

Court No. - 33

Case :- WRIT - A No. - 39492 of 2015

petitionerss :- Lalji Pandey And 4 Others

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

Counsel for petitionerss :- Santosh Kumar Singh, Santosh Singh

Counsel for respondents :- C.S.C.

Hon'ble Prakash Padia, J.

1. Heard learned counsel for the petitioners and learned Standing Counsel for the respondents.
2. Since the pleadings have already been exchanged between the parties, with the consent of learned counsel for the parties, the matter is being heard and decided at the admission stage.
3. The petitioners have preferred the present petition with the following prayers:-

(i) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to provide and pay the payment of salary to the petitioners on the post of Assistant Teachers in attached Primary Section of Sri Chiteswar Nath Sanskrit Pathshala Chitbaragaon Ballia month to month since their appointment including arrears of salaries in same terms and condition of Hon'ble Apex Court judgment dated 02.09.2014 in case of State of U.P. and others vs. Pawan Kumar Dwivedi and others as as this Hon'ble/Court order dated 18.01.1993 in case of Ramesh Upadhyay vs. State of U.P. and others reported in 1993(2) U.P.L.B.E.C. 945 and Special Appeal order dated 23.03.2015 in case of Special appeal No. 531 of 2005 (State of U.P. and others vs. Tarkeshwar Nath Singh) as providing to teachers of Junior High Schools Intermediate Colleges. to

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the respondents to provide the other consequential benefit like G.P.F., Insurance Gratuity and retirement benefits as providing to teachers of Junior High Schools to Intermediate Colleges.

4. Facts in brief as contained in the writ petition are that Shri Chiteswar Nath Sanskrit Pathshala Chitbaragaon Ballia is a recognized institution and is on the grant in-aid list of State Government and the payment of salary was made to the teaching staff of the aforesaid institution from the State exchequer only from Class VI to XII. Presently The Uttar Pradesh Board of

Secondary Sanskrit Education Act, 2000 (hereinafter referred to as Act No. 32 of 2000) as well as NCTE (Recognition Norms & Procedure) Regulations, 2009 (hereinafter referred to Regulation 2009) are applicable to the Institution and State Government has direct control over all Sanskrit Institutions running from class 6th to 12th according to Act No. 32 of 2000. The aforesaid Sanskrit Institution has already been attached and recognized Primary Institution from class Ist to Vth, and the primary section is integral part of the Institution and running under the control and supervision the same Committee of Management as well as same Principal.

5. The petitioner no.1 was appointed as Assistant Teacher in the attached Primary Section of the Sanskrit Institution on 30.10.1987 and had continuously worked since then. Similarly, petitioner no.2 was appointed on 02.01.1994, petitioner no.3, 4 & 5 on 10.09.1989, 18.09.1995 and 14.09.2008 respectively and they continued to work from the date of their initial appointments. All the petitioners were appointed in accordance with law prevailing at the relevant time by the competent authority. and have worked in the attached Primary Section since their appointments. It is further stated in the writ petition that all the petitioners are well qualified for their appointments in attached Primary Section of the Institution in question.

6. The State Government took a policy decision for providing grant-in-aid to the Primary Section attached with Normal Higher Secondary Institution in Uttar Pradesh by issuing government order as such teachers working in attached Primary Section with normal Higher Secondary School started getting payment of salary through State Exchequer.

7. One Ramesh Upadhyay and another working as Assistant Teachers to Primary Section of Sanskrit institution challenged the aforesaid Government Order before this Court which was allowed by this Court vide its judgement and order passed in the case of ***Ramesh Upadhyay and another vs. State of U.P. and others, reported in 1993 (2) UPLBEC 945*** directing the State Government to make payment of salary to Assistant Teachers working in attached Primary Section of Sanskrit institution similarly as provided to Assistant Teachers of attached Primary Sections of Normal Junior High School and Secondary School. Against the judgement and order passed in

the case of Ramesh Upadhyay (supra) , the State Government filed Special Leave to Appeal (Civil) No.3478 of 1994 which was dismissed by the Hon'ble Apex Court vide its order dated 12.07.1995.

8. The petitioners Nos.1 to 4 filed Writ Petition No.19569 of 1997 before this Court and this Court vide its judgement and order dated 30.05.1997 disposed of the petition directing the respondents to pay salary and other consequential benefits to the petitioners like Primary Teachers attached with Normal Higher Secondary Institution. Thereafter the District Inspector of Schools, Ballia/respondents No.4 passed order dated 03.09.2001 by which the petitioners were started getting salary. During the pendency of the proceedings for payment of salary to the petitioners, the State of U.P. filed several Special Leave Petitions and the matter was referred to the Larger Bench of Hon'ble Supreme Court and the respondents No.4 stopped payment of salary to the petitioners. The Hon'ble Supreme Court by its judgment and order passed in the case of ***State of U.P. and others Vs. Pawan Kumar Dwivedi and others reported in (2014) 9 SCC 692*** dismissed all the Special Leave Petitions holding that the Assistant Teachers working in attached Primary Section of Sanskrit institution similarly are entitled for the similar salary as providing to Assistant Teachers of attached Primary Sections of Normal Junior High School and Secondary School.

