

Neutral Citation No. - 2023:AHC-LKO:71669

Court No. - 5

Case :- WRIT - A No. - 1326 of 2010

Petitioner :- Raj Bahadur Singh S/O Triveni Singh

Respondent :- State Of U.P. Thru Principal Secretary Basic Education

Counsel for Petitioner :- R.K.S. Suryavanshi, Sangeeta Singh

Counsel for Respondent :- C.Sc., Jyotinjay Verma, Neeraj Chaurasiya, R.P. Verma

Hon'ble Irshad Ali, J.

1. Heard Shri R.K. S. Suryavanshi, learned counsel for the petitioner and Shri Neeraj Chaurasiya, learned counsel for the respondent nos.1 to 6 and Shri Sanjai Kumar, learned counsel for respondent no.7.

Shri Neeraj Chaurasia, learned Advocate by producing Circular of the Basic Education, has pointed out that now in those cases where Committee of Management is appointing authority, he is not appearing on behalf of the Basic Education Board.

2. By means of the present writ petition, the petitioner has prayed for the following prayers:

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the recommendation of Regional Committee, Basic Education, Faizabad Region, Faizabad whereby financial concurrence for payment of salary to the petitioner has been refused after summoning the same with all consequential benefits.

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the order passed by Assistant Education Director, Basic Education, Faizabad Region, Faizabad denying the payment of salary to the petitioner with all consequential benefit after summoning the same.

(iii) Issue a writ, order or direction in the nature of Certiorari quashing the order dated 9.4.2007 contained in Annexure No.9

to the writ petition issued by the District Basic Shiksha Adhikari, Ambedkar Nagar with all consequential benefits so far it relates to the petitioner.

(iv) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties to make payment of salary to the petitioner with all consequential benefits, each and every month as and when it become due regularly along with arrears and interest thereon.

(v) To pass any other suitable order or direction which is deemed just and proper in the circumstances of the case.

(vi) To allow the writ petition with costs."

3. Factual matrix of the case is that Ram Kawal Junior High School Sirsiya Raje Sultanpur, District Ambedkar Nagar was established in the year 1991 by the registered society namely Ram Kawal Junior High School Sirsiya Raje Sultapur District Ambedkar Nagar to impart education to students from Class VI to VIII. On 8.8.1983, the petitioner was initially appointed as Assistant Teacher in the School by the Committee of Management.

On 19.1.1984, the School was given temporary recognition for the Session 1983-84 which was extended from time to time. The services of the petitioner on the post of Headmaster of the School were regularized on 25.10.1987. On 21.5.1987, the School was given permanent recognition by the competent authority.

Management Committee forwarded all the requisite and required papers along with the list of teaching and non teaching staff working in the School including their qualification to the State Government for taking the School on the list of grant-in-aid. On 2.12.2006, a Government Order was issued and the School was taken on the list of grant-in-aid of State Government and budget for payment of salary to the teaching and non-teaching staff was also sanctioned.

On 7.2.2007, Finance and Account Officer, Basic Education, Faizabad issued letter to the concerned officers informing him that for payment of salary budget has been sanctioned and order for payment has been issued to the teaching and non-teaching staffs of schools whose name mentioned in the Government Order dated 2.12.2006 in which name of School in question stands at serial no.10.

On 9.4.2007, District Basic Shiksha Adhikari, Ambedkar Nagar sent a letter to the Manager, Kanya Junior High School saying that

financial concurrence for payment of salary to the petitioner i.e. Assistant Teacher is being not issued for the reason that appointment of the petitioner is being made dehere the Rule, 1978. On 21.2.2007, in the same school i.e. Ram Kawal Junior High School, Sirsiya Raje Sultanpur similarly situated teaching and non-teaching employees namely Sri Bal Mukund singh, Assistant Teacher who was appointed on 27.12.1986 i.e. after the appointment of the petitioner and Sri Ra Pher Verma, Peon, who was appointed on 4.7.1982 have been granted salary.

In a similarly situated matter in Writ Petition No.8048 (SS) of 2009, Smt. Radhika Singh v. State of U.P. and others, this Court was pleased to pass order directing the opposite parties to make payment of salary to the said petitioner regularly every month. In anohter another similar Writ Petition No.8080(SS) of 2009, Talukdar Singh and others v. State of U.P. and others, this Court was pleased to pass order directing the opposite parties that the petitioners have worked for extraordinary long time and today at this stage they are being ousted. Once the college has placed unde grant-in-aid it is incumbent on the part of the college to pay salary from the date of college has been placed under grant-in-aid. Accordingly, the opposite parties are directed to pay salary to the petitioners which shall be subject to the further orders of this Court.

