

**Court No. - 38**

**Case :-** WRIT - A No. - 12790 of 2018

**Petitioner :-** Baikunth Nath Pandey And 5 Others

**Respondent :-** State Of U.P. And 6 Others

**Counsel for Petitioner :-** Anubhav Dwivedi, H.K

Asthana, Prabhakar Awasthi, Satyendra Nath Tripathi, Shashi Kant Mishra, Shreyas Srivastava

**Counsel for Respondent :-** Ajitam Srivastav, C.S.C., Chandra Sekhar Pandey

**Hon'ble Donadi Ramesh, J.**

1. Heard Sri Prabhakar Awasthi, learned counsel for the petitioners and learned Standing Counsel for the State respondents.

2. Present writ petition is filed questioning the orders dated 17.11.2017, 30.03.2011 and 17.03.2011 with consequential direction to the respondents to ensure payment of current salary regularly month by month and arrears of salary to the petitioners, in accordance with law from the date of joining to the post of assistant teachers in the institution.

3. The petitioners have been appointed on various dates from 1996 to 2000. Vide order dated 16.12.2009, the respondents have rejected the claim of the petitioners for salary on the ground that there are only four sanctioned posts and denied the salary to the petitioners. Hence, they have approached this Court by filing Writ A No. 1237 of 2010, which was disposed of with the following directions:

*"It appears that there is an institution, which is recognized and affiliated with the Sampurnanand Sanskrit Viswavidhyalaya, Varanasi. It appears that petitioners were appointed as teachers and the papers were sent for the purposes of payment of salary, but the respondent has rejected the claim by order dated 16.09.2008 disapproving the claim of the petitioners for payment*

of salary on the ground that as the appointment of the petitioners have been made on non sanctioned post, therefore, approval for payment of salary cannot be granted. Petitioners submit that the petitioners' appointment was made after following proper procedure. The petitioners filed a writ petition before this Court being a writ petition No.51883 of 2008, which was finally disposed of vide order dated 24.08.2009 quashing the order and directing the competent authority to take a proper decision regarding payment of salary as well as to consider the question regarding sanction of post.

It appears that the authority has not taken decision. Then a contempt petition was filed, that was also finally disposed of on 26.11.2009. Now the order impugned has been passed rejecting the claim of the petitioners for the purposes of payment of salary on the ground that as in the institution in question, only four posts are sanctioned and the petitioners appointment and working is on a non sanctioned post, therefore, salary cannot be permitted to be paid to the petitioners on a non sanctioned post in an institution.

Learned counsel for the petitioners has brought on record the counter affidavit filed in the earlier writ petition, i.e. writ petition No.51883 of 2008, in which the District Inspector of Schools himself has admitted this fact in paragraph Ka that there are 12 sanctioned post in the said institution. Further the petitioners by means of the rejoinder affidavit Annexure No.1 dated 24.03.1972 has brought on record the order of the competent authority, which says that in the institution of the petitioners, there are 12 sanctioned post. But in the counter affidavit filed in the present writ petition does not say anything regarding sanction of 12 post, only an averment has been made that there are only four sanctioned post in the institution. Petitioners have placed reliance upon letter of the Inspector of Sanskrit Pathshala dated 14.04.2008, which also states that there are 12 sanctioned post in clause-3, which is at page 77 of the writ petition.

Further submission has been made by the learned counsel for the petitioner is that the order impugned has been passed in clear defiance of the order passed in the earlier writ petition because a direction was given in the earlier writ petition to the District Inspector of Schools that the letter of the Joint Director of Education dated 14.04.2008 addressed to respondent No.3 clearly shows that there are 12 sanctioned post of teachers in the institution. Further direction was given that if there is any doubt in the mind of the respondent No.3, he can have a clarification to that effect from the Joint Director of Education, who was respondent No.3. But the respondent No.3 without taking into consideration all these documents and the letter of the Joint Director of Education has passed the order impugned rejecting the claim of the petitioners only on the ground that there are only four sanctioned post. The respondent No.3 has not taken into consideration the sanctioned letter dated 24.03.1972 as well as admission made in the counter affidavit filed in the earlier writ petition.

