

Court No. - 5

Case :- WRIT - A No. - 306 of 2013

Petitioner :- Ram Subder Shukla And Others

Respondent :- State Of U.P.Thru Its Secy.Basic Edu.Up Civil Sectt. And Ors.

Counsel for Petitioner :- D.N. Tripathi,Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Udai Veer Singh,Vidyawashini Kumar

Hon'ble Abdul Moin,J.

1. Heard.

2. The instant writ petition has been filed praying for the following main reliefs:

"(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 17.04.2012 passed by the opposite party no.1 contained as Annexure No. 1 to the writ petition.

(ii) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to make the payment of salary to the petitioners immediately according to the directions of the State Government from grant in aid as was made available by the State Government as well as by Director of Education through order dated 23.01.2017."

3. Bereft of unnecessary details the undisputed facts of the case are that the petitioner no. 1 was appointed as Headmaster on 01.07.1981, the petitioner no. 2 was appointed as Assistant Teacher on 04.08.1985 while the petitioner no. 3 was appointed as Class IV employee on compassionate ground on 12.06.2000. The appointment of the petitioners have been approved by the competent authority who is said to be the District Basic Shiksha Adhikari, Gonda by means of the order dated 29.12.1988 so far as it pertains to the petitioners no. 1 and 2 and 18.09.2001 so far as it pertains to petitioner no. 3. In terms of government order dated 07.09.2006, a copy of which is annexure 3 to the writ

petition, the petitioner institution had applied for grant in aid. The institution came in grant in aid on 01.12.2006. When the petitioners, despite the institution having come in grant in aid with effect from 01.12.2006 were not paid the salary, the petitioners herein alongwith several others were constrained to approach this Court by filing Writ Petition No. 2187 (SS) of 2007 in re: Ram Sundar Shukla an others vs State of U.P. an others. The writ court vide judgement and order dated 19.09.2011, a copy of which is annexure 2 to the writ petition, disposed of the writ petition with a direction to the Secretary, Basic Education, Lucknow to take an independent decision on the recommendations so made by the respondent no. 6 relating to the institution and the petitioners and the management were given complete opportunity to put their claim before the Secretary, Basic Education and the respondent no. 1 was required to pass a reasoned and speaking order in accordance with law. In pursuance thereto the claim of the petitioner for payment of salary from the state exchequer was rejected vide order impugned dated 17.04.2012, a copy of which is annexure 1 to the writ petition, and hence the writ petition.

4. The contention of learned counsel or the petitioners is that the sole ground which has been taken by the respondent no. 1 while rejecting the claim of the petitioners for payment of salary is that as the date of appointment of the petitioners is much prior to the date of approval, consequently they are not entitled for payment of salary from the state exchequer.

5. The argument of learned counsel for the petitioners is that the said ground which has been taken by the respondent no. 1 is totally alien to the relevant provisions of Rules in as much as there is no provision under the Rules that where an appointment has taken place much prior to the date of approval consequently there would not be any occasion for payment of salary from the

state exchequer.

6. It is further argued that once the approval of the petitioners still stands good as of date and the said approval order has neither been modified, withdrawn or cancelled consequently there cannot be any occasion for the respondents to have taken such a ground for denying the salary from the state exchequer to the petitioners and hence it is prayed that the order impugned be set aside.

7. In this regard reliance has been placed on the judgement and order passed by this Court in the case of the **C/M Shri Dravi Nath Purva Madhyamik Vidyalaya and others vs State of U.P. and others** in **Writ C No. 9722 of 2012** decided on 24.08.2024 as affirmed with the dismissal of **Special Appeal (Defective) No. 932 of 2018 in re: State of U.P. vs Shri Dravi Nath Purva Madhyamik Vidyalaya and others** vide order dated 24.02.2020 and in turn affirmed with dismissal of the **SLP No. 4539 of 2021 in re: State of U.P. vs C/M Shri Dravi Nath Purva Madhyamik Vidyalaya and others** vide judgement and order dated 30.07.2021.

