

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 8146 of 2022

Applicant :- Nagendra Pratap Mishra And 108 Others

Opposite Party :- Shri Sudhir Mahadeo Bobde, Principal Secretary And Another

Counsel for Applicant :- Uma Nath Pandey, Manan Kumar Choubey

Hon'ble Rohit Ranjan Agarwal, J.

1. The applicants, who are 109 in number, have filed the present contempt application under Section 12 of the Contempt of Courts Act for punishing the opposite party for violating the judgment and order dated 01.03.2013 rendered by Lucknow Bench of this Court in Service Bench No.729 of 2012.

2. The applicants are teaching in various institutions under the self-financing scheme. They claim that minimum of pay scale be paid to them as per the UGC Scheme but the State Government is not paying them the minimum of pay scale. It has been contended on behalf of applicants that direction in the judgment rendered by Lucknow Bench in **Service Bench No.729 of 2012 (Dr. Suresh Kumar Pandey vs. State of U.p. & Ors.)**, especially in paras 53 and 57, has not been complied with by the opposite party.

3. Sri Manish Goyal, learned Additional Advocate General appearing for the State submits that the judgment rendered on 01.03.2013 does not envisage a situation where the Government was to pay minimum of pay scale to the teachers of self-financing scheme. He has invited the attention of the Court to paras 49 and 53 of the judgment, which are extracted hereas under :

"49. Where the burden is on the Committee of Management to pay salary, in that case, it shall be necessary for the Committee of Management to pay reasonable salary or minimum of the pay scale, necessary for human living.

53. We have noticed that not only in the respondent's college, but in other colleges of the State of U.P., the students are admitted without following the norms prescribed by the Statute as well as the UGC. Accordingly, we are of the view that the Government

should look into it and appropriate orders/circulars should be issued immediately commanding different universities and colleges aided as well as non-aided, containing following directions:-

(i) No student shall be admitted in the college and universities beyond the sanctioned strength.

ii) Director of Higher Education or the State Government as the case may be, shall sanction the teachers keeping in view the sanctioned strength of the students in the recognised courses of the universities, colleges receiving grant-in-aid and pay salary.

(iii) All those courses which are open under self-financing scheme, the universities as well as colleges shall at least pay minimum pay scale admissible to teachers in accordance with Rules. The services of teachers appointed under the self-financing scheme, should be permitted to continue till continuance of course or satisfactory discharge of duty.

(iv) Since 2000 and onward, the Government has stopped the grant-in-aid and sanction of new course, even then Government shall ensure that Committee of Managements do not exploit the teachers and pay reasonable salary in contractual and ad hoc appointments in the recognised and affiliated colleges.

(v) Keeping in view the strength of students sanctioned prior to August, 2000, by the State Government, the Committee of management of Government aided colleges receiving grant-in-aid, be informed to send their proposal keeping in view the teacher-student ratio within specified period for sanctioning of posts for respective course by the Government."

4. He further invited the attention of the Court to the judgment in **Special Appeal Defective No.458 of 2021 (State of U.P. & Another vs. Neeraj Srivastava)** wherein the Court while disposing of appeal on 14.07.2021 passed the following order :

"Order on Civil Misc. Exemption Application No. 2 of 2021

The application seeking exemption from filing certified copy of the order of the High Court is allowed.

The defect stands cured.

Order on Memo of Special Appeal

Heard Sri Manish Goyal, learned Additional Advocate General assisted by Ms. Archana Singh, learned Additional Chief Standing Counsel appearing on behalf of the appellants and Dr. Neeraj Srivastava, non-appellant in person.

