, the writ petitioner has filed the present writ petition.

8. This Court entertained the writ petition on 09.10.2023 requiring the learned Standing Counsel to obtain instructions thereafter a detailed order was passed on 26.10.2023 which is quoted hereunder.-

"The principal challenge in the present petition is to an order dated 31.07.2023 passed by the District Inspector of Schools, Mathura, fifth respondent, whereby the writ petitioner though was made entitled to the salary of the benefits of an Officiating Principal, but post-retirement, he has been denied payment of pension while taking into account the services undergone as an Officiating Principal.

Learned counsel for the writ petitioner seeks to rely upon the decision in Service Bench No.1590 of 2008, Dr. Bramhanand Shukla Vs. State of U.P. decided on 29.05.2019, which has considered the case of Paras Nath Vs. District Inspector of Schools, 1995 AWC 603, as well as the Full Bench judgment in the case of Dr. Jai Prakash Narayan Singh Vs. State of U.P. and others, reported in (2014) 4 UPLBEC 2642.

Sri R.P. Dubey, learned Addl. Chief Standing Counsel as well as Sri Dev Kaushik holding brief of Sri Shesh Kumar Srivastava seek time to seek instructions/ file affidavit detailing the issue with regard to the payment of pension taking into account the services undergone as Officiating Principal.

Counter affidavit be filed by 09.11.2023. Rejoinder, if any, may be filed by the next date fixed.

Put up this case as a fresh case on 16.11.2023."

A counter affidavit has been filed on behalf of District Inspector of Schools, Mathura dated 06.11.2023 to which a rejoinder affidavit has been filed. The matter was heard at length thereafter on 04.12.2023 the following orders were passed.-

"In spite of the time granted on 21.11.2023 to the learned Standing Counsel as well as Shri Shesh Kumar Srivastava to clarify on the said points which has been noticed in the order dated 21.11.2023, again time has been sought.

Put up this case as fresh on 08.12.2023 at 2.00 pm, with a clear stipulation that the case will not adjourn."

9. Post passing of the order dated 04.12.2023 Sri Shesh Kumar Srivastava, learned counsel for the Sampurnanand Sanskrit University has produced before this Court the instructions dated 06.12.2023 of the University.

10. Since the parties do not propose to file any further affidavits, thus, with the consent of the parties, the matter is decided at the fresh stage.

11. Sri Abhishek Kumar, learned counsel for the writ petitioner submits that the order dated 31.07.2023 passed by the District Inspector of Schools, Mathura, fifth respondent cannot be sustained particularly in view of the fact that firstly, from the perusal of the record of the approval of the accorded by the respondent-University which is annexed as Annexure 5 at page 59 of the paper book reference whereof has been given in para 7 there happens to be a communication of the Registrar of the University in question dated 03.01.2017 Manager of the institution providing that in terms of the provisions contained under Statute 31(11) of the first statute of the University approval has been accorded for the promotion of the writ petitioner as a Principal. The said communication also recites a resolution dated 02.01.2017. He submits that even in fact when pension was not being paid to the writ petitioner commensurate to the status which he was enjoying the writ petitioner preferred Writ A No. 4905 of 2023 in which it had been the stand of the learned counsel appearing for the University that they are not disputing the status of the writ petitioner as Officiating Principal and Regular Principal of the institution. According to him once the writ petitioner was entitled to payment of salary and the allowances which was admissible to the post of Officiating Principal/Principal then in the said circumstances, writ petitioner could not have been denied payment of pension referable to the said status particularly when pension is to be computed on the basis of last pay drawn. He seeks to rely upon the decision in the case of ***Paras Nath Vs. District Inspector of Schools reported in 1995 AWC 603***, judgment in the case of ***Dr. Jay Prakash Narayan Singh Vs. State of U.P., Full Bench decision reported in 2014 (4) UPLBEC 2642***, judgment in the case of ***Dr. Brahmanand Shukla Vs. State of U.P. Service Bench No. 1590 of 2008*** decided on 29.05.2019 so as to contend that the decisions in the case of ***Paras Nath (supra)*** and ***Dr. Brahmanand Shukla (supra)*** are relatable to a Sanskrit Institution being regulated by the Sampurnanand Sanskrit University, Varanasi wherein provisions contained Statute 10-B of the Uttar Pradesh State Universities first statute, age of superannuation, scales of pay

