

Court No. - 6

Case :- WRIT - A No. - 64747 of 2015

Petitioner :- Krishna Kumar Tiwari

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dinesh Kumar Pandey, Govind
Krishna, Muni Raj Goswami

Counsel for Respondent :- C.S.C., Harsh Vardhan Gupta, Pranesh
Dutt Tripathi

Hon'ble Saurabh Shyam Shamsheery, J.

1. Heard Shri Dinesh Kumar Pandey, learned counsel for the petitioner, Shri Harsh Vardhan Gupta, learned counsel for the respondent no.2 and learned Additional Chief Standing Counsel for the State.

2. The petitioner has filed this writ petition in the year 2015 and claims that he was appointed as Class-IV employee against a sanctioned post in pursuance of a direction passed by the State Government for sanctioning post in newly created district under memo dated 20.07.2007 and 28.05.2008. However, in the writ petition, no appointment letter was annexed. For the first time, appointment letter was annexed with the personal affidavit of respondent no.3 filed on 05.02.2024 and for reference contents of it are reproduced herein below :

"कार्यालय विज्ञप्ति/नियुक्ति

आदेश संख्या/ले०सं०/83/2008-09

दिनांक 01/12/08

कार्यालय में चतुर्थ श्रेणी कर्मचारी न होने के कारण कार्यालय कार्य जैसे डाक वितरण, सफाई, पानी, कोषागार, बैंक आदि कार्य सुचारु रूप से संचालित नहीं हो पा रहा है। कार्यालय के शासकीय कार्यों के सुचारु रूप से संचालन हेतु कृष्ण कुमार तिवारी (सोनू) पुत्र श्री ज्ञान चन्द्र तिवारी निवासी ग्राम व पो०-सराय अकिल, जनपद- कौशाम्बी की दैनिक वेतन भोगी के रूप में (किसी कर्मचारी की नियमित नियुक्ति होने तक) परिचारक के पद पर नियुक्ति की जाती है। इन्हें नियमानुसार दैनिक पारिश्रमिक रु० 42.50 प्रतिदिन की दर से भुगतान किया जायेगा।"

3. As referred above nature of appointment was a daily wager. In the aforesaid circumstances, it is further case of the petitioner that he was regularly working on said post and ought to have considered for regularization against the substantive vacancy, therefore, he has submitted a representation dated 15.01.2013 before the Finance and Account Officer, Basic Shiksha Adhikari,

Kaushambi that he may be regularized.

4. The said representation was decided by order dated 21.02.2013, whereby his services was considered to be contractual instead of daily wage and direction was passed to pay honorarium. The contents of the said order is reproduced herein below :

"कार्यालय वित्त एवं लेखाधिकारी, बेसिक शिक्षा, कौशाम्बी

आदेश सं०/प्रबन्ध/ले०सं०/

/2012-13 दिनांक 21/02/13

श्री कृष्ण कुमार तिवारी पुत्र श्री ज्ञान चन्द्र तिवारी निवासी ग्राम व पोस्ट सराय आकिल जनपद कौशाम्बी से कार्यालय में कई वर्षों से दैनिक वेतन भोगी परिचारक का कार्य लिया जा रहा है परन्तु उनको पिछले कई महीनों से पारिश्रमिक का भुगतान नहीं किया जा रहा है। श्री कृष्ण कुमार तिवारी द्वारा इस आशय का प्रत्यावेदन दिनांक 15.01.2013 प्रस्तुत किया गया है तथा सेवा में नियमित करने का अनुरोध किया गया है। उनके समर्थन में अध्यक्ष उत्तर प्रदेश राज्य कर्मचारी महासंघ द्वारा भी पत्र प्रेषित किया गया है। अधोहस्ताक्षरी इस तथ्य से अवगत है कि श्री कृष्ण कुमार तिवारी इस कार्यालय में पूरी निष्ठा, ईमानदारी एवं मेहनत से परिचारक के दायित्वों का निर्वहन करते आ रहे हैं परन्तु शासनादेश सं० 3967/15-2-07-14(97)/95 दिनांक 24 मार्च 2008 के अनुसार कार्यालय में परिचारक संविदा कार्य के अन्तर्गत ही नियुक्त किये जा सकते हैं। दैनिक वेतन पर कार्यालय में नियुक्ति एवं पारिश्रमिक भुगतान का प्राविधान नहीं है। परन्तु इस तथ्य इन्कार नहीं किया जा सकता है कि श्री कृष्ण कुमार तिवारी द्वारा कार्यालय में परिचारक का कार्य किया गया है तथा अभी भी किया जा रहा है अतः पारिश्रमिक का भुगतान करना न्यायसंगत होगा। अतः शासनादेश सं० 3967/15-2-07-14(97)/95 दिनांक 24 मार्च 2008 के अनुसार श्री कृष्ण कुमार तिवारी की नियुक्ति संविदा कार्य के अन्तर्गत मानते हुए इन्हें संविदान्तर्गत नियमानुसार दिनांक 1 जून 2010 से मानदेय के भुगतान की स्वीकृति प्रदान की जाती है।

(त्रिलोकी नाथ)

वित्त एवं लेखाधिकारी
बेसिक शिक्षा, कौशाम्बी"

5. The said order was never challenged as such above facts and nature of appointment remain undisputed. The petitioner has submitted a representation to determine his honorarium in terms of G.O. dated 24.05.2008 and a Office Memo dated 21.02.2013. It is further case of the petitioner that he was not paid adequate honorarium and his further honorarium was thereafter discontinued also, therefore, he approach this Court by way of filing the present writ petition seeking following reliefs:

"(A) Issue a writ, order or direction in the nature of mandamus suitable directing the respondent no.2 to provide arrears as well as regular fixed pay salary to the petitioner forthwith.

