

**Court No. - 20**

**Case :-** WRIT - A No. - 15838 of 2020

**Petitioner :-** Anita Devi And Ors.

**Respondent :-** State Of U.P. Thru Prin. Secy. Secondary Edu. Lko. And Ors.

**Counsel for Petitioner :-** Rohit Tripathi, Syed Zulfiqar Husain Naqv

**Counsel for Respondent :-** C.S.C., Abhay Raj Singh

**Hon'ble Shree Prakash Singh, J.**

1. Heard Sri Rohit Tripath, learned counsel for the petitioners, Sri Raj Kumar Singh, advocate, holding brief of Sri Abhay Raj Singh, counsel for opposite party no. 5, Sri Shailendra Kumar Singh, Chief Standing Counsel and Sri Vivek Shukla, learned additional chief standing counsel for the State.
2. Under challenge is the order dated 18.12.2019, whereby the claim of the petitioners for payment of salary from State exchequer, has been been rejected.
3. Counsel for the petitioners submits that the institution was established in year 1978 as Sanskrit College Imparting Education from class-VI (Prathma) to Post-Graduate (Acharya) level and it was affiliated to Sampurnanad Sanskrit University, Varanasi and started receiving financial grant from the State Government and the integrated system from School to Post Graduate level continued for almost 20 years, but later on, for regulating the system of Sanskrit Education and to maintain the standards of such institution, the U.P. Board of Secondary Sanskrit Education Ordinance, 2000, subsequently Uttar Pradesh Board of Secondary Sanskrit Education Act, 2000 (hereinafter, referred to as

'Act 2000'), was promulgated wherein, five categories were classified as Prathmik, Purva Madhyamik, Uttar Madhyamik, Shashtri and Acharya.

4. After the aforesaid enactment, looking into the vacancies, the institution started the process of recruitment against the post of Teaching and Non-Teaching staff and thereafter, the petitioners applied for and were duly selected. The details of the petitioners with the description of their post and appointment are given herein under:-

| Petitioner No. | Name                     | Post                            | Date of Appointment |
|----------------|--------------------------|---------------------------------|---------------------|
| 1.             | Anita Devi               | Asstt. Teacher (Modern Studies) | 03.07.2000          |
| 2.             | Anita Singh              | Asstt. Teacher                  | 05.08.2001          |
| 3.             | Narvadeshwar Nath Sharma | Principal                       | 03.07.2000          |
| 4.             | Rajeev Bhatt             | Asstt. Teacher (Litt)           | 03.07.2000          |
| 5.             | Krishna Pratap Pandey    | Asstt. Teacher (Litt)           | 22.01.2000          |
| 6.             | Karunesh Chaturvedi      | Asstt. Teacher                  | 08.08.2005          |
| 7.             | Akhilesh Kumar Pandey    | Asstt. Teacher (Litt.)          | 13.07.2006          |
| 8.             | Vinod Kumar Pandey       | Clerk                           | 15.07.2000          |
| 9.             | Nagesh Tripathi          | Clerk                           | 22.07.2000          |
| 10.            | Krishna Deo Pathak       | Peon                            | 02.07.2000          |
| 11.            | Hari Ram Mishra          | Peon                            | 02.07.2000          |

5. After the recruitment, the petitioners joined and they are continuously working on their respective posts up till date. He submits that by means of option letter dated 17.07.2002, the classification of institution was resolved/decided to run the institution for two levels and the option indicated in the letter dated 17.07.2002, shows that the state Government approved/recognized two sections uptill Prathama to Uttar Madhyama section

and this was segregated from Graduate and Post Graduate sections i.e. Shastri and Acharya and thereafter, the petitioners became employees of the intermediate section by virtue of operation of the Act, 2000, but once they sought payment of salary from the State Exchequer, their claims were rejected while giving the reasons that since they are not duly appointed, therefore, and their appointments are irregular.

6. Further contention of learned counsel for the petitioners is that since section 25 of the Act, 2000 itself speaks that 'Subject to provision of this Act, the head of the institution and teachers and other employees of an institution shall be appointed in accordance with the regulation'.

