

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 137 of 2021

Appellant :- Ram Prakash Vishwakarma

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

Counsel for Appellant :- Shri Krishna Madhav Shukla, Advocate

Counsel for Respondent :- Shri Pratyush Chaube, Standing Counsel

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. Heard Shri K. M. Shukla, learned counsel for the appellant and Shri Pratyush Chaube, learned Standing Counsel for the State-respondents.
2. By means of the instant special appeal, the appellant assails the judgment and order passed by the learned Single Judge dated 22.01.2021 passed in Writ Petition No.1135 (S/S) of 2009 (Ram Prakash Vishwakarma Vs. State of U.P. & others) whereby the writ petition preferred by the appellant was dismissed. The appellant had filed an application for review which also came to be rejected on 22.02.2021, hence the instant appeal.
3. The grievance of the appellant, who was the writ-petitioner, was that he had challenged the order dated 18.11.2008 passed by the Assistant Regional Director of Education, Basic, Faizabad Region, Faizabad whereby the claim of the appellant for payment of salary was rejected. This matter came up before the learned Single Judge who also dismissed the writ petition upholding the order passed by the Assistant Regional Director of Education, Basic, Faizabad Region, Faizabad.
4. Facts giving rise to the instant appeal are that the appellant [who was the petitioner no.2 in the writ petition before the learned Single Judge] was appointed on the post of Peon by the

Committee of Management on 22.06.1986 and he joined the institution i.e. Sarvajanik Junior High School, Dhaurahara, Gaura Gujar, Tanda, District Ambedkar Nagar on 01.07.1987. The appointment of the appellant was regularized by the order dated 14.09.1992 and at a later stage the institution aforesaid was brought under the Payment of Salary Act on 02.12.2006. The claim of the appellant was that he was entitled for disbursement of salary from the State Exchequer having been duly appointed as a Group-D employee. Since no order was passed, consequently the appellant had filed Writ Petition No.5679 (S/S) of 2008 which came to be allowed by the Court directing the competent authority to pass appropriate order on the representation moved by the appellant.

5. By means of order dated 18.11.2008 the representation of the appellant was rejected holding that despite several directions given to the management to submit relevant papers in regard to the selection and appointment of the appellant, the same was not made available. It also noticed that the society running the institution was registered on 17.08.1981 and the institution was granted temporary recognition by the order of the District Basic Education Officer dated 30.06.1982 and permanent recognition was granted by the Assistant Regional Director of Education, Basic, Faizabad Region, Faizabad vide order dated 25.07.1987. The manager of the institution was required to place the necessary documents in respect of the selection and appointment of the appellant and the approval. Since the requisite documents were not provided, hence the claim of the appellant was rejected as he was not found to have been duly appointed in accordance with the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984. (hereinafter referred to as the Rules of

1984), therefore, there was no concurrence for payment of salary by the competent authority. This was assailed before the learned Single Judge in Writ Petition No.1135 (S/S) of 2009.

6. Submission of the learned counsel for the appellant is that at the time of hearing, the Manager had placed the relevant documents to establish the selection and appointment of the appellant in terms of the Rules of 1984 but the same was ignored. It is further urged that the services of the appellant were regularized and the order of approval and regularization were made. This clearly indicates that the same was done only after perusing the necessary documents and they must have been found to be in order, otherwise the recognition and grant-in-aid would not have been granted to the Institution, nor the regularization would have been passed.

7. Before the learned Single Judge, the contention of the State-respondents was that the appointment regarding the appellant was not in accordance with the rule prescribed as it required prior approval of District Basic Education Officer and since the said approval was not accorded, hence the appellant was not duly appointed.

8. It is further urged that the learned Single Judge while referring to the Rules of 1984 failed to notice that the necessary documents regarding the appointment of the appellant was furnished for approval and since it was not granted yet the fact remains that it was not disapproved. In this view of the matter, the approval would be deemed to have been accorded, hence the case of the appellant was duly covered in terms of Rule 15(5)(iii) of the Rules of 1984. It is thus urged that in light of the aforesaid statutory prescription, once the document and the necessary papers were furnished before the District Basic Education Officer and even though he did not grant specific

approval but since he had not disapproved it, hence in terms of the aforesaid provision, the approval was deemed, hence the premise upon which the learned Single Judge has passed the order is patently erroneous. It is urged that for the same very reason, the appellant had filed a review which also did not find favour with the learned Single Judge.