On 20.2.2010, the petitioner made representation for redressal of her grievance but failed to get any response till date. On and before the date 19.1.1984, when the school was given temporary recognition followed by permanent recognition on 21.5.1987 the date on which Rules, 1978 became applicable on School petitioner was being fully qualified and eligible for the post of Assistant Teacher continuing on the post of Assistant Teacher w.e.f. 8.8.1983. As such denied of payment of salary to the petitioner on the ground that his appointment was not in accordance with Rules, 1978 apparently suffers from vice of non-application of ind, malice and arbitrariness in administrative action.

4. Learned counsel for the petitioner submits that the services of the petitioner on the post of Headmaster of the School were regularized by the opposite party no.5 vide order dated 25.10.1987 having been found the same perfectly valid and in accordance with.

5. Learned counsel for the petitioner next submits that denial of payment of post retiral dues to the petitioner under the Act, 1978 after taking the school on the list of grant-in-aid by the State Government

and allocation of budget, therefore is highly arbitrary, illegal, unjust, improper and no sustainable in the eyes of law.

6. Learned counsel for the petitioner next submits that the petitioner was discharging his duties in the school to the utmost satisfaction of the higher authorities concerned continuously without any demur w.e.f. 8.8.1983 and there is no complaint against his work and conduct of any nature whatsoever from any corner whatsoever till date.

7. Learned counsel for the petitioner next submits that right to life guaranteed under Article 21 of the Constitution of India including right to lead the life with proper human dignity and also right to livelihood, as such action of the opposite parties for not making payment of post retiral dues to the petitioner under the Act, 1978 for which sanction and budget has already been granted by the State Government is being violative of Article 21 of the Constitution of India and bad in the eyes of law.

8. Learned counsel for the petitioner next submits that the petitioner continuously represented his cause to the competent authority concerned from time to time for payment of post retiral dues on the post of Headmaster in the School for which budget had already been allocated by the State Government after taking the school on the list of grant-in-aid vide Government Order dated 2.12.2006, but the respondent authorities failed to get any response. The also preferred various representations through Committee of Management of the School in question to the authority concerned.

9. Learned counsel for the petitioner next submits that at the relevant time when the petitioner was appointed as Headmaster in the School, Rules, 1978 was not applicable on the school and he was appointed on the post of Headmaster by the competent authority having been found him fully qualified for the post.

10. Learned counsel for the petitioner next submits that the petitioner's appointment on the post of Headmaster was approved/regularized by Basic Shiksha Adhikari, Ambedkarnagar i.e. opposite party no.5 on 25.10.1987 after the Rules, 1978 became applicable on the school which amounts to approval of petitioner's appointment under Rules, 1978. The appointment of the petitioner on the post of Headmaster has been duly approved by the opposite party no.5 on 25.10.1987 having been found there is no illegality in appointment of the petitioner on the post of Headmaster in the School. Approval/regularization granted by the competent authority to the appointment

of the petitioner worked on the post of Headmaster and order dated 25.10.1987 is not recalled or cancelled by the competent authority till date.

11. Learned counsel for the petitioner next submits that the opposite parties also filed a special appeal defective no.828 of 2010 (Basic Shiksha Adhikari, Ambedkarnagar v. Raj Bahadur Singh) in case of the petitioner against the order dated 11.3.2010 passed in the writ petition No.1326 (SS) of 2010 (Raj Bahadur Singh v. State of U.P. and others) in which this Court was pleased to pass order dated 11.03.2010 in favour of the petitioner and dispose of the special appeal in terms of the order dated 23.11.2010 passed in special appeal no.807 of 2010 (Basic Shiksha Adhikari, Ambedkarnagar v. Smt. Mandarin Chaudhari and others).

The petitioner has filed a Criminal Misc. Case no.742 (C) of 2010 against the interim order dated 3.7.2010 passed by this Court in which the notices were issued and the opposite parties were pleased to comply the order passed by this Court on 15.12.2010.

12. Learned counsel for the petitioner next submits that the Division bench of this Court was pleased to observe that the Basic Shiksha Adhikari who has approved the appointment of the petitioner and thereafter, his services have been regularized, therefore the incumbent who is the successor, in office (Basic Shiksha Adhikari), departments could not challenge the same though they can take steps for recall or review of the order of approval but till date no such order for review or recall has been passed by the Basic Shiksha Adhikari, Ambedkarnagar.