7. Referring the aforesaid provision, the counsel for the petitioners submits that since the regulation is admittedly came in to the existence on 15.01.2010 and the appointments which were done likewise appointments of the petitioners from the date of promulgation of the Act, 2000 and up till the promulgation of the regulation in year 2010, the State has denied to make payment of salary to such appointments. He added that the aforesaid view is not justified as the petitioners were appointed to impart education by duly constituted selection committee and further since, there was no regulation came into effect uptill 2010, therefore, the only source remains for appointment in such institution with respect to Teaching and Non-Teaching Staff was Committee of Management, having administrative control over the institution concerned.

8. He further argued that it is not the case, where there is any denial with respect to the appointment by the Committee of Management, but the reasons for denial of payment of salary is that the source of appointment is not as per the law. He submits that in fact the question arises that once the provision of section 25 of the Act, 2000 itself, speaks that the appointment of teachers and other employees of institution shall be done in accordance with the regulations and the regulations do not come into existence uptill 2010, then the students cannot be

thrown to suffer, therefore, the only mechanism of appointment was, by the Committee of Management.

9. Adding his arguments, he submits that in the identically situated circumstances, the coordinate bench of this Court in case of Shiva Kant Mishra and others versus State of U.P. and others in Writ Petition No. 8253 (SS) of 2007 passed the judgment and order on 05.05.2009, for taking decision with respect to payment of salary from the State Exchequer, whereafter, the State Government took decision and those petitioners are being paid salary. He next submits that not only to this, but the ratio of judgment and order was also followed in the subsequent judgment in the case of Sushil Kumar Pandey and 13 others versus State of U.P. and others in Writ Petition No. 6520 (SS) of 2013 and the order was passed on 12.11.2013, whereafter, the same was complied with vide order dated 17.01.2017, by the State Government and all those petitioners/employees are also getting salary from the State Exchequer. Further submits that the case of the present petitioners are ditto identical to the case of those petitioners and therefore, they are also entitled for the same relief.

10. Concluding his arguments, he submits that the reasons which are assigned for non-payment of salary to the petitioners from State Exchequer is infact shows that the there is non-application of mind and the exigency which has arisen, after the promulgation of the Act, 2000 and uptill regulation in 2010 came into existence therefore, submission is that the impugned order dated 18.12.2019 may be quashed and the opposite parties may be directed to make payment of salary to the petitioners from the State Exchequer.

11. On the other hand, Sri Vivek Shukla, learned Additional Chief Standing counsel for the State has refuted the aforesaid contention of counsel for the petitioners, vehemently and submitted that the Act, 2000 is very clear in its terms as section 25 provides the mechanism with respect to the appointment of Teaching and Non-Teaching Staff of such institutions.

12. Submission is that in fact the regulation came into existence in year 2010 and therefore, any appointment contrary to the regulation is always against the law and therefore, such employees are not entitled for any salary from the State exchequer. He added that those teaching and non-teaching employees, appointed by Committee of Management are liable to be paid from its own resources. He submits that the settled proposition of law is that if, there is specific provision in the Act with respect to anything to be done in a particular manner that is to be done in a particular manner not otherwise.

13. Further contention is that so far as the judgment and order passed in the Writ Petition No. 8253 (SS) of 2007 as well as the judgment and order passed in Writ No. 6520 (SS) of 2013 are concerned, in both the orders, it was left open to the State to take decision and no ratio is drawn thereof, and therefore, the petitioners could not seek any benefit of ratio of judgments as above-said, thus, submitted that the order dated 18.12.2019 does not suffer from any illegality and therefore, no interference is warranted.

14. It is replied in rejoinder by counsel for the petitioners that in writ petition no. 8253/SS/2007, the same objection was also raised and considering that objection, this Court passed the order and that is complied with by the State, thus, the objection is unsustainable.

15. Having heard learned counsel for the parties and after perusal of material placed on record, it emerges that the consequence of the bifurcation of the institution in two sections i.e. one section is education up to Uttar Madhyamik and the other up to Acharya and Sastri level and the Teaching and Non-Teaching Staff of the institution existing prior to its division was transferred to the section of the institution, imparting education upto Acharya and Sastri level and no teachers or employees were left for working in the school in the section, imparting the Sankrit Education up to Uttar Madhyamik level. Under aforesaid compelling circumstances the appointment of the petitioner was done to impart the education.

