

Neutral Citation No. - 2025:AHC:53380

Reserved on 09.04.2025

Delivered on 11.04.2025

Court No. - 6

Case :- WRIT - A No. - 38887 of 2015

Petitioner :- Mohan Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- P.K. Upadhyay, T.N. Tiwari

Counsel for Respondent :- Adarsh Bhushan, C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

1. This is second round of litigation. Petitioner has earlier approached this Court by way of filing Writ-A No. 75516 of 2011, which was disposed of by following order dated 21.11.2014:

“List is revised. No one is present to press this petition.

I have perused the record.

The grievance of the petitioner is that he was appointed in the year 1988 with the approval of the Basic Shiksha Adhikari, Padrauna dated 31st March, 1997. At that point of time the Institution was not on the grant-in-aid list of the State Government. However, when the Institution was brought on the grant-in-aid list the Manager of the Institution did not sent the name of the petitioner for extraneous reasons.

To ventilate his grievance the petitioner has made several representations. However, his representations have failed to elicit any response from the concerned authority.

Having regard to the facts and circumstances of the case, the end of justice requires that the representation of the petitioner may be considered by the authority concerned.

Accordingly, writ petition is finally disposed of with a direction upon the fourth respondent to consider the cause of the petitioner and pass appropriate order in accordance with law after hearing the concerned parties.

No order as to costs.”

2. In pursuance of above order, claim of petitioner was considered by District Basic Education Officer, Kushinagar vide order dated 16.03.2015 but it was not decided on merit on ground that said respondent was not

competent to decide the issue and it ought to be decided by Director of Education (Basic). Relevant part of order is mentioned hereinafter:

"जहां तक याची की मांग / दावेदारी पर विचार किये जाने का प्रश्न है? सम्बन्धित विद्यालय के प्रबन्धक / प्रधानाध्यापक के संयुक्त लिखित बयान के अनुसार याची की नियुक्ति प्रबन्ध समिति द्वारा दिनांक 01.07. 1988 को किया गया है तथा उक्त नियुक्ति का अनुमोदन तत्कालीन जिला बेसिक शिक्षा अधिकारी, कुशीनगर द्वारा दिनांक 31.03.1997 को किया गया है। परन्तु याची श्री मोहन यादव का सहायक शिक्षा निदेशक (बेसिक) मण्डल गोरखपुर के द्वारा अनुमन्यता निर्गत न किये जाये की स्थिति में याची मोहन यादव वेतन से वंचित रहे है। जहां तक याची के कार्य प्रमाण के आधार पर वेतन भुगतान दिये जाने अथवा न दिये जाने का प्रश्न है? चूंकि प्रबन्ध समिति द्वारा नियमानुसार नियुक्ति किये जाने के उपरान्त जिला बेसिक शिक्षा अधिकारी द्वारा उक्त नियुक्ति का अनुमोदन किया जाता है तथा जिला बेसिक शिक्षा अधिकारी द्वारा उक्त नियुक्ति का अनुमोदन किये जाने के उपरान्त उक्त अनुमोदन का सहायक शिक्षा निदेशक (बेसिक) द्वारा अनुमन्यता निर्गत करने के उपरान्त ही नियमानुसार वेतन भुगतान की कार्यवाही की जाती है। परन्तु जब याची मोहन यादव का सहायक शिक्षा निदेशक (बेसिक) मण्डल-गोरखपुर द्वारा प्रशिक्षित/अप्रशिक्षित अध्यापक के रूप में जब अनुमन्यता ही निर्गत नहीं किया गया है तो बिना अनुमन्यता के याची के प्रशिक्षित अथवा अप्रशिक्षित वेतन क्रम में कार्य प्रमाण के आधार पर वेतन का भुगतान किया जाना विधि के परिपेक्ष्य में उचित प्रतीत नहीं हो रहा है जहां तक याची के कार्य प्रमाण के आधार पर वेतन दिये जाने का प्रश्न है? चूंकि याची के नियुक्ति के उपरान्त बिना सहायक शिक्षा निदेशक (बेसिक) मण्डल, गोरखपुर के अनुमन्यता के ही यदि प्रबन्ध समिति द्वारा याची से कार्य लिया गया है या लिया जा रहा है तो उसके लिये सम्बन्धित विद्यालय के प्रबन्ध समिति उत्तरदायी है। जहां तक याची के अनुमन्यता पर विचार किये जाने का प्रश्न है? चूंकि अनुमन्यता दिये जाने अथवा न दिये जाने का निर्णय सहायक शिक्षा निदेशक (बेसिक) के स्तर से लिया जाता है अनुमन्यता देने अथवा न देने का क्षेत्राधिकारी अधोहस्ताक्षरी को नहीं है ऐसी स्थिति में याची का प्रत्यावेदन / दावेदारी निर्बल प्रमाणित होने के कारण अस्वीकार किया जाना मेरे राय में उचित / समीचीन प्रतीत हो रहा है।