13. Learned counsel for the petitioner next submits that the petitioner retired from service on 31.03.2022 on the post of Headmaster due to attaining the age of superannuation, but after retirement the respondents has not paid pension and other retiral dues to the petitioner, till date.

14. Per contra, learned counsel for the respondents submits that at the time of appointment of petitioner the procedure provided for appointment in the U.P. Recognized Basic Schools (Junior High Schools) (Appointment and Conditions of Service of Teachers) Rules, 1978, has not been followed.

15. Learned counsel for the respondents next submits that since the petitioner institution has been taken into grant-in-aid list after the year 2005 and they have not deposited the contribution in the treasury as such the petitioner cannot be paid pension from the State Exchequer.

16. Learned counsel for the petitioner respondents next submits that by means of letter dated 7.2.2007 the Finance & Account Officer, Faizabad has requested to the Assistant Director of Education (Basic) Faizabad to examine the qualification/ eligibility of teaching/ non-teaching staff which have been taken into grant-in-aid list by means of G.O. dated 2.12.2006 so that the payment of salary to the eligible staff be released.

17. I have considered the submissions advanced by learned counsel for the parties and perused the material available on record.

18. To resolve the controversy, relevant provisions of U.P. Recognized Basic (Junior High School) (Recruitment and Condition of Service of Teachers) Rules, 1978 are being quoted below:

“3. Appointment - (1) It shall be the responsibility of the Management to fill a vacancy in the post of Headmaster or Assistant teacher, as the case may be, of a recognised school by 31st July every year.

(2) If any vacancy occurs during an academic session, it shall be filled within two months from the date of occurrence of such vacancy.

4. Minimum qualification. - (1) The minimum qualifications for the post of Assistant Teacher of a recognised school shall be a Graduation Degree from a University recognised by U.G.C., and a teachers training course recognized by the State Government or U.G.C. or the Board as follows :-

1. Basic Teaching Certificate.

2. A regular B.Ed. degree from a duly recognized institution.

3. Certificate of Teaching.

4. Junior Teaching Certificate.

5. Hindustani Teaching Certificate.

And

Teacher eligibility test passed conducted by the Government of Uttar Pradesh or by the Government of India.

(2) The minimum qualifications for the appointment to the post of head master of a recognized school shall be as follows -

(a) A degree from a recognized University or an equivalent examination recognized as such.

(b) A teacher's training course recognized by the State Government or U.G.C. or Board as follows :-

1. Basic Teaching Certificate.

2. A regular B.Ed. degree from a duly recognized Institution.

3. Certificate of Teaching;

4. Junior Teaching Certificate.

5. Hindustani Teaching Certificate.

(c) Five years teaching experience in a recognized school].

5. Eligibility for appointment. - No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school, unless -

(a) he possesses the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee.

6. Disqualification. - (1) No person who is related to any member of the Management shall be appointed as Headmaster or Assistant Teacher of a recognised school.

(2) For the purposes of this rule, a person shall be deemed to be related if he is related to such member in any one of the following ways, namely -

(i) Father or mother;

(ii) Grandfather, grandmother;

(iii) Father-in-law, mother-in-law;

(iv) Uncle, aunt, maternal uncle, maternal aunt;

(v) Son, daughter, son-in-law, daughter-in-law;

(vi) Brother, sister;

(vii) Grandson, grand-daughter;

(viii) Husband, wife;

(ix) Nephew, niece;

(x) Cousin;

(xi) Wife's brother, or wife's sister, wife's brother's wife, sister's husband;

(xii) Husband's brother, husband's brother's wife;

(xiii) Brother's or cousin's wife.

7. Advertisement of vacancy. - (1) No vacancy shall be filled, except after its advertisement in at least two newspapers one of whom must have adequate circulation all over the State and the other in a locality the school is situated.

(2) In every advertisement and intimation under clause (1), the Management shall give particulars as to the name of the post, the minimum qualifications and age-limit, if any, prescribed for such post and the last date for receipt of applications in pursuance of such advertisement.

(3) Management of the school after explaining the sanctioned posts of the institution shall send information of vacant post during the calendar year compulsorily to the District Basic Education Officer by the 30th April for permission of Advertisement to fill them.

(4) After scrutinizing the proposal within 15 days the District Basic Education Officer shall accord permission to advertise the post according to law. The District Basic Education Officer shall be duty bound to accord permission for advertisement or to reject the permission with reasoned speaking order during the stipulated time

(6) An appeal may be preferred before the Regional Assistant Director of Education (Basic) against the decision of the District Basic Education Officer. The decision of the Regional Assistant Director of Education (Basic) shall be final.