16. It is undisputed that prior to the bifurcation, the institution was receiving grant in aid from the State Government and the Teaching and Non-Teaching staff working in the section of institution imparting education upto Sastri and Acharya level is being paid by the State Government and the counsel for the State could not substantiate that the payment of salary of Teachers and Employees of the institution imparting education upto Uttar Madhyamik is governed by the payment of Salaries Act, 1971 and further he has failed to bring any material on record that any regulation framed by the Board under the Act, 2000.

17. Undisputedly, the institution was established in year 1978 for imparting education from class VI (Prathama) to post graduate (Acharya) level and it was affiliated to Sampurnanand University, Varanasi and it was receiving in aid, but once it is bifurcated in between Uttar Madhyamik and Acharya and Sastri level vide the Act, 2000, but uptill 2010, no regulation was framed and under the compelling circumstances, the committee of management for imparting the education running the institution appointed the Teachers and it is not in dispute that Teachers who were appointed are not imparting education, but they are not getting their salary from State Exchequer. It is also a fact that after the bifurcation, the Teaching and Non-Teaching Staff of the institution which is running the Acharya and Sastri Level, they are getting salary from State Exchequer.

18. This Court is also not unmindful to the judgment and order dated 05.05.2009 passed in Writ Petition No. 8253 (SS) 2007, wherein, it has categorically been held that those petitioners were appointed under the provisions of U.P. Act No. 32 of 2000 and the direction was given to the State to take necessary decision on the representation wherein, the claim of the payment of salary was made and as a result, the representation were decided infavour of those petitioners and they are getting salary from State Exchequer.

19. Further, in judgment and order dated 12.11.2013, passed in Writ Petition No. 6520 (SS) of 2013 (Sushil Kumar Pandey and 13 other versus State of U.P. and others), the benefit granted in the writ petition no. 8253(SS) of 2007 was also accorded to the aforesaid petitioners and the same was also complied with vide the order dated 17.01.2017 and they are also getting payment of salary.

20. So far section 25 read with 2(F) of the U.P. Board of Secondary Sanskrit Education, Act 2000 is concerned that specifically provides the procedure with respect to the appointment of the Head of the Institution and Teachers and other employees in accordance with the regulations.

21. The provisions with respect to framing of the regulation, envisaged under section 21 and 22 of the 'Act, 2000', whereby, the Board was empowered to make regulations with the previous approval of the State Government, while publishing it in the Gazette and the same could be approved with or without the modification by the State Government.

22. Section 2(f), 21, 22, 25 and 26 of the 'Act 2000' are quoted herein under:-

*2(f) "Institution" means a Sanskrit school imparting Sanskrit education upto Uttar Madhyama recognized by the Board;*

*21- (1) The Board may make regulations for carrying out the purposes of this Act.*

*(2) In particular and without prejudice to the generality of the foregoing powers, the Board may make regulations providing for all or any of the following matters, namely :-*

*(a) constitution, powers and duties of committees and sub-committees;*

*(b) the conferment of diplomas and certificates;*

*(c) the conditions of recognition of institutions;*

*(d) the course of study to be laid down for all certificates and diplomas.*

*(e) the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates;*

*(f) the fees for admission to the examination of the Board;*

*(g) the conduct of examinations;*

*(h) the appointment of examiners, moderators, collators, scrutinisers, tabulators, centre inspectors, Superintendents of Centers and invigilators and their duties and Powers in relation to the Board's examinations and the rates of their remuneration;*

*(i) the admission of institutions to the privileges of recognition and the withdrawal of recognition;*

*(j) all matters which are to be, or may be, provided for by regulations.*

*22- (1) Regulations under section 21 shall be made only with the previous approval of the State Government and shall be published in the Gazette.*

*(2) The State Government may approve any such regulation proposed by the Board with or without modification.*

25- Subject to the provision of this Act, the Head of institution and teachers and other employees of an institution shall be appointed in accordance with the regulations.