and qualification of teachers (1975) (first statute) and Statute 12.2 inserted in the first statute of the State Government by virtue of the notification dated 31.10.1985 was considered and the objection was raised by the respondents that the Officiating Principal cannot be paid the salary commensurate to the status was deprecated. He submits that in the wake of the said facts the matter requires re-consideration.

12. Sri P.K. Shahi, learned Additional Chief Standing Counsel who appears for the State official respondents on the strength of the averments made in the counter affidavit has sought to argue that once the substantive appointment of the writ petitioner is of Acharya then lien will on the said post and mere officiation will not be ipso facto made him admissible for pension as Officiating/Regular Principal. He submits that the judgment in the case of **Jay Prakash Narayan Singh (supra)** would not apply and the other two judgments in the case of **Paras Nath (supra)** and **Brahmanand Shukla (supra)** are concerned they do not apply in the cases of payment of pension as the same is only relatable to payment of salary and allowances.

13. Sri Shesh Kumar Srivastava, learned counsel who appears for the respondent-University pursuant to the order passed in the present writ petition on 04.12.2023 has produced before this Court the instructions dated 06.12.2023 wherein he seeks to argue that the entire procedure envisaged is of a regular promotion as Principal was resorted to by the University and a conscious decision has been taken in that regard.

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

15. It is not in dispute that the writ petitioner was allowed to perform duties on the post of Principal of the institution in question. Since 05.01.1998 approval whereof was accorded by the respondent-University in pursuance of a decision dated 02.01.2017 communication whereof was 03.01.2017 and the writ petitioner post passing of the orders were made entitled to payment of salary. The only bone of contention is as to whether pension is to be paid or not. Though on one hand, the learned counsel for the writ petitioner relies upon a statement made by the learned counsel for the University in the earlier litigation in **Writ A No. 4905 of 2023** that the status of the writ petitioner as Officiating Principal and then regular principal was not disputed, however, on the other hand, the learned Additional Chief Standing Counsel disputes the said facts.

16. At this juncture, Sri P.K. Shahi, learned Additional Chief Standing Counsel has made a statement that the said aspects of the matter remain unnoticed to be dealt with in the counter affidavit filed by the State respondents according to him it is the fundamental and core aspect on which the entitlement to some extent would lie in favour of the writ petitioner, however, he submits that the said aspect had not been dealt even by the District Inspector of Schools. The question of payment of pension while relying upon the judgment in the case of **Paras Nath (supra)**, **Brahmanand Shukla (supra)**, **Jay Prakash Narayan Singh (supra)** would arise subsequently when the said hurdle gets resolved. According to him the order in question be set aside, matter be remitted back to the authority to pass a fresh order.

17. Considering the submission of the rival parties as well as the stand taken by them, the writ petition stands decided in the following terms: (a) the order dated 31.07.2023 passed by the District Inspector of Schools, Mathura, fifth respondent is set aside; (b) matter stands remitted back to the fifth respondent to pass a fresh order strictly in accordance with law bearing in mind the status of the writ petitioner either of Officiating Principal or Regular Principal; (c) the applicability of the above noted judgments and the import and impact of payment of salary and extension of the benefits of pension. Since this Court has passed an order without issuing notice to respondents No. 6, 7 and 8, thus, the fifth respondent, District Inspector of Schools, Mathura shall put to notice to respondents No. 6, 7 and 8 and pass an order strictly in accordance with law within a period of two months from the date of production of certified copy of the order.

Order Date :- 8.12.2023

Rajesh