

Court No. - 5

Case :- WRIT - A No. - 8757 of 2009

Petitioner :- Sri Satya Ram S/O Jai Karan Yadav And Ors.

Respondent :- State Of U.P. Thru Secy. Basic Education And Ors.

Counsel for Petitioner :- Kaushlendra Tewari,Rajendra Pratap Singh,Shree Prakash Shukla,Surendra Pratap Singh

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

Hon'ble Irshad Ali,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent nos.1 to 3 and Sri Neeraj Chaurasia, learned counsel for the respondent no.4.

2. By means of the present writ petition, the petitioners have prayed for the following reliefs:

"(i) Issue a writ, order or direction in the nature of Certorari quashing the impugned order dated 9.4.2007 passed by the opposite party no.4 (contained as Annexure No.1 to this writ petition).

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties particularly opposite party no.1 & 4 to pay the salary regularly each and every month to the petitioners w.e.f. 02.12.2006 from the date the school has been taken in the list of grant-in-aid school.

(iii) Issue a writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case and in the interest of justice.

(iv) To awards, the cost of the present writ petition to the petitioner against the opposite parties."

3. Brief facts of the case are that the petitioner nos.1 and 2 are Assistant Teachers in a Junior High School run and managed under the provisions of U.P. Basic Education Act, 1972 and petitioner no.3 is Class-IV employee of the institution in question. The institution namely Bharat Junior High School, Nyori, District Ambedkar Nagar was established in the year 1977 and after its establishment, the petitioners were granted appointment on 15.8.1983, 5.5.1987 and 29.12.1986

respectively and were granted approval by the District Basic Education Officer vide order dated 27.7.1987. Since the date of appointment, they have continuously been discharging their duties in the institution and no complaint whatsoever in regard to their working has been made against them.

A Government Order was issued on 2.12.2006 inviting applications from the eligible institutions by giving certain conditions for taking institutions in the grant-in-aid list. In pursuance thereof, the institution in question submitted papers before the Competent Authority along with the required documents. The committee constituted for consideration of the claim, considered and published a list of institutions who were taken in the grant-in-aid list on 7.2.2007 wherein the name of the institution of the petitioners finds place.

Thereafter, the Competent Authority passed an order on 30.3.2007 whereby financial concurrence was granted to the teachers and employees of the institution excluding the petitioners for the purpose of disbursement of salary to them and in regard to the petitioners, an order was passed on 9.4.2007 whereby it was held that the petitioners have been appointed without following the procedure prescribed under the law. The order dated 9.4.2007 is subject-matter of challenge in the present writ petition with the prayer for issuing a writ in the nature of Mandamus directing the respondents to ensure payment of salary to the petitioners with effect from the date the institution was brought within the purview of Payment of Salary Act.

4. Submission of learned counsel for the petitioners is that the petitioners were appointed long back in the year 1983 to 1986 and approval was granted vide order dated 27.7.1987 by the District Basic Education Officer. His next submission is that after the grant of approval, the question of validity of appointment of the petitioners cannot be raised at the time when they became entitled for payment of salary from the State Exchequer. He next submits that once the approval has been granted, the question of validity of appointment cannot be raised. He next submits that the Authority has no power to review the order of approval after lapse of almost 20 years holding that the procedure was not followed. His last submission is that the order is cryptic in nature and does not disclose that what was the procedure which was not followed in making selection and appointment of the petitioners.

5. On the other hand, learned Standing Counsel and learned counsel for the District Basic Education Officer submit that under the Government Order dated 2.12.2006, it has been

provided that while taking the institution, the validity of the appointment of its employees shall be looked into and after examination, they can be made entitled for the payment of salary from the State Exchequer. They next submit that although the appointment of the petitioners has been approved by the Competent Authority, but at the time of appointment the procedure prescribed was not followed.

6. On pointed query made to the learned counsel for the District Basic Education Officer that what was the procedure which was not followed in making appointment and what is the illegality, he submits that the qualification of the petitioner nos.1 and 2 is B.Ed. and under the Rules, B.Ed. is not the prescribed qualification for appointment on the post of Assistant Teacher. In regard to appointment of petitioner no.3, no discrepancy has been pointed out.

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

8. The provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 are applicable to the institution of the petitioners. Under the Rules, after the appointment, it is required that the papers shall be submitted before the District Basic Education Officer for the grant of approval to the selection and appointment and in case it is found that the appointment is not in accordance with law and procedure prescribed, he has right to disapprove the same. For ready references, the said provisions is extracted hereinbelow:

"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."

9. The order annexed as Annexure-6 to the petition creates no doubt nor in this regard statement of fact has been made in the counter affidavit that it is fraudulent meaning thereby the approval has been granted by the District Basic Education Officer to the selection and appointment of the petitioners. Once the approval has been made meaning thereby the District Basic Education Officer at the relevant time examined the entire proceedings and thereafter accorded approval to the selection and appointment. Therefore, while granting financial concurrence, the Authorities are not empowered to re-examine the validity of the approval granted by the District Basic Education Officer. Law in this regard is very much clear that the order passed by the District Basic Education Officer cannot be reviewed except on the ground that it has been obtained by fraud or misrepresentation of facts.

10. It is not the case of the respondents that the order of approval is fraudulent, therefore there is no hesitation to hold that the petitioners are entitled for payment of salary and other consequential benefits available to them after taking the institution in grand-in-aid list. The impugned order also does not record cogent reason that what was the procedure which was not followed in making selection and appointment. In

regard to the qualification prescribed, it is admitted case of the petitioners that they are holding B.Ed. training qualification which was not prescribed for appointment, but it is seen in the year 1987-88 that due to non-availability of the qualified candidates, the State Government came forward to issue Government Order to the effect that in case sufficient number of BTC training holders are not available, the candidates having B.Ed. qualification shall be considered for appointment on the post of Assistant Teacher in the institution run and managed by the Board of Basic Education meaning thereby it is admitted case of the petitioners that in the year 1997, sufficient candidates holding B.T.C. training qualification were not available. The education plays very important role in the society and every citizen has right to get education and to provide qualification sufficient number of teachers are required. Taking into consideration this aspect of the matter, the Government has resolved to amend Article 21 by inserting Article 21-A of the Constitution of India providing that the education from the age of 6 to 14 has fundamental right. Appointment of the petitioners has been made to provide education to the students in short-fall of availability of teachers having B.T.C. training qualification. In the opinion of this Court, to run an institution if the teachers having training qualification are available, at the time of payment of salary from State Exchequer technical objection should not be taken.

11. Considering the totality of facts and circumstances of the case as well as provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, this writ petition is **allowed** and impugned order dated 9.4.2007 is hereby quashed. Respondents are directed to ensure payment of salary to the petitioners with effect from the date the institution was brought within the purview of Payment of Salary Act forthwith inasmuch as all other consequential benefits available to them within a period of three months from the date of production of a certified copy of this order.

Order Date :- 2.11.2023

GK Sinha