



2025:AHC:175612

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 10565 of 2020

Dr. Archana Agnihotri And 11 Others

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s) : Man Mohan Singh

Counsel for Respondent(s) : C.S.C., Shashi Prakash Rai, Shrinath

Connected with

WRIT - A No. - 6650 of 2020

Dr Mamta Mishra And Another Petitioner(s)

Versus

State Of U.P. And 3 Others Respondent(s)

WRIT - A No. - 6684 of 2025

Dr. Shivendra Narayan Singh And 2 Others Petitioner(s)

Versus

State Of U.P. And 4 Others Respondent(s)

WRIT - A No. - 12246 of 2020

Naveen Kumar Lavania Petitioner(s)

Versus

State Of U.P. And 2 Others Respondent(s)

Court No. - 38

HON'BLE DONADI RAMESH, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Man Mohan Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed for a mandamus commanding the 2nd respondent for absorption of the petitioners as lecturers in their respective institutions in terms of Section 31 E of the U.P. Higher Education Service Commission Act, 1980 (hereinafter referred to as "the Act, 1980")

and payment of salary to the petitioners regularly. All the petitioners were appointed prior to the cut off date fixed in different colleges.

3. The State Government has taken a policy decision permitting the committee of management of aided institutions to appoint lecturers on payment of honorarium vide Government Order dated 07.04.1998. As per the said Government Order, appointment should be in substantive vacancies and the said appointments should be made by following procedure contemplated under the Rules. All the petitioners have continued as honorarium lecturers. Based on the circumstances having large number of vacancies in the said institutions, the State Government made amendment by inserting Section 31E to the U.P. Act No. 42 of 2006, on 28.12.2006. The said provisions are extracted below:

31E. Absorption of teacher on honorarium.

"(1) Subject to the provisions contained in sections 12 and 13, if any vacancy exists, which can not be filled under the provisions of said sections, a teacher on honorarium shall be absorbed in the manner prescribed under sub-section (2), who is working in grant in aid college, possessing educational qualifications determined by the State Government, receiving honorarium, Thereby working for a minimum period of three academic sessions and has been working till the date of commencement of the Uttar Pradesh Higher Education Services Commission (Third Amendment) Act, 2006.

(2) Where any substantive vacancy in the post of a teacher in a grant in aid college is to be filled by direct recruitment, such post shall, at the instance of the Director, be offered by the management to teacher on honorarium referred to in sub- section (1).

(3) Where any teacher on honorarium who has been offered appointment in accordance with the provisions of sub-section (2) fails to join the post within the time allowed, which shall not be less than fifteen days, his further claim shall cease automatically.

Explanation -For the purposes of this section;-

"teacher on honorarium" means a person working in grant-in-aid college and is engaged in teaching a course of study and receiving payment from the Funds of State aid on a fixed honorarium appointed on a contractual basis with the prior approval of the Director.

(4) Where the Management fails to offer any post to a teacher on honorarium in accordance with the provisions of sub-section (2) within the time specified by the Director, the Director, may himself issue the letter of appointment to such teacher on honorarium and the teacher on honorarium concerned shall be entitled to get his salary as teacher, from the date, he joins the post in pursuance of such letter of appointment."

4. The said provision was further amended in 2014 (Act No.22 of 2014) and in 2018 Act No.38 of 2018. Section 31 E (1) of the Act No.38 of 2018 reads as follows:

"(1) Subject to the provisions contained in Sections 12 and 13, if any vacancy exists, which could not be filled, under the provisions of said sections, a teacher on honorarium who has been appointed in grant-in-aid college on or before March 29,2011, in accordance with the provisions as specified under G.O. No. 467/Sattar-2-98-3(19)/93T.C., dated April 07, 1998 possessing educational qualifications determined by the State Government, working and receiving honorarium thereby from the State exchequer till the date of commencement of the Uttar Pradesh Higher Education Services Commission (Amendment) Act 2018, shall be absorbed in the

manner prescribed under sub-section (2)."

5. Based on the above amendments, all the petitioners are eligible and qualified for absorption into regular post but the 2nd respondent has not included names of the petitioners for absorption in the list dated 18.05.2017 and 07.03.2019. As aggrieved by the said action, the petitioners ventilated their grievance before 2nd respondent - Director of Education but the said representation was not considered and no order was passed thereon. Aggrieved by the said inaction, the present writ petition has been filed by the petitioners.

6. Learned Senior Counsel appearing on behalf of the petitioners has brought to the notice of the Court that identical persons have already approached this court by way of filing Writ-A No.9601 of 2020, Dr. Chandrashekhar Srivastava vs. State of U.P & 4 others. In the said matter, the respondents rejected the case of the lecturers on the ground of not possessing 55% marks in graduation degree. The said aspect was considered and finally decided by this Court with the following observations:

"1. Appointment in grant-in-aid colleges on or before 29.3.2011;

2. Working and receiving honorarium on the commencement of the U.P. Higher Education Services Commission (Amendment) Act, 2018, i.e., 10.09.2018.