9. It has further been pointed out that another similarly situate person who was a Class-IV employee in another institution, namely, Jai Ambe Jai Raji Devi Poorv Madhyamik Balika Vidyalaya; Daultabad, Bhiyaon, Ambedkar Nagar, namely, Bhagwati Prasad whose claim had been rejected on similar grounds had filed Writ Petition No.3600 (S/S) of 2010, which was allowed by the Court taking note of the rules vide judgment dated 18.01.2021. In the case of Bhagwati Prasad the order passed by the writ court was not complied with which prompted the said writ petitioner, namely, Bhagwati Prasad to file a contempt Petition before this Court bearing Contempt No.1534 of 2021 and in the said case the State had complied with the said order and the contempt petition came to be dismissed on 09.02.2024 on the statement of the State Counsel that the order passed by the writ court was complied with in its letter and spirit.

10. It is thus urged that the learned Single Judge was not justified in refusing the relief to the appellant whereas the other similarly situate persons have been granted the benefit and moreover the case of the appellant was duly covered by the statutory rules, hence the findings recorded by the learned Single Judge while dismissing the petition was bad in the eyes of law, consequently the appeal deserves to be allowed after setting aside the order of the learned Single Judge dated 21.01.2021 and the writ petition as far as the appellant is concerned deserves to be allowed.

11. Shri Chaubey, learned counsel for the State while refuting the aforesaid submissions has urged that findings of fact has been recorded by the learned Single Judge and in view thereof there is no error committed by the learned Single Judge, hence the appeal deserves to be dismissed.

12. The Court has considered the rival submissions and also perused the material on record.

13. At the outset, it may be noticed that the learned counsel for the State could not dispute the fact that the appointment of the appellant was governed by the Rules of 1984. It also could not be disputed that Rule 15(5)(iii) of the Rules of 1984 provides for a deeming provision for grant of approval and the relevant portion of the said Rules reads as under:-

"15. Procedure for selection. - (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date 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 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 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 Ministerial staff and Group 'D' employees, 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."

14. It is further found that similarly situate persons have been granted the benefit taking note of Rules 15 of the Rules of 1984 and in such circumstances there was no material on record to indicate that the case of the appellant was any different. Nothing could be placed before this Court to indicate as to how the case of the appellant was any different to the case of other persons who have been granted the benefit. The findings recorded by the learned Single Judge that the order passed by the Regional Director of Education, Basic, Faizabad Region, Faizabad does not require interference, has been passed without taking note of the fact that when the institution was taken in grant-in-aid of the necessary documents would have been submitted and even though the approval may not have been specifically granted but it was not refused and now after many years it could not have been taken as a ground to reject the claim of the appellant. It is also not disputed by the State respondents that the service of the appellant was regularized and in such circumstances after many years there was no justification for rejecting the claim of the appellant for not granting the salary from the State Exchequer.

15. The learned Standing Counsel also could not dispute that in case of **Bhawati Prasad and others v. State of U.P. and others, Writ Petition No.3600 (S/S) of 2010**, decided on 18.01.2021, the learned Single Judge by relying upon the relevant Rules had upheld the claim of Bhawati Prasad for payment of salary and the said order was not challenged by the State and it was complied with as recorded in the order passed

in the said case by the Contempt Court in Contempt Application No.1534 of 2021, dated 09.02.2024.

16. The aforesaid line of reasoning relating to the Rules of 1984 while allowing the case of employees, was adopted by the another Single Judge of this Court in **Munendra Singh and others v. State of U.P. and others, WRIT-A No.64346 of 2007, decided on 16.02.2012** and **Ram Pal Singh and others v. State of U.P. and others, reported in 2016 (2) UPLBEC 1607.**

17. The said dictum was also ignored by the learned Single Judge while passing the impugned order, moreover when there was no case of the respondents that the appointment and regularization of the appellant was fraudulent then in absence of any cogent plea, the learned Single Judge was not justified in ignoring the relevant provisions and dictum as laid by the Court, as mentioned above, while passing the impugned order.

18. In this view of the matter, this Court is of the clear view that the judgment passed by the learned Single Judge dated 21.01.2021 passed in Writ Petition No.1135 (S/S) of 2009 in so far as it dismissed the writ petition of the appellant cannot be sustained.

19. Accordingly, the appeal is allowed. The judgment dated 22.01.2021 including the order rejecting the Review dated 22.02.2021 passed in Writ Petition No.1135 (S/S) of 2009 is set aside and the writ petition filed by the appellant shall stand **allowed**. In the facts and circumstances, there shall be no order as to costs.

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(Jaspreet Singh, J) (Arun Bhansali, C.J.)

Order Date :- 18.10.2024

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