8. Placing reliance on aforesaid judgement of this Court in the case of **C/M Shri Dravi Nath Purva Madhyamik Vidyalaya (supra)** the contention of learned counsel for the petitioners is that initially in the first round of litigation the claim of the institution and its teachers had been rejected for payment of salary on the ground that certain teachers were not appointed as per Rules despite the approval to their appointment having been granted. In the second round of litigation another ground had been taken by the respondents which all have been turned down by the writ court vide its judgement and order dated 24.08.2018. Upon a challenge being raised by the state government to the aforesaid order passed by the writ court, a

division bench of this Court vide judgement and order dated 24.02.2020 has also held that after lapse of 23 years it was not open for the respondents to say that at the time of grant of permanent recognition the appointments were dehors the rules.

9. It is contended that once the aforesaid grounds taken in respect to another institution have already been scrutinized threadbare by the writ court and division bench of this Court and in turn by the Hon'ble Supreme Court consequently the said ground which has been urged by the respondents for denying the claim of the petitioners for payment of salary from the state exchequer cannot be said to be legally sustainable and countenanced in the eyes of law.

10. On the other hand, learned Standing Counsel on the basis of averments contained in the counter affidavit has argued on the basis of Rules 9, 10 and 11 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 (hereinafter referred to as the Rules, 1978) that the proposal for approval of the selected candidates by the selection committee constituted as per Rules has to be sent by the committee of management to the District Basic Shiksha Adhikari and after giving approval of the selected candidate by the officer concerned the manager will have to send the appointment letter to the teacher through registered post but the appointment of the teachers had not been made in accordance with rules, consequently there cannot be any occasion for payment of salary to them by the state exchequer of the appointment of the petitioners.

11. It is further contended that there was no recommendation by the selection committee of the appointment of the petitioners.

12. Heard learned counsel for the parties and perused the record.

13. From the arguments as raised by learned counsel for the contesting parties and from perusal of record it emerge that the petitioners have been appointed on 01.07.1981, 04.08.1985 and 12.06.2000. Their appointments have duly been approved by the competent authority i.e. the District Basic Shiksha Adhikari by means of approval order dated 29.12.1988 so far as it pertains to the petitioners no. 1 and 2 and 18.09.2001 so far as it pertains to the petitioner no. 3. The said approval orders still stands good as of date in as much as neither in the order impugned dated 17.04.2012 nor in the counter affidavit has any averment been made that the said approval order has either been withdrawn, cancelled or modified till date meaning thereby that the approval which had been granted to the appointment of petitioners on 29.12.1988 and 18.09.2001 still stands good as of date.

14. Rules 9, 10 and 11 of the Rules 1978 are reproduced below:

"9. Selection Committee – The Management of minority Institutions and unaided Junior High Schools shall constitute a selection committee:

(i) For the post of headmaster :

(1) Manager;

(2) Two nominee of the 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 nominee of the Management:

10. Procedure for selection. –

(1) Non Government Aided Junior High School-

(a) On the basis of requisition received from management the Director of Education (Basic) shall determine the number of district wise vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes,

Scheduled Tribes, Backward Classes, and other categories and an advertisement for recruitment will be published in at least two leading daily newspapers having adequate circulation in the State inviting online application from candidates possessing prescribed educational and training qualification. In advertisement there shall be detail of the post, qualification, as may be, and last date of submissions of applications.

(b) A recruitment examination shall be conducted before every recruitment of headmaster and Assistant Teacher of non-Government Aided Junior High School. Recruitment Examination shall be conducted by the authority prescribed by the State Government.

(c) The names of candidates passed in recruitment examination shall be arranged in accordance with the quality points as specified in the appendix, Provided that if two or more candidate obtain equal marks, the candidate senior in age shall be placed higher:

Provided that if two or more candidates having the same date of birth then the name of candidates shall be arranged in accordance with the English alphabet.