8. Age limit. - The minimum age shall on the first day of July of the academic year following next after the year in which the advertisement of the vacancy is made under Rule 7 be :

(1) In relation to the post of an Assistant Teacher, 18 years.

(2) In relation to the post of Head Master, 25 years.

9. Selection Committee. - For appointment of Headmaster and Assistant Teacher in institutions other than minority institutions and in the minority institutions, the Management shall constitute a Selection Committee as follows :

A - Institutions other than Minority Institutions :

(i) For the post of headmaster :

(1) Manager;

(2) a nominee of the District Basic Education Officer;

(3) a nominee of the Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which appointment is to be made;

(3) a nominee of the District Basic Education Officer;

B - Minority Institutions :

(i) For the post of Headmaster;

(1) Manager;

(2) two nominees of Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which the appointment is to be made;

[(3) A specialist in the subject nominee by the District Basic Education Officer.]

10. Procedure for selection. - (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates

and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that -

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.

11. Appointment - Appointment by the Management. - (1) On receipt of communication of approval or as the case may be, on the expiry of the period of one month under clause (iii) of sub-rule (5) of Rule 10, the Management shall, first offer appointment to the candidate given the first preference by the Selection Committee and on his failure to join the post, to the candidate next to him in the list prepared by the Selection Committee and on the failure of such candidate also, to the last candidate specified in such list.

(2) (a) The appointment letter shall be sent under the signature of the Manager by registered post to the selected candidate.

(b) The appointment letter shall clearly specify the name of post, the pay scale and the nature of appointment, whether permanent or temporary, and shall also specify that if the candidate does not join within 15 days from the date of receipt of the appointment letter his appointment shall be cancelled.

(c) a copy of the appointment letter shall also be sent to the District Basic Education Officer.

19. Provident Fund: Provident Fund shall be payable by the management of a recognised school to every Headmaster or teacher employed in such school in accordance with the scheme applicable to aided institutions as laid down in Appendix 8 of the Education Code (1958 Edition)."

19. On bare perusal of Rule 19, it is evident that provident fund shall be payable by the Management of a recognized school to Headmaster or teachers employed in such a School in accordance with Scheme applicable to aided institutions as laid down in Appexdix-XIII of the Education Code.

20. It is clearly demonstrates that the scheme in regard to provident fund shall be applicable to the institutions recognized under the provisions of Act of 1972 and no distinction has been carved out in regard to aided and non-aided institutions.

21. On bare perusal of Rule 19 of 1978 Rules amended through notification dated 4.12.2019, it is crystal clear that by adding provision, it shall not be effective for the teaching and non-teaching staff appointed after 1.4.2005, meaning thereby all the teachers and non-teaching staff of recognized Junior Highschools are entitled for provident fund.

22. The petitioner before this Court was granted appointed in accordance with aforesaid Rules and his appointment was duly approved by the competent authorities. At the time of taking the institution on grant-in-aid list in the manager's return names of teaching and non-teaching staff were also submitted and financial concurrence was also granted to them. At the time of enforcement of NPS, the Rules referred herein above were same as was existing at the time of appointment of the petitioner. When the institution was brought within the purview of Payment of Salaries Act, the aforesaid rules were intact and no amendment was incorporated in the rules that after taking the institution in grant-in-aid list their appointment shall be treated to be made after enforcement of NPS. Therefore, once this is

the back ground, the petitioner before this Court cannot be denied for the grant of benefit of OPS being appointed in the institution prior to enforce of NPS.

23. Relevant point of consideration is that when the institution was brought within the purview of Payment of Salaries Act, 1978, there were same provision in regard to recruitment and appointment of teachers in the institution. For consideration of this aspect of the matter, it is relevant to narrate the necessary facts.

24. Perusal of the material on record shows that the petitioner was engaged as Headmaster in the School on temporary basis by the committee of Management on 1.7.1982 and he was joined on 1.7.1982. School in question was given temporary recognition by the competent authority vide order dated 19.1.1984 for the session 1983-84 which was extended from time to time in accordance with law. Vide order dated 25.10.1987 the services of the petitioner on the post of Headmaster were regularized by the opposite party no.5.