In such circumstances, learned counsel for the petitioners submit that order impugned is liable to be quashed.

On the other hand learned Standing Counsel is not able to support the order impugned in view of the facts of admission of the D.I.O.S. in earlier writ petitioner as well as the order dated 24.03.1972, which clearly states that

there are 12 sanctioned post in the institution.

*I have considered the submission of the parties and perused the record. In my opinion once there is an admission by the District Inspector of Schools in the counter affidavit filed in the earlier writ petition and further there is an order of the competent authority sanctioning 12 posts in the institution, then the District Inspector of Schools have got no jurisdiction to pass such order rejecting the claim on the ground that the petitioners' appointment in on a non sanctioned post. There may be other ground regarding validity and genuineness of the appointment of the petitioners, but the payment of salary to the petitioners cannot be refused only on the ground that the petitioners' appointment has been made on a non sanctioned post, when there is a clear document dated 24.03.1972 as well as the admission itself of the respondent No.3 in the earlier writ petition. Further in the earlier writ petition, a specific direction was given by this Court that in case of any doubt, District Inspector of Schools respondent No.3 was obliged to have a quarry from the Joint Director of Education, but instead of making any quarry as directed by this Court, the order impugned has been passed.*

*From perusal of the order impugned, it is also clear that the reasons mentioned in the order impugned does not any where mentioned that 12 posts are not sanctioned. The only reason has been given that as regards the sanction of 12 posts, the position is not clear.*

*Form the order impugned, it is also clear that before making the appointment on 16.01.1996, the prior permission for making ad-hoc appointment has been given. It appears that the respondent No.3 himself was not confident regarding giving a specific finding that where there was 12 sanctioned post or 4 sanctioned post. But in view of the various documents and admission, respondent No.3 had no option except to pass the order for the purposes of payment of salary to the petitioners.*

*In view of the aforesaid facts and circumstances this writ petition is allowed, the order impugned dated 16.12.2009 (Annexure No.14 to the writ petition) passed by the respondent No.3 is hereby quashed and respondent No.3 is directed to take an appropriate decision regarding payment of salary of the petitioners within a period of six weeks from the date of production of certified copy of this order before him.*

*No order as to costs."*

4. Consequent upon the said directions, initially the salary of Rs. 1,61,960/- has been released, but the same was not paid to the petitioners. For non-compliance of the orders passed by this Court dated 17.8.2010, the petitioners have invoked the provisions of the Contempt Act in Contempt Application (Civil) No. 5498 of 2010. Pursuant to the same, respondents have passed the present impugned order on 17.11.2017, which reads as under:

"श्री वेद वेदांग संस्कृत महाविद्यालय नवली तोरवां चन्दौली के तथाकथित सहायक अध्यापकों सर्व श्री विजय कुमार अवस्थी, गिरिजा शंकर श्रीवास्तव, बृहस्पति त्रिपाठी, रघुवर दयाल श्रीवास्तव, वैकुण्ठ नाथ पाण्डेय पंकज श्रीवास्तव आदि द्वारा वेतन भुगतान के संबंध में उनके प्रत्यावेदन दिनांक 14-12-2013 एवं दिनांक 21-7-2014 द्वारा किये गये अनुरोध का मुख्य अंश निम्नवत् है:-