9. It is argued by learned counsel for the petitioners that once the issue for payment of salary to Assistant Teachers of attached Primary Section has been decided by Constitution Bench of Hon'ble Apex Court in the case of ***Pawan Kumar Dwivedi (supra)***, the issue is no more *Res-Integra* and in this view of the matter, it is argued that the petitioners are also became entitled for the same relief as has been granted by this Court in case of ***Ramesh Upadhyay reported in 1993 (2) U.P.L.B.E.C. 945*** as such the petitioners are entitle for payment of salary from the State Exchequer as provided to teachers of Junior High Schools, High Schools as well as Intermediate Colleges.

10. It is further argued that after judgement was delivered by Hon'ble Apex Court in the case of ***Pawan Kumar (supra)***, large number of Special Appeals filed by the State Government before this Court were also dismissed.

11. It is argued by the learned counsel for the petitioners that since the claim of petitioners for salary in attached primary Section of the Sanskrit Institution is similar as decided by Hon'ble Apex Court vide order dated 02.09.2014 passed in the case of **Pawan Kumar (supra)** as well as in the case of **Ramesh Upadhyay (supra)** and further in **Special Appeal No. 541 of 2005 (State of U.P. Vs. Tarkeshwar Nath)**, therefore the petitioners are entitled for their payment of salary as being paid to the teachers of Junior High Schools, High Schools and Intermediate Colleges along with other consequential benefit.

12. It is further argued that by not providing the payment of salary to the petitioners in attached Primary Section of Sanskrit Institution it is not only violating the judgment of Hon'ble Apex Court but also hit by constitutional mandate under Articles 14, 16 and 19 of the Constitution of India therefore the respondents are under obligatory duty to provide payment of salary to the petitioners as directed and hold by Hon'ble Apex Court.

13. It is argued by the learned counsel for the petitioners that the petitioners are still working as Assistant Teachers in attached primary Section of the Sanskrit Institution which are under the control of one Management Committee and one principal and for being integral part of Sanskrit Institution they fulfil all condition as held by Hon'ble Apex Court, therefore are entitled for their payment of salary through State funds as salary to the others Assistant Teachers who teaching from Class VIth to XIIth.

14. The learned counsel for the respondents, as per the counter affidavit, submitted that the appointments of the petitioners were alleged to have been made in the attached primary section of the institution without advertising the vacancies in widely circulated newspapers and without prior permission from the department, nor were any documents relating to the alleged appointments sent to the office of District Inspector of Schools, Ballia. The learned counsel for the respondents submitted that Sri Chiteswar Nath Sanskrit Pathshala Chitbaragaon Ballia (in short the institution) was recognized vide order dated 09.01.1975 by the Sampooranand Sanskrit Vishwavidyala, Varanasi and payment of salary to the teachers of Class-9 to 12, i.e., of Poorvamadhyama upto Uttar Madhyama only are being paid from

the government as 'Chhatipoorti Anudan' under the provisions of Payment of Salary Act, 1971. It is further argued that the Director of Education vide its letter dated 18.01.1999 referred name of five attached primary section of Sanskrit institution sought information/details and the name of present institution was not there in the list of five institutions.

15. The learned counsel for the respondents further submitted that again the Director of Education, vide its letter dated 20.06.2021 sought information of Jan Shakti of primary sections attached to the Non Government and aided Sanskrit institution/degree colleges with specific reference/details of attached primary sections of 21 districts including five institutions of District Ballia which were recognized and attached primary section receiving Chhatipoorti grant. Those institutions are as under:

- i. श्री व्यन्तानन्द सं० उ०मा०वि० सिवानकला, बलिया
- ii. आदर्श सं० उ०मा०वि० सन्दवापुर बनहटा, बलिया
- iii. आदर्श सं० उ०मा०वि० सिवानकला, बलिया
- iv. द्वाबा संस्कृत प्रचार समिति सं० उ०मा०वि० बैरिया, बलिया
- v. श्री अमर रा० उ०मा०वि० खेजुरी, बलिया।

16. The learned counsel for the respondents submitted that regarding the appointment/selection of the petitioners there are no details available in the office of answering respondents and even the Manager of the institution is also not providing any details regarding sanction of post of attached primary section of Sanskrit institution, regarding advertisement of vacancy, selection process etc. It is further submitted that the petitioners are claiming to have been appointed to attached primary section of the institution, i.e., respondents no.5 and as such, is not entitled for any benefit of salary and other monetary benefit as claimed. In view of the facts that vide letter dated 13.03.1987, Chhatipoorti grant was not extended to the institutions, i.e., respondents no.5 which name was not in the list of five institutions receiving Chhatipoorti grant and as such, therefore the petitioners are not entitled. It is further argued by the learned counsel for the respondents that the name of present institution is not included in the list of institutions which have been

extended benefit of Chhatipoorti as issued vide letters dated 18-01-1999 and 20-06-2021.