By this appeal, a challenge is made to the order dated 24th March, 2021 passed by the learned Single Judge. Sri Manish Goyal, learned Additional Advocate General submits that a contempt petition was filed alleging non-compliance of the judgment dated 1st March, 2013 passed in Service Bench No. 729 of 2012 (Dr. Suresh Kumar Pandey Vs. State of U.P. and others). The judgment does not contain a direction on the State Government for payment of wages/salary to the teachers at the minimum pay scale. In fact in para 53, the direction to the Government was for issuance of appropriate orders commanding different universities and colleges to pay minimum pay scale. It was for the institution having self finance scheme. The Government was to issue a circular, as directed and not for payment of minimum pay scale by them. An affidavit was called for it. It was going contrary to the direction contained in the judgment. Prayer is accordingly to cause interference in the order dated 24.3.2021.

The non-appellant/in-person submits that not only the direction was given to pay minimum pay scale but an undertaking was also given for it by the Government. In view of the above, the learned Single Judge has rightly called for the affidavit of the Director, Higher Education, so as Additional Chief Secretary, Higher Education. The prayer is accordingly not to cause interference in the order dated 24.3.2021.

We have considered the rival submissions of the parties and perused the record.

The contempt petition was preferred by the non-appellant alleging non compliance of the judgment dated 1.3.2013. Para 57 of the said judgment contains direction and is reproduced herein for ready reference :

"57. In view of the above, the writ petition deserves to be allowed. We allow the writ petition with following directions:-

(I). Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 6.2.2012 passed by the Vice-Chancellor of the University, as contained in Annexure No.1 to the writ petition, with all consequential benefits. The Vice-Chancellor of the University is directed to pass a fresh order keeping in view the observations made in the body of the judgment with regard to petitioner's service career expeditiously say, within a period of one month from the date of receipt of a certified copy of this judgment and till then, status quo shall be maintained in terms of the interim orders passed by this Court.

(II). A writ in the nature of mandamus is issued commanding the Government of U.P. to provide teachers keeping in view the sanctioned strength of students as done prior to August, 2000 (supra), after taking into account the Statutes of various universities, UGC guidelines, Government circulars laying down teacher-student ratio. The State Government shall also ensure that number of teachers should be such that every section of every subject possesses teachers to impart education in different years of the discipline to meet out the requirement.

(III). Respondent college shall engage part time teachers to meet out the requirement of 1556 students within a month to impart education for the session 2012-2013.

However, henceforth the number of students in B. Com. and other courses shall be confined to the extent of sanctioned strength. The State Government shall also ensure that in each and every college of U.P., students are admitted only in terms of sanctioned strength and not beyond that. The colleges admitting students beyond sanctioned strength from the session 2013-2014 be de-affiliated by the Universities and the Government and recognition be withdrawn.

(IV). The Government of U.P. shall issue a Government order or circular communicating to all the universities and affiliated colleges as well as related Government Departments in terms of observations made in the body of the present judgment (para 53 and others) for maintenance of standard of education keeping in view the teacher-student ratio expeditiously say, within two months.

The circular/Government order issued by the Government, shall be placed on record of this Court by the learned Chief Standing Counsel. Registry shall list the writ petition after two months for appreciation of circular/ Government order (supra).

No orders as to costs."

The para 53 of the judgment has been referred in para 57(IV) quoted above. Para 53 of the judgment is also quoted hereunder:

"53. We have noticed that not only in the respondent's college, but in other colleges of the State of U.P., the students are admitted without following the norms prescribed by the Statute as well as the UGC. Accordingly, we are of the view that the Government should look into it and appropriate orders/circulars should be issued immediately commanding different universities and colleges aided as well as non-aided, containing following directions:-

(i) No student shall be admitted in the college and universities beyond the sanctioned strength.

(ii) Director of Higher Education or the State Government as the case may be, shall sanction the teachers keeping in view the sanctioned strength of the students in the recognised courses of the universities, colleges receiving grant-in-aid and pay salary.

(iii) All those courses which are open under self-financing scheme, the universities as well as colleges shall at least pay minimum pay scale admissible to teachers in accordance with Rules. The services of teachers appointed under the self-financing scheme, should be permitted to continue till continuance of course or satisfactory discharge of duty.