"न्यायहित में श्रीमान शिक्षा निदेशक (माध्यमिक) उत्तर प्रदेश की ओर से श्रीमान उप शिक्षा निदेशक (संस्कृत) शिक्षा निदेशालय उ० प्र० इलाहाबाद के हस्ताक्षर से निर्गत प.त्र/आदेश-पत्रांक सामान्य (2) विस्तार / 2137/2010-11 दिनांक 30-03-2011 को वापस / निरस्त करते हुए हम प्रार्थीगण विजय कुमार अवस्थी (सहायक अध्यापक साहित्य) बृहस्पति त्रिपाठी (सहायक अध्यापक साहित्य), वैकुण्ठ नाथ पाण्डेय (सहायक अध्यापक- व्याकरण) गिरिजा शंकर श्रीवास्तव (सहायक अध्यापक-आधुनिक विषय) रघुवर दयाल श्रीवास्तव (सहायक, अध्यापक आधुनिक विषय) एवं पंकज श्रीवास्तव (सहायक, अध्यापक आधुनिक विषय) के वेतन भुगतान के संबंध में श्रीमान शिक्षा निदेशक (माध्यमिक) उत्तर प्रदेश की ओर से तत्कालीन उप शिक्षा निदेशक (संस्कृत) शिक्षा निदेशालय उ० प्र० इलाहाबाद द्वारा जारी आदेश/पत्र पत्रांक / सामान्य (2) विस्तार अनुभाग / 1927/2007-08 दिनांक 28-01-2008 को यथावत रखते हुए श्रीमान जिला विद्यालय निरीक्षक चन्दौली को समस्त बकाये सहित अविलम्ब वेतन भुगतान करने हेतु आवेक्षित करने की कृपा करे।"

2-यात्री गण के प्रत्यावेदनों पर आख्या निम्नवत् है:-

श्री वेद वेदांग संस्कृत महाविद्यालय नवली, तोरवा, चन्दौली, सम्पूर्णानन्द, संस्कृत विश्वविद्यालय वाराणसी द्वारा मान्यता प्राप्त राज्यानुदानित संस्कृत विद्यालय है। उक्त विद्यालय हेतु उ० प्र० शासन के पत्रांक संख्या- 1/3 (1) /72- शिक्षा (3) दिनांक 24 मार्च, 1972 द्वारा 12 पद सृजित किया गया है तथा उप शिक्षा निदेशक पंचम मण्डल वाराणसी के पत्रांक / संस्कृत / नियुक्ति / अध्यादेश / 12075/78-79 दिनांक 5-9-1978 द्वारा भी 12 पद स्वीकृत प्रदान की गयी है।

महाविद्यालय में उक्त सृजित पदों के प्रति रिक्त 08 पदों हेतु तत्कालीन प्रबंध तंत्र द्वारा दिनांक 22-01-1996 को विज्ञापन निकाल कर दिनांक 22-2-1996 को श्री वाचस्पति तिवारी, श्री अरविन्द कुमार पाण्डेय एवं श्री वैकुण्ठनाथ पाण्डेय को सहायक अध्यापक व्याकरण हेतु चयन किया गया तथा 22-2-1996 को श्री रघुवर दयाल श्रीवास्तव एवं श्री गिरिजा शंकर श्रीवास्तव को आधुनिक विषय हेतु चयन किया गया। विद्यालय प्रबंध तंत्र द्वारा श्री वाचस्पति तिवारी, श्री गिरिजाशंकर श्रीवास्तव एवं श्री रघुवर दयाल श्रीवास्तव को विद्यालय में 3-3-1996 को एवं श्री बैकुण्ठनाथ पाण्डेय एवं श्री अरविन्द कुमार पाण्डेय को दिनांक 5-3-1996 में विद्यालय में कार्यभार ग्रहण करना दिखाया गया है।

पुनःविद्यालय प्रबंधतंत्र द्वारा अपने विज्ञापन दिनांक 22-1-1996 के क्रम में ही अपने प्रस्ताव दिनांक 20-9-2000 द्वारा दिनांक 24 9-2000 के विज्ञापन के माध्यम से शेष 03 पदों हेतु दिनांक 8-10-2000 को साक्षात्कार की तिथि निर्धारित करते हुए अपने प्रबंध समिति की बैठक दिनांक 28-9-2000 के मध्याह्न से भी श्री विजय कुमार अवस्थी एवं श्री बृहस्पति तिवारी को साहित्यिक विषय हेतु तथा श्री पंकज श्रीवास्तव को आधुनिक विषय हेतु चयनित कर लिया गया, जिसके प्रति इन तीनों अध्यापकों को दिनांक 11-10-2000 से विद्यालय में कार्यभार ग्रहण करना प्रबंधतंत्र द्वारा बताया गया है। उक्त नव नियुक्त 08 अध्यापकों को वेतन शासकीय खाते से न होने पर उक्त अध्यापकों द्वारा माननीय उच्च न्यायालय में याचिका संख्या 2290 / 2008 योजित कर दी गयी, जिसमें माननीय उच्च न्यायालय ने दिनांक 11-1-2008 को याचिका अन्तिम रूप से निस्तारित करते हुए आदेश पारित किया था।