(d) The Director of Education (Basic) shall send the list of candidates passed under clause (c) to the Basic Education Officer after allotment of district/school by software as per their marks and choice within two weeks through registered post/e-mail.

(e) Basic Education Officer shall send the list of selected candidates for verification within a week after receiving from the Director of Education (Basic).

(f) After receiving the verification from Director of Education (Basic) the Basic Education Officer shall examine the academic documents of selected candidates then the name of candidate shall be send to the concerned management of schools for appointment.

(2) Minority and Non Aided Junior High School-

(a) The Selection Committee shall scrutinize the applications received in pursuance of the advertisement under rule (7) and prepare a merit list of such person as appear to possess the prescribed academic qualification and be eligible for appointment.

(b) The Selection Committee shall after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, for 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.

(c) The list prepared under clause (a) 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.

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

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

(f) (i) If the District Basic Education Officer is satisfied that the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post; and 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(e).

(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(e), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.

11. Appointment by the Management. –

(1) Non Government Aided Junior High School-

(a) Appointment- On receipt of the name of selected candidate from District Basic Education Officer under of sub-rule (1) of rule 10, the management shall send the appointment letter by

registered post to the selected candidate within two weeks.

(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 to the District Basic Education Officer.

(2) Minority and Non Aided Junior High School-

(a) On receipt of communication of approval from the District Basic Education Officer 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."

15. From perusal of Rules 9, 10 and 11 of the Rules, 1978 it clearly emerge that the said Rules only pertain to appointment and nowhere the rules precludes or provides anywhere that in case any appointment has been made much prior to date of approval, the approval would get vitiated or that the appointment itself would get vitiated. Thus the reliance placed by the respondents on the Rules, 1978 in their counter affidavit is patently misconceived and hence rejected.

16. Thus the grounds which have been taken by the respondents while denying the claim of the petitioners for payment of salary from the state exchequer that as their appointments were much prior to the date of approval is clearly not countenanced in the eyes of law more particularly Rules 9, 10 and 11 of the Rules, 1978 clearly had not envisaged such situation.

17. From the perusal of the aforesaid it is thus apparent that the approval which has been granted to the appointment of the petitioners still continues to hold good as of date and consequently the ground as urged by the respondents in the order impugned as well as by means of counter affidavit merits to be rejected and is accordingly rejected.

18. The other ground which has been taken by the respondents in the counter affidavit is that as per the Rules 14, 15 and 16 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Ministerial Staff And Group 'D' Employees) Rules, 1984 (hereinafter referred to as the Rules, 1984) the proposal for approval of selected candidates on clerical and Class IV posts through a selection committee constituted as per Rules, 1984 has to be sent by the committee of management to the District Basic Shiksha Adhikari and after approval, the Manager of the School will send the appointment letters to the candidates through registered posts, yet the said procedure was not adopted while making appointment of the petitioner no. 3.

19. The aforesaid ground is also patently misconceived in as much as, as already indicated above, the approval of appointment of petitioner no. 3 vide order dated 18.09.2001 and the appointment having been made on 12.06.2000 still continues to subsist as of date and thus once there is an approval to the appointment, merely because the appointment was made much prior to approval, the appointment cannot be negated on this ground. Thus, the said ground is also rejected.

20. This aspect of the matter has also been considered by this Court in the case of **C/M Shri Dravi Nath Purva Madhyamik Vidyalaya (supra)** and in turn by the division bench of this Court which has been affirmed by Hon'ble Supreme court.