26- (1) Every person employed in an institution shall be governed by such conditions of service as may be prescribed by regulations and any agreement between the Management and such employees in so far as it is inconsistent with the provisions of this Act or with the regulations, shall be void.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) the regulations may provide for, -

(a) the code of conduct, the period of probation, the conditions of confirmation and the procedure and the procedure and conditions for promotion and punishment including suspension pending or in contemplation of inquiry or during the pendency of investigation, inquiry or trial in any criminal case for an offence involving moral turpitude and the emoluments for the period of suspension and termination of service with notice;

(b) the scales of pay and payment of salaries;

(c) transfer of service from one recognized institution to another;

(d) grant of leave and provident fund and other benefits; and

(e) maintenance of record of work and service.

(3) (a) No Head of institution or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Regional Joint Director.

(b) Regional Joint Director may approve or disapprove or reduce or chance the punishment or approve or disapprove of the notice for termination of service proposed by the Management;

Provided that in the cases of punishment, before passing order, the Regional Joint Director shall give, an opportunity to the Head of institution or the teacher to show cause within a fortnight of the receipt of the notice why the proposed punishment should not be inflicted.

(c) Any party may prefer an appeal to the Director against an order of the Regional Joint Director under clause (b) within one month from the date of communication of the order to that party and the Director may, after such further enquiry as he considers necessary, confirm, set-aside or modify the order and the order passed by the Director shall be final.

(4) No Head of institution or teacher shall be suspended by the Management, unless in the opinion of the Management, -

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, enquiry or trial.

(5) Where any Head of institution or teacher is suspended by the Committee of Management it shall be reported to the Regional Joint Director within seven days from the date of order of suspension and the report shall contain such particulars as may be prescribed by regulations and accompanied by all relevant documents.

(6) No such order of suspension shall, unless approved in writing by the Regional Joint Director, remain in force, for more than sixty days from the date of such order and the order of the Regional Joint Director shall be final and shall not be questioned in any court.

(7) If at any time the Regional Joint Director is satisfied that disciplinary proceedings against the Head of institution or teacher are being delayed for no fault of the Head of institution or the teacher, the Regional Joint Director may after affording opportunity to the Management to make representation, revoke any order of suspension passed under this section.”

23. Bare reading of the provisions, indicates that a mechanism was proposed to be developed for appointment of teaching and non-teaching staff of such institution by way of framing regulations, but about ten years nothing was done and therefore, looking into the exigency of imparting education to the students, the appointments are done.

24. I have also noticed that the opposite parties have failed to establish that the present matter is not identical to the petitioners of the writ petition no. 8253/SS/2007 and writ petition no. 6250/SS/2013.

25. This Court is also aware about the order passed in Special Appeal No. 122 of 2010, wherein, the Division Bench of this Court has also directed that the petitioners of Writ Petition No. 8253/SS/2007, shall be paid salary as per the order passed by the Learned Single Judge.

26. The order passed in Special Appeal No. 122 of 2010 and Special Appeal No. 80 of 2010, is quoted hereinunder:-

Order (Oral)

*Application with affidavit of apology filed in Court is taken on record.*

*Learned counsel for respondents prays for and is granted a week's time to file reply to the application.*

*Operation of further proceedings towards the charge drawn for committing contempt of this Court shall remain deferred till the next date of hearing.*

*These two Special Appeals namely Special Appeal No.84 of 2010 and Special Appeal No.122 of 2010 arise out of judgments and orders passed by learned Single Judges in Writ Petition No.8253 (SS) of 2007 (dated 5.5.2009) and Contempt Petition No.2111 of 2009 (dated 16.03.2010) respectively. The main reason that has given rise to these litigations seems to be the operative portion of the order passed by learned Single Judge in the Writ Petition. Last two paragraphs of the said judgment, on reproduction, would read as:*

*“.....It is not in dispute that the Section of the Institution imparting education upto Shastri and Acharya level is receiving grant-in-aid from the State Government and the salaries, of the teaching and non-teaching staff of that Section of the Institution is being paid by the Sate Government. The State Government by its Office Memorandum dated 20.02.2004 had granted permission to the Management of the Institution to run classes upto Acharya and Shastri level and Uttar Madhyama level subject to the conditions mentioned in the said Office*