3- माननीय उच्च न्यायालय द्वारा पारित उक्त आदेश के अनुपालन में तत्कालीन जिला विद्यालय निरीक्षक के पत्रांक / 33440-52/2008-09 दिनांक 16-9-2008 द्वारा प्रकरण की सुनवाई करते हुए अपने समीक्षात्मक निर्णय में इन सभी 08 नियुक्तियों को अनियमित एवं अवैधानिक मान्य करते हुए वेतन भुगतान शासकीय खाते से अमान्य कर दिया गया।

उक्त पत्रांक दिनांक 16-9-2008 के विरुद्ध याचीगणों द्वारा माननीय उच्च न्यायालय में याचिका 51883/2008 योजित की गयी, जिसमें न्यायालय, इलाहाबाद ने दिनांक 24-8-2009 को याचिका अन्तिम रूप से निस्तारित करते हुए उक्त निर्णय दिनांक 16-9-2008 को निरस्त कर दिया तथा प्रकरण हेतु जिला विद्यालय निरीक्षक, चन्दौली हेतु आदेश पारित किया।

4- माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 24-8-2009 के अनुपालन में तत्कालीन जिला विद्यालय निरीक्षक, चन्दौली द्वारा प्रकरण की पुनः सुनवाई की गयी एवं अपने समीक्षा में उल्लेख किया कि कथित रूप से रिक्त पद का विज्ञापन दिनांक 21-1-1996 को किया गया है तथा 05 अभ्यर्थियों की नियुक्ति दिनांक 28-02-1996 को तथा 03 अभ्यर्थियों की नियुक्ति दिनांक 9-10-2000 को किया गया है, जो कि सर्वथा अनियमित और पूर्ण रूपेण संदिग्ध कार्यवाही है तथा अवैधानिक तथा शासनादेश के विपरीत होने के कारण वेतन भुगतान सम्बन्धित माँग को अस्वीकार करते हुए पृ० सं० / संस्कृत / 4100-12/2009-10 दिनांक 16-12-2009 द्वारा प्रकरण निस्तारित किया गया है।

5-उक्त निर्णय दिनांक 16-12-2009 के विरुद्ध पुनः याचीगणों, द्वारा माननीय उच्च न्यायालय, इलाहाबाद में याचिका संख्या- 1270/2010 योजित की गयी जिसमें माननीय उच्च न्यायालय ने अपने निर्णय दिनांक 17-8-2010 द्वारा पूर्व निर्णय दिनांक 16-12-2009 को खारिज करते हुए पुनः प्रतिवादी नम्बर-3 जिला विद्यालय निरीक्षक चन्दौली को याचीगणों के वेतन भुगतान के सम्बन्ध में निर्णय लेने हेतु आदेश पारित किया।

माननीय उच्च न्यायालय, इलाहाबाद द्वारा पारित उक्त निर्णय दिनांक 17-8-2010 के सम्बन्ध में तत्कालीन जिला विद्यालय निरीक्षक चन्दौली के समक्ष याचीगणों द्वारा प्रत्यावेदन प्रस्तुत नहीं किया गया तथा माननीय उच्च न्यायालय में अवमानना वाद संख्या- 5498/2010 कर दिया गया। इस अवमानना वाद में सुनवाई के पश्चात् दिनांक 17-8-2010 के क्रम में जिला विद्यालय निरीक्षक, चन्दौली के पत्रांक 3943-48/2010-11 दिनांक 3-3-2011 द्वारा माननीय उच्च न्यायालय में योजित स्पेशल अपील में पारित होने वाले निर्णय के अधीन याचीगणों को वेतन भुगतान की अनुमति प्रदान की गयी।

