

Court No. - 17

Case :- WRIT - A No. - 6982 of 2013

Petitioner :- Phool Chand Yadav And Another

Respondent :- State Of U.P. Through Secy. Secondary Edu. Lko. And Ors.

Counsel for Petitioner :- Om Prakash Mani Tripathi

Counsel for Respondent :- C.S.C., Vishal Pandey

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioners, learned State Counsel for opposite parties 1 to 4 and Mr. Vishal Pandey, learned counsel for opposite parties 5 and 6.

2. Petition has been filed challenging order dated 20.08.2013 whereby petitioners' representation for payment of salary on Class IV posts in the institution in question has been rejected. Further prayer for a direction to opposite parties to create two Class IV posts in the institution and for payment of salary to petitioners with effect from 01.04.1996 has been made along with interest.

3. It has been submitted that initially Fateh Bahadur Uchchar Madhyamik Vidyalaya commenced as a Junior High School in year 1978 and was enhanced to High School on 15.08.1983. Petitioners were appointed on Class IV posts by the Principal of the Institution on 31.03.1992 and their appointments were approved by the District Inspector of Schools vide order dated 10.06.1992. Subsequently, the institution was taken under grant-in-aid by means of order dated 08.02.1996 with effect from 01.04.1996 and in lieu thereof, the Manager's return was submitted by Management which was approved vide order dated 01.02.1997 and whereby names of 18 employees were approved indicating only 5 posts in Class IV having been sanctioned.

4. Since petitioners' names were omitted in the sanction order

due to which their salary payments were also stopped, they filed writ petition no.2820(S/S) of 1999 in which it was noticed that creation of posts is to be in accordance with Government Order dated 20.11.1976 and since aforesaid aspect can be decided only by the District Inspector of Schools, it was directed that in case the institution is entitled to have more than five posts of Class IV employees, only then the petitioners would get any benefit of approval of appointment in year 1992. The said petition was thereafter decided by means of judgment and order dated 04.04.2008 directing the District Inspector of Schools to consider and take a decision with respect to number of Class IV posts permissible in the institution and in case more than five posts of Class IV employees are available and sanctioned, claim of petitioners would be considered.

5. In pursuance of the said directions, concerned authority passed order dated 11.11.2008 again reiterating that only 5 Class IV posts were required in the Institution in question as was sanctioned earlier. Petitioners' representation was therefore rejected.

6. The said order was thereafter challenged by petitioners in Writ Petition No.2986 (S/S) of 2009 and was allowed vide judgment and order dated 22.01.2013 primarily on the ground that concerned authority has determined sanctioned strength of Class IV employees in the institution on the basis of students' strength of year 1986 whereas admittedly the College was granted recognition for Intermediate Class in the year 1998 and was brought under grant in aid in year 1996. It was also observed that ground on the basis of which sanction for payment of salary was withheld did not relate to the period for which petitioners are claiming salary, the order impugned therein was found unsustainable and was therefore quashed with a direction to the authority concerned to take a fresh

decision regarding sanction for payment of salary to petitioners keeping in view the observations made therein.

7. A perusal of judgment and order dated 22.01.2013 also makes it evident that a finding has been recorded that it is not the case of opposite parties that initial appointments of petitioners were illegal or improper and salary payment was withheld only on ground that there was not enough sufficient work for the other Class IV employees and therefore there was no occasion to sanction two additional posts in Class IV category.

8. It is in pursuance of aforesaid judgment and order dated 22.01.2013 that impugned order has been passed again rejecting petitioners' representation regarding salary payment and creation of new posts.

9. It has been submitted by learned counsel for petitioners that once in both the judgments of this Court, it has been clearly held that sanction of posts is to be in light of Government Order dated 20.11.1976, it was incumbent upon concerned authorities to have passed orders in light of the said Government Order, which has not been taken care of even in the impugned order. It has been submitted that in fact the impugned order does not advert to the controversy regarding sanction of new posts and is based only on the claim of petitioners regarding payment of salary. It is therefore submitted that observations made by this Court in judgment and order dated 22.01.2013 have been completely ignored and that it was incumbent upon authority concerned to have passed orders regarding creation of posts in terms of Government Order dated 20.11.1976 which clearly prescribes creation of at least ten Class IV posts in an institution where students' strength is less than 500.

10. Learned counsel appearing on behalf of the Committee of

Management has supported the case of petitioners with submission that in the Manager's return, the Management had clearly indicated the fact that five Class IV posts had been sanctioned in the institution but seven persons were working against the said sanctioned posts. It has also been submitted that petitioners' names found mention in the Manager's return while indicating requirement of creation of posts of 28 persons who were at that time working in the institution.