17. The learned counsel for the respondents further submitted that the appointments of the petitioners were alleged to have been made in attached primary section of the institution without advertising the vacancies in widely circulated news paper and without prior permission from the department and nor any documents relating to alleged appointments of the petitioners were sent to the office of District Inspector of Schools, Ballia.

18. The learned counsel for the petitioners, in the rejoinder affidavit, stated that the records of the writ petition as well as the counter affidavit filed by the answering respondents show that all relevant records are available in the office of D.I.O.S. Ballia. It is argued that the State Government itself admitted in its report dated 13.10.1997 that there was no earlier arrangement or provision for sanctioned posts, advertisement, or selection procedure for appointment of attached primary section teachers in Sanskrit Institutions. The counsel for the petitioners have placed reliance upon the judgment of ***Paripurna Nand Tripathi 2015 (3) ADJ 567 (D.B.)***, in which it was held that the Committee of Management is empowered to appoint only on availability of vacancy from his own records was itself admitted by department.

19. It is further argued that the Institution in question was recognized by Sampurnanend Sanskrit Vishwavidyalay and act according to the first statue of University from Poorva Madhyama to Unar Madhyama, i.e., Class 6th to 12th but after enforcement of U.P. Sanskrit Board Act 2000, it came under the preview of Sanskrit Board and the Institution was already under grant-in-aid up to 6th to 12th Classes. It is further argued by learned counsel for the petitioners that the teachers who are working and teaching from Class 6th to 12th are getting their salary from State fund in terms of the provision contained under Payment of Salary Act 1971 (UP Act No.24 of 1971) as there is no separate Act for payment of salary as such no question arises as Chhatipoorti Anudan' once the institution in question from class 6th to 12th under regular grant-in-aid scheme of State Government. It is further argued by learned counsel for the petitioners that it is only the teachers working in

the attached Primary Section with the aforesaid institution who are not getting regular salary from State funds and they are only being paid from Management from their own sources.

20. It is further argued that the Director of Education only sought the Jan Shakti/strength of Sanskrit Institution only from Class 6 to 8 and it is not a reference of Chhatipurti grant from attached Primary Section. It is further argued by learned counsel or the petitioners that according to the relevant records of department for District Ballia only five Sanskrit Institution is attached primary section got Chhatipurti showing name of Dwaba Sanskrit Prachar Samiti institution Bairia Ballia but in para under reply same contains the name of the different institution. It is further argued that several orders were passed by the State Exchequer from time to time for payment of salary to the teachers working in attached Primary Section of Sanskrit institution in District Ballia which are not registered under chhatipurti anudan namely Hindu Sanskrit U.M. Bhimpura No. 1 Ballia, Adarsh Sanskrit U.M.V. Kishore Chetan Ballia and Shri Bajrang Adarsh Sanskrit V.M.V. Dadar Sikandarpur Ballia etc. It is further argued that the entire record is available in the office of District Inspector of Schools, Ballia, hence it is wrong to say that the records pertaining to the appointments of petitioners are not available. It is further argued that there is no earlier arrangement or provision for advertisement of sanction of posts etc. and for appointment of teachers in attached Primary Section in Sanskrit Institution which is itself admitted by the State Government in its report dated 13.10.1997.

21. It is argued by learned counsel for the petitioners that the teachers working in the Primary Section of Dwaha Sanskrit Prachar Samiti U.M.V. Bairia, Ballia, are also getting their salary from the State Funds though the name of the Institution is not included in the list of chhatipouri anudan.

22. Heard learned counsel for the parties and perused the record.

23. From perusal of the record it reveals that the Hon'ble Apex Court in the case of Pawan Kumar Dwivedi (supra) has categorically held that Assistant Teachers working in attached Primary Sections of Sanskrit institutions are entitled to the same salary as provided to Assistant Teachers of attached Primary Sections of Normal Junior High Schools and Secondary Schools.

From perusal of the judgement delivered by the Hon'ble Supreme Court in the case of Vinod Sharma and Ramesh Upadhyay, it is well-founded that the respondents attempt to distinguish the petitioners' institution on the ground of non-inclusion in the Chhatipoorti grant list is not tenable, as teachers of such primary sections are entitled to the same benefits as those of higher education.