(iv) Since 2000 and onward, the Government has stopped the grant-in-aid and sanction of new course, even then Government shall ensure that Committee of Managements do not exploit the teachers and pay reasonable salary in contractual and ad hoc appointments in the recognised and affiliated colleges.

(v) Keeping in view the strength of students sanctioned prior to August, 2000, by the State Government, the Committee of management of Government aided colleges receiving grant-in-aid, be informed to send their proposal keeping in view the teacher-student ratio within specified period for sanctioning of posts for respective course by the Government."

Para 53(iii) (iv) contains a direction on the universities and colleges to pay minimum pay scale admissible to the teachers in accordance with the Rules and pay reasonable salary. So far as the State Government is concerned, it was to issue an order/circular. The further compliance was to be made by institutions. The direction contained in para 57 does not provide for grant of pay minimum of the pay scale by the State Government.

The direction contained in para 53 to the extent of issuance of circular was to be complied by the State and payment by the institution. Accordingly, if the necessary order or circular has not been issued by the Government, that can be questioned but so far as the payment of salary/wages to the teachers pay scale is concerned, it has to be paid by the institution.

With the aforesaid clarification, this appeal is disposed of."

5. From perusal of the order of Appellate Court it transpires that the Appellate Court has held that the directions contained in para 57 of the judgment in the case of **Dr. Suresh Kumar Pandey (supra)** does not provide for grant of minimum of pay scale by the State Government. Further, the Appellate Court held that directions contained in para 53 of the judgment was to the extent of issuance of circular was to be complied by the State and payment by the institution.

6. Sri Goyal had further placed before the Court the Government Order issued on 13.03.2020 wherein, in paras 4, 5 and 6, it has been specifically mentioned that it is the institution who has to pay the minimum of pay scale and not the Government.

7. Learned counsel appearing for the applicant vehemently opposed the argument advanced by the State counsel and submitted that the guidelines of UGC are not being adhered with by the State Government and the minimum of pay scale is not being paid to the teachers who are teaching in the Government aided institution. According to him, the entire burden of payment of minimum of pay scale is upon the State and not the institution in question.

8. I have heard the respective counsel for the parties and perused the material on record.

9. From perusal of the decision of the Lucknow Bench of this Court in **Dr. Suresh Kumar Pandey (supra)** it transpires that the matter relating to payment of teachers working under the self-financing scheme was under consideration and the Court had found that the burden is on the Committee of Management to pay the salary and not the State. Further, in para 53 (iii), the Court had observed that the courses which are open under self-financing scheme, the universities as well as colleges shall at least pay minimum of pay scale admissible to teachers in accordance with Rules but it does not say that the said pay is to be disbursed by the State Government and the State exchequer has to bear the burden. Moreover, the Division Bench in **Special Appeal Defective No.458 of 2021** had clarified the position and especially paras 53(iii), 53(iv) and 57 of the judgment of **Dr. Suresh Kumar Pandey (supra)**.

10. Moreover, the State Government has also issued Government Order on 13.03.2020 laying down the procedure to be followed by the institution as well as Universities in case of payment of salary to the teachers appointed under self-financing scheme. In case the teachers are aggrieved by the said Government Order, they have remedy of challenging the same before the appropriate Forum, if so advised.

11. In the instant case, neither the institution nor the University has been arrayed as party and the State has been arrayed as party. This Court finds that no case for contempt is made out against the opposite party Nos.1 and 2 as there is no intension of the Division Bench to put burden of payment of salary of the teachers appointed under self-financing scheme upon the State exchequer and it is only the institution, who has to bear the burden of payment to the said teachers as per the advertisement made for their appointment.

12. In view of the above, I find that no case for contempt is made out. The

contempt application is misconceived. **Dismissed.**

13. Contempt notice stands discharged.

Order Date :- 23.11.2023

Kushal