11. Mr. P.K. Singh, learned State Counsel has refuted the submissions advanced by learned counsel for petitioners with submission that although it is admitted that petitioners were appointed in year 1992 but the aspect is required to be seen only after the institution comes under grant-in-aid in year 1996. He has disputed the documents brought on record by the Management as Manager's return and in fact submits that a copy of the original Manager's return as available in the office of the District Inspector of Schools has been brought on record with counter affidavit and indicates only 18 persons working in the institution with Manager's return not featuring the names of petitioners. It is submitted that once after the Manager's return, five posts were sanctioned by means of order dated 12.01.1996, the same having not been challenged either by petitioners or by Committee of Management, bars them from fresh challenge to the same on ground of estoppel. It is submitted that aforesaid order has not been challenged till date and therefore impugned order has been rightly passed considering the nature of work required in the institution in question.

12. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it has been indicated in judgment and order dated 22.01.2013 passed in Writ Petition No.2986 (S/S) of 2009 that petitioners after being appointed in year 1992 were granted approval by means

of order dated 10.06.1992 whereafter the institution was brought under grant in aid in year 1996 whereafter five Class IV posts were sanctioned in the institution by means of order dated 12.01.1996. It also appears that aforesaid order was never challenged either by petitioners or by Committee of Management at any time. However, petitioners raised grievance in Writ Petition No.2820(S/S) of 1999 with regard to non-payment of salary. It is also evident from judgment and order dated 04.04.2008 passed in the said petition that the District Inspector of Schools was required to decide the aspect of sanction of posts in the institution in terms of Government Order dated 20.11.1976. It was also held that petitioners' claim in terms of approval of appointment in year 1992 would ensue only after it is found or determined that the institution is entitled to have more than five posts of Class IV employees.

13. After the rejection order dated 11.11.2008, this aspect has been considered again in judgment and order dated 22.01.2013 passed in Writ Petition No.2986 (S/S) of 2009 in which a coordinate Bench of this Court has specifically considered the aspect that it is not the case of opposite parties that initial appointment of petitioners was illegal or improper and that salary payment has been stopped only on ground that their appointment was beyond the sanctioned strength. The judgment thereafter indicates lacuna in the order dated 11.11.2008 with the observations that the strength of Class IV employees has been determined in terms of students' strength of year 1986 whereas it should have been determined as on the date the School was brought under grant-in-aid. It was on the basis of aforesaid observations that competent authority was required to decide the matter afresh.

14. A perusal of impugned order however makes it apparent that aforesaid aspects as required to be considered have not at

all been touched upon. Impugned order has again adverted to fact that students' strength as on 14.10.1986 was 450. The impugned order does not consider students' strength at all as on date when the institution was brought under grant in aid. The aforesaid reasoning has already been rejected by this Court in its judgement and order dated 22.01.2013.

15. The impugned order merely notices the Government Order dated 20.11.1976 and observes that only five posts of Class IV employees are required in the institution. However, such a reasoning has been indicated on ground of students' strength of year 1986 as well as Section 7A of the Act of 1921 while recording fact regarding work available in the institution pertaining to Class IV posts.

16. A perusal of Government Order dated 20.11.1976 indicates the criteria for creation of Class IV posts in High School institutions and indicates at least nine posts are required to be created with additional post of a Gardener, in case required. The order also indicates that one additional post of Peon would be sanctioned where the strength of students is more than 500.

17. Clearly, the Government Order is indicative of the fact that in case of High School Institutions where students' strength is less than 500, at least nine Class IV posts are required to be created. The Government Order does not appear to indicate creation or sanction of posts in terms of work available in an institution which is the ground taken in impugned order for rejection of petitioners' claim.

18. Another aspect for passing of impugned order is that creation of new Sections was in violation of Section 7A of the Intermediate Education Act, 1921(hereinafter referred to as the Act of 1921).

19. A perusal of Section 7A however reveals that it pertains to

creation of new Sections and not of new posts and, therefore also erroneous reliance has been placed in the impugned order with regard to aforesaid Section.

20. In view of aforesaid facts, it is evident that impugned order has been passed in violation of not only directions issued by this Court earlier but also against the Government Order dated 20.11.1976.

21. Considering the aforesaid facts, a writ in the nature of Certiorari is issued quashing the impugned order dated 20.08.2013. A further writ in the nature of Mandamus is issued commanding opposite party no.2 and opposite party no.4 collectively to reconsider the aspect of creation of more Class IV posts than five in accordance with directions issued by this Court vide judgment and order dated 22.01.2013 passed in Writ Petition No.2986(S/S) of 2009.

22. Such exercise shall be undertaken by the opposite party concerned within a period of six weeks from the date a certified copy of this order is served upon the said authority who shall also consider creation of supernumerary Class IV posts for purposes of payment of salary and other benefits to petitioners in lieu of fact that they have been admittedly appointed in year 1992 with approval also being accorded by the District Inspector of Schools.

23. Resultantly, the petition succeeds and is **allowed**. The parties shall bear their own costs.

24. In case the posts are found to be created in terms of judgment passed by this court earlier or supernumerary posts are created, grant of benefits to petitioner shall also be considered by opposite parties.

Order Date :- 13.2.2024

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