21. For the sake of convenience, the relevant observations made by this Court in the case of **C/M Shri Dravi Nath Purva Madhyamik Vidyalaya (supra)** are reproduced below:

*"Having heard the learned counsel for the parties and having gone through the record, I am of the view that the orders dated 18.11.2011 and 23.5.2014 cannot be sustained. The reasons as have been given in both the orders have no basis. In the order dated 13.7.2011 which was passed in Writ Petition No. 29572 of 2010 this Court had observed that when the School was given a permanent recognition in the year 1984 then the Basic Siksha Adhikari after 23 years could not question the appointment of the employees of the School. **Further more, the order had found that the appointments were correctly made and there was a proper approval also accorded to the appointments.** Further, the reason which has now been given in the order dated 23.5.2014 also is an absolutely erroneous one. When the petitioners college was recognized in the year 1984 and was running from much before the order of recognition then as per 'the Rules of 2011', the Institutions which had come up in the vicinity of the institution of the petitioners could not have been opened at all. It does not lie in the mouth Secretary Basic Education to say that since there were other institutions being run by the Parishad in the vicinity of the petitioners' Institution, the petitioners were dis-entitled from getting the financial aid. Further, I find that under the provisions of 'the Act of 2009' and as per the Article 21A of the Constitution of India, children studying in the petitioners' Institution were also entitled for free education and this was possible only if the petitioners' Institution was granted a proper financial aid. In the judgement reported in 2014(9) SCC 692 (State of U.P. & Ors vs. Pawan Kumar Divedi & Ors), and in view of the judgement reported in 2015 (2) UPLBEC 1154 (Paripurna Nand Tripathi and Ors. vs. State of U.P. and Ors.) wherein it has been held that it was the Fundamental Right of every child between the ages 6 to 14 to get free education, I am definitely of the view that the petitioners institution which runs classes 6 to 8 alongwith other classes should be given grant-in-aid for which it was eligible ever since 2006."*

(Emphasis by the Court)

22. Upon a challenge being raised to the aforesaid judgement,

the division bench of this Court has observed as under:

*"By the orders aforesaid the financial aid was stopped that was allowed to the respondents / petitioners' institution. The financial aid came to be detained firstly, on the count that the appointments of the employees with the institution were not made in accordance with applicable rules and secondly, on the count that as per the applicable rules no two aided institution could have been allowed to continue within a periphery of 300 meters. From perusal of the facts available on record it is apparent that a permanent recognition was given to the respondents / petitioners' institution in the year 1984. At that time all necessary enquiry was made and nothing was found adverse. **After a lapse of 23 years it was not open for the respondents to say that at the time of grant of permanent recognition the appointments were dehors the rules.***

So far as the second argument is concerned that too lacks merit. As per the facts averred the respondents / petitioners' institution was the first institution working in the area and within the periphery of 300 meters a school was subsequently established. Learned Single Bench in quite ambiguous terms after examining the record held that, that in the vicinity of the institution other school could not have been opened at all."

(Emphasis by the Court)

23. As already indicated above, the order of writ court has been affirmed with dismissal of Special Leave Petition.

24. From perusal of the aforesaid judgement passed by division bench of this Court in the case of **C/M Shri Dravi Nath Purva Madhyamik Vidyalaya (supra)** it clearly emerges that the division bench of this Court has disapproved the ground taken by the respondents at the time of permanent recognition that the appointment were dehors the rules.

25. In this case also, once the appointments of the petitioners stood approved by the District Basic Shiksha Adhikari and the said approval order still stands good as of date consequently the ground taken by the respondents is clearly not countenanced in the eyes of law more particularly when as already indicated

above, Rules 1978 do not envisage or provide anywhere that where an appointment has been made much prior to the approval the same would not be legal in the eyes of law.

26. Keeping in view the aforesaid discussion, the writ petition is **allowed.**

27. A writ of certiorari is issued quashing the order impugned dated 17.12.2012, a copy of which is annexure 1 to the writ petition.

28. A writ of mandamus is issued commanding the respondents to make payment of salary to the petitioners according to the directions of the State Government from the date the grant in aid was made available with all consequential benefits.

29. Let the order be complied within a period of 8 weeks from the date of receipt of a certified copy of this order.

Order Date :- 13.11.2024

J. K. Dinkar