(B) Issue a writ, order or direction in the nature of mandamus suitable the directing the respondent no.2 to regularize the service of the petitioner in view of the Government direction issued to his effect."

6. This Court has passed an order dated 16.12.2015 and thereafter,

pleadings were exchanged between the parties and this Court has passed following order on 31.10.2023 and sought explanation for non payment of honorarium despite petitioner is working:

"Parties have exchanged affidavits.

Admit.

On 16.12.2015, the following order was passed :

"It is contended on behalf of the petitioner that the petitioner was appointed on contract basis on 01st December, 2008 on the post sanctioned in pursuance of the order of the State Government dated 20th January, 2007, which he has brought on record as annexure-1 to the writ petition. Learned counsel for the petitioner has drawn the attention of the Court to the details of honorarium paid to the petitioner @ Rs.2550/- per month. The said document is on the record annexure-6 to the writ petition. It is further contended that the honorarium of the petitioner has not been paid from July, 2014.

Learned Standing Counsel, who appears for all the respondents, has received the instructions pursuant to the order of this Court. The instructions are taken on record.

As prays by the learned Standing Counsel, six weeks' time is granted to file counter affidavit.

List this matter on 24th February, 2015."

Till the next date of listing the status quo as on today shall be maintained and if the petitioner is working, current honorarium shall be paid to him.

The Court is informed that though the respondents, in compliance with the interim order dated 16.12.2015, are permitting the petitioner to work, or rather taking work from him, but no honorarium, in compliance with the aforesaid interim order is being paid.

In the circumstances, the Director, Basic Shiksha, U.P., Lucknow and the Finance and Account Officer, Basic Shiksha, Kaushambi shall show cause, by their affidavits, why the accounts maintained in the bank or the treasury, wherever it is, be not attached for the entire arrears of honorarium due to the petitioner from 16.12.2015 till date. Cause shall be shown by personal affidavits of both officers, on or before 03.11.2023.

Adjourned to 03.11.2023.

To be taken up in the additional cause list.

The Registrar (Compliance) is directed to communicate this order to the Director, Basic Shiksha, U.P., Lucknow through the Chief Judicial Magistrate, Lucknow and the Finance and Account Officer, Basic Shiksha, Kaushambi through the Chief Judicial Magistrate, Kaushambi today."

7. In pursuance of above order, a personal affidavit was filed and this Court has passed the following orders on 02.05.2024 and 15.05.2024:

02.05.2024

1. Personal Affidavit filed today on behalf of the respondent no.2 is taken on record.

2. Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

3. Learned counsel for the petitioner submits that the new posts were carved out. In pursuance thereof, posts were sanctioned by the State Government vide order dated 20.01.2007, a copy whereof has been annexed as Annexure No.1 to the present writ petition; wherefor District Kaushambi, at Serial No.5, two posts were sanctioned. In pursuance thereof, the petitioner was appointed on 01.12.2008 and the appointment letter was issued by respondent no.2 i.e. Finance and Account Officer, Basic Shiksha, District- Kaushambi.

4. Counsel for the petitioner further submits that the petitioner was discharging his services

diligently without any complaint whatsoever of any kind in the office of Finance and Account Officer, Distric- Kaushambi. Further, when new Finance and Account Officer took the charge of the matter, they stopped the salary of the petitioner without any rhyme or reason and sent a letter to Finance Controller, Basic Education Council, Prayagraj on 21.01.2015 seeking guidelines regarding salary of the petitioner. In the said letter, for the first time, it was recorded that the appointment of the petitioner is not a regular appointment. In pursuance thereof, various letters and reminders were sent to seek guidelines from the respondent no.2, though the petitioner was discharging his services diligently, but the payment was not paid to him, which compelled the petitioner to move the present writ petition in which on 16.12.2015, order was passed directing that the status quo shall be maintained. It was further directed that if the petitioner was working current honorarium shall be paid to him, but in spite of the said fact, the petitioner was working regularly, no honorarium was paid to him.

5. In the present writ petition, affidavits have been exchanged. Thereafter, on the direction of this Court on previous occasions, personal affidavits have been filed by Mahendra Deo, the then Director, Basic Education on 02.11.2023 and thereafter, another detailed personal affidavit was filed on 05.02.2024.

6. On the strength of these affidavits, learned Standing Counsel tried to justify their action for not paying the honorarium to the petitioner in spite of interim order being passed by this Court on 16.12.2015.