अतः उपरोक्त विवेचन के आधार पर याची का प्रत्यावेदन /दावेदारी, निर्बल/निराधार प्रमाणित होने के कारण अस्वीकार करते हुये मा० उच्च न्यायालय इलाहाबाद में योजित याचिका सं० 75516/2011 में पारित आदेश दिनांक 21.11.2014 के क्रम में याची श्री मोहन यादव द्वारा प्रस्तुत प्रत्यावेदन का तद्रूप एतद् द्वारा निस्तारण किया जाता है।"

3. Sri P.K. Upadhyay, learned counsel for petitioner submits that District Basic Education Officer ought to have forwarded the representation of

petitioner to said authority and, therefore, erroneously without deciding the matter on merit he has rejected the representation of petitioner.

4. This writ petition is pending since 2015 and on first flush the aforesaid argument appears to have substance, however, since Sri Brijesh Narain, learned Standing Counsel appearing for State-Respondents has brought on record relevant material, the Court instead of remitting the matter back to concerned respondent, considered the matter on merit, i.e., to look into the issue, whether petitioner was qualified for appointment as Assistant Teacher or not.

5. Relevant part of counter affidavit is reproduced hereinafter:

“8. That it is further submitted that whether the question of validity of appointment of petitioner by the Committee of Management and payment of salary are concerned, because while making appointment approval is taken from the District Basic Education Officer as per rules and it after granting approval and on the basis of the M.R. sent by the Committee of Management, after being found all the educational qualifications as per the Government Order, the proceeding for payment of salary is initiated and whether the question is of consideration of the educational certificates of the petitioner, because the training certificate of the petitioner is of National Correspondence Institute, Kanpur of the year 1989 of Shikshalankar (Bachelor of Education), which is not an eligibility as per Column-4 of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service Of Teachers Rules, 1978 and the above degree is not mentioned in the Government Order, so that petitioner is not entitled for his claim. True copy of the marksheet of the petitioner is being filed herewith and marked as Annexure No. CA.2 to this counter affidavit.”

6. Learned counsel for petitioner submits that this issue may not be considered at this stage as it was not the ground to reject the representation of petitioner and he refers para 8 of rejoinder affidavit. However, during argument, learned counsel for petitioner has not effectively denied that petitioner possessed degree of Shiksha Alankar. It is also not under much dispute that the degree of Shiksha Alankar is not a valid degree and in this regard Court takes note of judgments passed by this Court in **Dinesh Kumar**

Singh vs. State of U.P. and others, 2024:AHC:38395 and Manoj Kumar Singh vs. State of U.P. and others, 2024:AHC:191092.

7. As referred above, this matter can be remitted back to concerned authority to decide the aforesaid issue, however, as it is brought on record that petitioner is not qualified for appointment as Assistant Teacher since he has not possessed degree of Bachelor of Education and degree of Shiksha Alankar is not equivalent to degree of Bachelor of Education and such degree has already been set aside in various judgments passed by this Court, therefore, since petitioner is not even qualified for the post of Assistant Teacher, the initial prayer to grant financial approval on basis of list of institution, cannot be allowed.

8. Writ petition is accordingly dismissed.

Order Date :- 11.04.2025

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