It also shows that the State Government had taken the school in the list of grant-in-aid along with other schools vide government Order dated 2.12.2006. On 7.2.2007, Finance & Account Officer, Basic Education, Faizabad issued letter to the concerned officers informing him that for payment of salary budget has been sanctioned and order for payment has been issued to teaching and non-teaching staffs of schools whose name mentioned in the Government Order dated 2.12.2006 in which the name of school in question stands at serial no.10.

25. I have carefully examined the relevant provisions of recruitment and appointment of teachers and there is no hesitation to hold that at the time of taking of institution on grant-in-aid list in the year 2006, same provision of recruitment and condition of service were applicable to the teachers who are liable to be paid salary from the State Exchequer after taking the institution on the grant-in-aid list.

26. It is the case of the petitioner who is non-teaching staff of the institutions that he was appointed in the institution in accordance with the provisions contained under the 1984 Rules and at the time of taking the institution on grant in aid list, same service condition shall be applicable in regard to recruitment of non-teaching staff of the institution. Therefore, the applicability of NPS treating the non-teaching staff to be appointed on the date the institution was brought within the purview of Payment of Salaries Act on 2.12.2006 is erroneous in nature. The service condition and recruitment process of

non-teaching staff of the institution were same as was existing at the time of appointment in the institution. Therefore, analogy drawn by the respondents that he is not entitled to get covered under OPS as the same came into existence prior to taking of institution on grant-in-aid list on 1.4.2005 is not sustainable.

27. Once this is the background of the case of the petitioner, the analogy drawn by the respondent making applicable the NPS being the institutions brought within the purview of Payment of Salaries Act, 1978 after 1.4.2005 is wholly erroneous and contrary to the Act and Rules applicable to the petitioners.

28. It is admitted case between the parties that teachers and non-teaching staff have been appointed much prior to enforcement of NPS the date of enforcement w.e.f. 1.4.2005, therefore only on the ground that the institution was brought within the purview of Payment of Salaries Act vide notification issued on 2.12.2006 after cut off date of enforcement of applicability of NPS cannot be a ground for depriving the teachers and non-teaching staff, who were appointed in accordance with applicable Rules and on the date of taking the institution on grant-in-aid list the recruitment condition of appointment was same.

29. Once the service rendered by teachers and non-teaching staff appointed in non-aided institutions is counted from the date of approval for the purpose of fixation of salary, the analogy drawn by the respondents treating the petitioner to be appointed after 1.4.2005 due to taking of institution on grant-in-aid list vide Government Order dated 2.12.2006 appears to be not justified in law.

30. It is also reflected that there is a scheme of the State Government in regard to teachers and non-teaching staff appointed in the recognized school under U.P. Basic Education Act, 1972 to whom recruitment and condition Rules, 1978 are applicable that the Management shall deposit the manager's fund for the period he has discharged service in non-aided institution.

In this view of the matter, this Court is of the opinion that in case the Management is directed to deposit the manager's contribution with interest for counting of service rendered in the institution prior to taking of institution on grant-in-aid list, the petitioner shall come under the ambit of OPS and there shall be no difficulty or burden on the State Government in endorsing the petitioner under OPS which was prevailing prior to enforcement of NPS.

31. I have also gone through the judgment relied upon in regard to fixing cut off date for deposit of manager's fund wherein this Court recorded that the State failed to justify the cut off date fixed and quashed the Government Order of July, 2001 fixing cut off date as 31.3.2002.

32. The Management has been empowered at earlier point of time by issuing Government Order to deposit the manager's contribution by calculating the service for grant of pension to teaching and non-teaching staff, therefore there shall be no burden upon the State Government in paying the pension treating the teaching and non-teaching staff to be covered under OPS.

33. Considering in totalities of facts and circumstances of the case as also the fact that the petitioner before this Court who has been granted appointment much prior to enforcement of NPS vide notification issued on 28.3.2005 w.e.f. 1.4.2005 shall not affect the right of the petitioners to be covered under OPS, the writ petitions are finally disposed of with a direction to permit the Management to deposit manager's contribution with simple interest excluding the deducted amount from the petitioner within a period of two months from the date of production of a certified copy of this order and to reckon the service rendered by the petitioner in the institution from the date of his approval to the appointment made on his post and to pay pension under OPS within a further period of two months from the date of production of a certified copy of this order.

34. Needless to say that in case the service required for reckoning the qualifying service for the payment of pension is insufficient, the service rendered prior to taking into consideration on grant-in-aid list shall be counted for the purpose after deposit of manager's contribution and accordingly, the pension shall be released in his favour.

Order Date :- 31.10.2023

GK Sinha

[Irshad Ali, J.]