The petitioner clearly fulfills the aforesaid requirements and the finding in the impugned order taking into consideration the academic qualification of the petitioner on the date of his initial appointment was not relevant for the purpose of granting him benefit of absorption. It is not denied in the counter affidavit that the petitioner was not working on the cut off date of 29.3.2011 nor there is any such finding in the impugned order.

In view of the above, the impugned order dated 03.10.2019 passed by respondent No.2, Director of Higher Education, U.P., Prayagraj, is hereby quashed.

The respondent no.2 is directed to pass appropriate order for regularization of the service of the petitioner with effect from enforcement of U.P. Act No. 38 of 2018, i.e., 10.9.2018 and pay him the arrears of salary and other benefits payable to him from the aforesaid date, within six weeks from today. In case of failure to compute and make payment of the arrears of salary and issuance of regularization letter in favour of the petitioner, petitioner would be entitled to 12% interest on the amount of arrears.

The State Government shall be free to recover 4.5% additional interest from the public servant/servants, who is/are found responsible for the delay."

7. In the above said judgment, this Court has clearly held that if appointments were made in grant-in-aid colleges on or before 29.03.2011 and working and receiving honorarium on the commencement of the U.P. High Education Services Commission (Amendment), Act, 2018 as on date 10.09.2018 on the honorarium post, are eligible for absorption. Aggrieved by the said order, the State Government filed intra-court appeal being No.656 of 2022. The division Bench of this Court considered extensively with regard to

eligibility and absorption under Section 31E of the Act, 1980: and further held:

"Our view further stands amplified from the fact that a Government Order was issued on 14.10.2018 itself bearing in mind Section 31E of the 1980 Act as well as the Government Order dated 7.4.1998 according to which in Clause 1 it has been specifically provided that honorary lecturer would be regularised subject to possession of necessary academic qualifications and eligibility as determined by U.G.C. and are discharging the duties on honorarium basis since 29.3.2011, till the enactment of Section 31E of the 1980 Act. The Government order dated 24.10.2018 puts down the controversy to rest as it not only clarifies the position but also eliminates any doubts in that regard."

8. As against the State respondents preferred Civil Appeal No.14455 of 2024 before Hon'ble Apex Court. In the said Civil Appeal, Hon'ble Apex Court modified the orders to the extent of payment of salary. As observed by the learned Single Judge, which was confirmed by the division Bench, it is very clear that primary condition for absorption on honorarium lecturers in the regular post, appointment should be prior to the date of 29.03.2011. Undoubtedly, in the instant case all the petitioners were appointed much prior to 29.03.2011 and there must be relevant condition that the said lecturers should be continued as on date of amendment i.e. 10.09.2018. Learned Senior Counsel appearing on behalf of the petitioners has submitted that all the petitioners were appointed prior to 29.03.2011 and the said lecturers are continued as of today hence, the petitioners are entitled for absorption as per provisions of amended Act.

9. In reply to the said contention, learned Standing Counsel for the State-respondents has submitted that as per observations made by the division Bench of this Court, one should possess necessary academic qualification and eligibility as determined by UGC (University Grants Commission) and should discharge duties as honorarium post since 29.03.2011 till the amendment made vide Government Order dated 24.10.2018. As per the above submissions, all the petitioners do not have requisite qualification at the time of appointment.

10. Considering the submissions made by the learned Senior Counsel for the petitioners and also on perusal of the records, while formulating the policy by introducing Section 31E which clearly mandates that as per Section 12 and 13, if any vacancies exist and lecturers, working in grant-in-aid colleges, possess educational certificate, receiving honorarium and continuing till the date of commencement of the amendment, shall be absorbed. The very grievance of the petitioners is that the 2nd respondent has purposely not considered the case of the petitioner though the petitioners are fully qualified and complied with all the conditions stipulated under Section 31E of the Act, 1980. That being grievance of the petitioners, the respondents ought to have

considered and passed appropriate orders but the respondents have not considered the case of the petitioners as per the observations made by the learned Single Judge which was confirmed by the division Bench of this Court though it has been modified partly by Hon'ble Apex Court with regard to the interest. No doubt, the petitioners are entitled and eligible for payment of salary (arrears) with interest as allowed by Hon'ble Apex Court.

11. In view of the submissions made by learned counsel for the parties and perusal of the entire records, the present writ petition is disposed of with the direction to the 2nd respondent to consider the case of the petitioners as per Section 31 E of the Act, 1980 and enforcement of the amendment to the U.P. Act No.38 of 2018 and pass an appropriate order keeping in view the observations made by this Court in Writ-A No.9601 of 2020 on 31.05.2022 within period of two months from the date of receipt copy of this order. If absorption is made, the respondents shall also consider for release of arrears of salaries within a period of two months thereafter.

September 26, 2025

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(Donadi Ramesh,J.)