तत्कालीन जिला विद्यालय निरीक्षक, चन्दौली द्वारा अपने निर्णय दिनांक 3-3-2011 के क्रम में रु0161960,00 मात्र का अनुदान उक्त अध्यापको हेतु संयुक्त वेतन वितरण खाते में अन्तरित कराया गया था।

06- उपरोक्त के प्रश्नात निदेशालय के पत्रांक / 2137/2010-11 दिनांक 30-3-2011 द्वारा इस आशय का पत्र/निर्देश जारी हुआ कि माननीय उच्च न्यायालय में योजित याचिका संख्या- 2290/2008 में पारित आदेश दिनांक 11-1-2008 के समादर में तत्कालीन उप शिक्षा निदेशक, (संस्कृत) एवं सम्प्रति प्रधानाचार्य राजकीय इण्टर कालेज, कमेटी रामपुर द्वारा निर्गत पत्रांक सामान्य (2) विस्तार / 1927/2007-08 दिनांक 28-1-2008 कूटराचित एवं फर्जी है।

07-उपरोक्त वस्तुस्थिति से अवमानना वाद में माननीय उच्च न्यायालय, इलाहाबाद को अवगत कराया गया एवं माननीय उच्च न्यायालय, इलाहाबाद ने अपने आदेश दिनांक 21-7-2011 में निदेशालय के पत्र दिनांक 28-1-2008 को सही साबित करने का भार याचीगणों पर डालते हुए अवमानना वाद खारिज कर दिया। याचीगणों द्वारा योजित अवमानना वाद दिनांक 21-7-2011 के खारिज होने के उपरान्त याचीगणों का वेतन उनके खाते में स्थानान्तरित नहीं कराया गया एवं संयुक्त वेतन वितरण खाते में स्थानान्तरित रूपये 161960,00 मात्र की धनराशि को विद्यालय में पूर्व से कार्यरत शिक्षकों के वेतन मार्च, 2011 देय अप्रैल, 2011 एवं मई, 2011 के नियमित वेतन में समायोजित कर दिया गया।

08- उपर्युक्त वर्णित स्थिति में याचीगण के प्रत्यावेदन दिनांक 14-12-2013 एवं दिनांक 21-7-2014 बलहीन होने के कारण एतद्द्वारा अस्वीकार करते हुए निस्तारित किये जाते हैं।"

5. Assailing the said order, present writ petition has been filed.

6. When the facts are not in dispute as the petitioners have been appointed and continuously working in sixth respondent institution, the authorities have stopped the payment of salaries and when the said action is being assailed before this Court, this Court after considering the counter affidavit filed by the respondents disposed of the writ petition discussing all the facts. In fact, the said writ petition was allowed directing the District Inspector of Schools to take appropriate decision regarding payment of salary to the petitioners within a period of six weeks. But surprisingly instead of releasing salaries to the petitioners, the respondent-authorities have taken a u-turn and passed the impugned orders only on the assertions that the letter of the Director dated 28.01.2008 is forged and fake. The said order is contrary to the statements made by the respondents in their counter affidavit filed in Writ A No. 51883 of 2008.

7. Learned counsel for the petitioners further brought to the notice of the Court about the extracts made by the co-ordinate Bench in the said writ petition, wherein the District Inspector of Schools has categorically admitted the fact that there are 12 sanctioned posts in the said institution and by way of rejoinder affidavit, petitioners have also brought to the notice of the Court that the institution has 12 sanctioned posts. Further, the said writ petition was disposed of by taking the letter of Joint Director of Education dated 14.4.2008. The said writ petition was disposed of based on the record available as on the date with the specific direction to the respondents to release salary to the petitioners, but surprisingly the respondents now passed the impugned order making an assertion that the letter dated 28.01.2008 is forged and fake as the same is contrary to the record and the earlier writ petition was disposed of based on the assertions made in the writ petition as well as the counter affidavit, now the respondents are estopped to take contrary view.