24. In the case of Pawan Kumar Dwivedi (supra), the Hon'ble Supreme Court held that the attached Primary Institution of a recognized institution is also entitled for the payment of salary to the teachers and non teaching staff from the State Fund. The relevant portion of the order reads as follows:-

23. The 1971 Act was enacted to regulate the payment of salaries to teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the state funds and to provide for matters connected therewith. Section 2(b) of the 1971 Act defines "Institution", which means recognized institution for the time being receiving maintenance grant from the State Government and includes a Sanskrit Mahavidyalaya or a Sanskrit Vidyalaya receiving maintenance grant from the State Government. Section 2 also defines expressions such as "Management", "Teacher", "Employee" and "Salary". The residuary definition clause, viz., Section 2(h) of the 1971 Act, says that other words and expressions in the 19:21 Act shall have the meaning assigned to them if not defined under the Act. Section 5 of the 1971 Act provides for procedure for payment of salary in the case of certain institutions.

46. Though in the Reference Order, the two-Judge Bench has observed that the High Court in the first round in Vinod Sharma' did not appreciate that the education at the primary level has been separated from the Junior High School level and separately entrusted under the different enactments to the Board constituted under Section 3 of the 1972 Act and the same Board exercises control over Junior Basic Schools and it was a conscious distinction made by the Legislature between two sets of schools and treat them two separate components and, therefore, Vinod Sharma does not take the correct view but we think that the features noted in the reference order do not render the view taken in Vinod Sharma' bad. We find merit in the argument of Dr. M.P. Raju that the schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for

which there may not be a separate order of grant-in-aid by the Government.

25. In my opinion, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of the school, i.e., Basic School having Classes 1 to VIII. The expression "Junior High School in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. I do not think it is appropriate to give narrow meaning to the expression Junior High School as contended by the learned counsel for the state.

26. In the case of ***Ramesh Upadhyay vs. State of U.P. and others (1993 (2) U.P.L.B.E.C. 945)*** a relief directing the respondents to pay salary to the petitioners in regular grade and to provide other consequential benefits was sought. The petitioners, therein, teachers of the primary section of Sri Alpeshwarnath Sanskrit Maha Vidyalaya, Janewar, Fatehganj, Jaunpur, a duly recognized Sanskrit Institution imparting Sanskrit education in primary section. The operative portion of the order reads thus:

In the circumstances the writ petition is allowed and a mandamus is issued directing the respondents to pay salary to the primary section teachers in Sanskrit institutions through the State as is done in the case of primary school teachers of High School and Intermediate Colleges Also, the salaries to be paid to the former must be the same as that paid to the latter, ie in accordance with the G.O. dated 28.2.90 and 6.9.60 as amended. The petitioners will also be entitled to other consequential benefits like group insurance, General Provident Fund, retirement benefits etc. which are being made available to the primary section teachers in High School and Intermediate Colleges.

27. On considering the rival submissions and the record, it is evident that the petitioners were appointed long ago by the competent authority and have continuously served as teachers in the attached primary section. The contention of the respondents regarding the lack of sanctioned posts, advertisement, and selection procedure is not sustainable in eyes of law as in light as the State Government has own admitted in its report dated 13.10.1997 that there is no earlier arrangement or provision for sanctioned posts or selection procedure for attached primary section teachers in Sanskrit institutions.

28. From going through the material on record, the petitioners have demonstrated that several similarly situated institutions in Ballia are receiving salary for attached primary section teachers without being under Chhatipoorti Anudan, and sometimes even without proper recognition or orders. The denial of salary to the petitioners, despite fulfilling all requisite conditions, is unjustified.

29. The Court is of the opinion that the petitioners have been in continuous service, and their entitlement to salary and consequential benefits is not only a matter of statutory right but also of equity. The denial of such benefits, when similarly placed teachers are being paid, cannot be sustained in law or in equity

30. Furthermore, the court is of the opinion that the right to education of children below the age of 14 years is a fundamental right under Article 21A of the Constitution. The petitioners, who are contributing to the fulfilment of this constitutional mandate by teaching in the primary section, deserve to be treated with dignity and provided with proper remuneration for their services

31. In view of the matter considering the entire fact and circumstances of the case as well as the ratio laid down by Hon'ble Supreme Court the respondents are directed to consider the case of the petitioners for entitlement of payment of salary to the petitioners for the post of Assistant Teachers in the attached Primary Section of Sri Chiteswar Nath Sanskrit Pathshala Chitbaragaon Ballia, along with all consequential benefits such as G.P.F., gratuity, and retirement benefits. The respondents are also directed to consider the case of the petitioners for payment of arrears of salary from the date of their respective appointments, subject to verification of their continuous service and in accordance with the applicable rules and regulations. The respondents shall ensure compliance of this order within a period of three months from the date of receipt of a certified copy of this order.

32. Accordingly, in view of the above, the writ petition is allowed. No order as to costs.

Order Date :- 19.05.2025
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