*Memorandum and Management of the Institution having fulfilled all the conditions mentioned in the Office Memorandum dated 20.02.2004, the State Government is bound to make payment of the petitioners' salary. The submission made by the learned counsel for the opposite parties that the State Government is not liable to pay the petitioners' salary for the reason that the posts against which the petitioners have been appointed have not been sanctioned by the opposite party No.5 is totally misconceived and unacceptable. The petitioners have been appointed under the provisions of U.P. Act No.32 of 2000, which is self contained Act and there is nothing in the Act which may indicate that the provisions of Payment of Salary Act, 1971 shall apply to the persons appointed as Assistant Teachers in the Institution imparting education upto Uttar Madhyama for the purpose of payment of their salary. Since the State Government is paying salary of the teachers and the non-teaching employees working in the section of the Institution in which education upto Acharya and Shastri level is being imparted, the State Government, in my opinion, cannot deny its liability to make payment of the petitioners' salary w.e.f. the date of their appointments.*

*In the result, the writ petition is finally disposed of with a direction to the opposite parties No.1 to 5 to take necessary decision on the representations dated 23.10.2007 submitted by the Manager of Srimat Param Hans Sanskrit Mahavidyalaya Tikarmafi, Sultanpur (Annexures No.4 to 8 to the writ petition) and on the petitioners' claim for payment of their salary from the date of their respective appointments in the Institution in the light of the observations made hereinabove and in accordance with law within a period of two months from the date of production of certified copy of this order."*

*As the learned Single Judge rejected the arguments of learned counsel for State and concluded by expressing opinion inter alia that the State Government cannot deny its liability to make payment of petitioners' salary from the date of their appointments, then perhaps there was no reason to direct the State to consider the representation.*

*The earlier Secretary, Secondary Education, Sri Jitendra Kumar while deciding the representation proceeded in the ignorance of the above findings which though the Court has referred as observations are in the nature of mandate of the judgment.*

*Thus, we hold that irrespective of rejection of representation submitted by the Manager dated 23.10.2007 by the Secretary, the teachers and non teaching staff as directed vide the impugned judgment, would be entitled to get their salary. Nonetheless we cannot ignore the apathy of the State as well as the Union of India towards the institutions which are imparting education in Sanskrit, It appears that the State as well as the Central Government has forgotten the theme and mandate as contained in Article 351 of the Constitution. The said Article on reproduction would read as:*

***"351. Directive for development of the Hindi language.-*** *It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages"*

*Accordingly, we issue notice to the Secretary, Human Resources, Government of India, to file reply as to why the Central Government has not made provision for grant in aid or some similar type of financial help to such institutions in the light of mandate of the Article as aforesaid.*

*Let the reply be filed by the Central Government as well as the State through their Secretaries before the next date of hearing.*

*Issuance of this notice is necessitated in the light of grouse that for the past many years after bifurcation of this institution, it has not been provided sufficient number of teachers and non teaching staff in the absence of grant in aid.*

*List on 05.03.2013.*

27. Referring the aforesaid, he submits that the Hon'ble Division Bench has held that irrespective of rejection of representation submitted by the Manager, the teacher and non-teaching staff would be entitled to get their salary and it has also been observed that 'nonetheless we cannot ignore the apathy of the State as well as Union of India towards the institution which are imparting education in Sanskrit.'

28. It is noteworthy that the petitioners of the aforesaid writ petitions are getting salary from the State-Exchequer as the State has taken decision positively on the claim raised by those petitioners. The case of the present petitioners are ditto identical to those petitioners of writ petition no. 8253 of 2007 and thus, the present petitioners are entitled for same relief.

29. In view of the above-said submissions and discussions, the Writ Petition is hereby **allowed**.

30. The State Government i.e. opposite party no. 1 is hereby directed to consider and decide the claim of the petitioners regarding their payment of salary, in light of the judgment and orders dated 05.05.2009 passed in Writ Petition No. 8253 (SS) 2007 (Shiva Kant Mishra and others versus State of U.P. and others) and order dated 12.11.2013 passed in Writ Petition No. 6520 (SS) of 2013 (Sushil Kumar Pandey and 13 others versus State of U.P. and others) and the benefit of the said judgments shall also be extended to the present

petitioners, within a period of eight weeks, from the date of certified copy of this order produced before it.

31. Needless to say that identical question is subjudice in Special Appeal No. 122 of 2010 connected with Special Appeal No. 80 of 2010 and therefore, the decision taken by the State Government shall be subject matter of final outcome of the special appeals.

**Order Date :- 16.04.2024**

Mayank