8. Replying to the said submissions, learned Standing Counsel representing the respondents has relied on the averments made in the counter affidavit filed on 20.04.2019. Paragraph 41 of the counter affidavit, reads as below:

*"41. That in reply to the contents of paragraph no. 83 of the writ petition it is submitted that in compliance of the Hon'ble High Court's order dated 15.3.2011, the respondent no.5 again examined the records and file, in which it has been found that as per advertisement dated 21.1.1996, the documents relating to appointment of five candidates were produced on 28.2.1996 and the documents relating to appointment of three candidates were produced on 9.10.2000 and no document relating to selection has been placed. No information regarding the expert nominated for selection has been placed. They have also not produced any document that the University has issued approval/disapproval letter regarding payment of salary or not. The alleged appointments were not found in accordance with the Statute 11.15 to 11.32 of the Statute 1987 of Sampurnanand Sanskrit University, Varanasi. It is further stated that in view of the judgment and order dated 21.2.1995 passed by this Hon'ble Court in writ petition no. 38219/1992 (Swami Nath Mishra Vs.*

*Director of Higher Education and others), the ban has been imposed in making appointment in the Sanskrit Vidyalaya affiliated with Sampurnanand Sanskrit Vishwavidyalaya with reference to the U.P. Higher Education Commission by the committee of management, the respondent no.5 has filed that the aforesaid appointments are illegal and irregular and passed the order dated 17.3.2011 and cancelled the earlier order dated 3.3.2011."*

9. According to the said assertions, the appointments which were made on 28.02.1996 are contrary to the ban imposed by the State, hence, the said appointments are contrary to the observations made by this Court in Writ Petition No. 38219 of 1992, Swami Nath Mishra Vs. Director of Higher Education and others, when the appointment itself is illegal, the petitioners are not entitled to grant any relief.

10. Considering the submissions made by learned counsel for the parties as well as perusal of the record, it transpires that the controversy continuing since 2009 and when the petitioners have approached this Court in the earlier writ petition, which was disposed of by taking all the facts into consideration, more specifically as submitted by the petitioners, the admissions made in the counter affidavit filed by the respondents in Writ A No. 51887 of 2008. Further, as per the letter of the District Inspector of Schools to the Joint Director of Education dated 14.04.2008, the Court has set aside the orders passed on 16.12.2009 and directed the respondents to take a decision for release of salary to the petitioners. In fact, on perusal of the above judgment, the matter was remitted to the authorities to release the payment by taking a decision, but surprisingly the respondents once again decided the issue by taking other irrelevant materials, which were not filed before this Court while deciding the Writ A No. 1237 of 2010.

11. Apart from that as the respondents again took one more view in the counter affidavit at paragraph 41 to refute the said statement,

learned counsel for the petitioners has relied on the ratio decided by the Apex Court in **Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors. 1978 (1) SCC 405.**

Relevant portion of the said judgment, is as under:

*"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji.*

*"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

12. Following the ratio decided in the above-said judgment, the respondents are restrained to take different/contrary stand, which were not there in the impugned order.

13. On perusal of the orders passed by this Court in Writ A No. 1237 of 2010, the respondents ought not to have rejected the claim of the petitioners on flimsy grounds stating that the letter dated 28.01.2008 is forged and fake as the respondents have not placed anything on record to prove that letter is forged or fake and have not initiated any criminal or civil action against anyone.

14. In view of such circumstances, the observations made in the impugned orders are without any basis and record. Hence, the impugned orders are set aside. It is needless to say that in view of the orders passed by this Court in Writ A No. 1237 of 2010 dated 17.8.2010, the respondent authorities are directed to release salary to the petitioners, within two months from the date of receipt of

certified copy of this order.

15. The writ petition is, accordingly, allowed.

**Order Date :- 28.4.2025**

Noman

**(Donadi Ramesh, J.)**