7. During the course of arguments, learned Standing Counsel refers para nos. 7 & 11 of the personal affidavit filed on 05.02.2024 and tried to buttress the submission by stating that since the petitioner was not discharging his services, therefore, the payment was not released to him. He further refers para no.11 of the aforesaid affidavit and submits that the then Finance and Account Officer has withheld the honorarium for the month of July, 2014 and stopped to take work from the petitioner.

7. On the contrary, counsel for the petitioner submits that no material has been brought on record to show that by which order the services of the petitioner was stopped. Further, he relies on Para Nos. 33 & 34 of Annexure No.7 of this writ petition and submits that only guidelines were sought for payment.

8. Confronted with the said fact, learned Standing Counsel prays for accommodation for today to prepare his case.

9. List for further hearing on 07.05.2024.

15.05.2024

1. Heard learned counsel for the petitioner and Sri Ashok Mehta, learned AAG assisted by Mr. Pradeep Kumar Shahi, learned counsel for the respondent no.2 and Mr. Harsh Vardhan Gupta, learned counsel for the respondent no.2.

2. Learned counsel for the respondent no.3 submits that the appointment of the petitioner was per se illegal, the said fact has specifically been spelled out in para nos. 11, 14 & 17 of the personal affidavit and tried to justify and also refers appointment letter. He further submits that there was specific ban for making appointment of such person by the Government.

3. On perusal of the said affidavit, not a single word has been whispered by the deponent (respondent no.3) that whether the action of the Finance Controller was illegal and if illegal, what action has been taken against the officer, who committed illegality.

4. Confronted with the said fact, learned counsel for the respondent no.3 prays for and is granted a weeks' time to file a better affidavit spelling out therein that what action has been taken against the officer who committed illegality, if any and if not, reason for that.

5. List on 24.05.2024.

8. Shri Dinesh Kumar Pandey, learned counsel for the petitioner refers a reply filed to the personal affidavit though wrongly nomenclature as counter affidavit that not only the petitioner was appointed as against the substantive vacant post with a condition that he will be continued till the regular appointment is made but

he is still working also and since till date no regular appointment is made, therefore, he may be regularized.

9. Learned counsel for the petitioner further submits that a specific interim order was passed on 16.12.2015 i.e. to maintain status-quo. However, the petitioner was not allowed to mark his attendance though he regularly worked at the office of respondent no.2 after the above referred interim order was passed and even he is working till date.

10. It is relevant to mention here that in the interim order dated 16.12.2015 the status quo was subject to the condition that if the petitioner is working he shall be paid current honorarium.

11. Per contra, learned counsel appearing on behalf of respondent no.2 refers personal affidavit, specifically its paragraph nos.9,11 and 14 and for reference, same are reproduced hereinafter:

"9. That the petitioner has been paid Rs.42.50/- per day as a Daily Rated Employees on purely temporary basis, for which neither any advertisement had been published nor any Selection Committee has been constituted, which is against the Government Order. It was against the law to pay the honorarium to the petitioner by the then Finance and Accounts Officer, Basic Education, Kaushambi, while treating him to be the contract employee. Being afflicted with the withheld of payment of honorarium in the month of July,2014, the petitioner has filed the present Writ Petition before this Hon'ble Court, in which this Hon'ble Court on 16.12.2015 has pleased to pass the following order:-

" It is contended on behalf of the petitioner that the petitioner was appointed n contract basis on 01st December, 2008 on the post sanctioned in pursuance of the order of the State Government dated 20th January, 2007, which he has brought on record as Annexure-1 to the writ petition. Learned counsel for the petitioner has drawn the attention of the Court to the details of honorarium paid to the petitioner @ Rs.2550/- per month. The said document is on the record annexure-6 to the writ petition. It is further contended that the honorarium of the petitioner has not been from July, 2014.

Learned Standing counsel, who appears for all the respondents, has received the instructions pursuant to the order of this Court. The instructions are taken on record.

As prays by the learned Standing Counsel, six weeks' time is granted to file counter affidavit.

List this matter o4th February, 2015.

11. That this Hon'ble Court in its order dated 16.12.2015 has been pleased to direct to maintain status quo and if the working of the petitioner is going on, he may be paid honorarium because the then Finance and Accounts has withheld the honorarium for the month of July, 2014 and has stopped to take work from the petitioner. Hence, the petitioner was not working, as such it was not possible to pay him any honorarium.

14. That after July, 2014 and since from the date of interim order dated 16.12.2014 passed by this Hon'ble Court for maintaining the status quo the petitioner has not worked in the office of the District Basic Education, Kaushambi."

12. In rejoinder, learned counsel for the petitioner reiterated as above referred argument in brief.

13. I have heard learned counsel for the parties and perused the record.

14. On basis of material available on record, appointment of the petitioner is a contractual appointment on payment of honorarium. The honorarium can be determined on the basis of circulars, if any.

15. Therefore, only on a ground that there was a reference in the appointment letter dated 01.12.2008 that though he was appointed as a daily wager but it would be till substantive appointment of any other Class-IV employee as made, the appointment itself cannot be considered against a substantive post, specifically when in by subsequent order dated 21.02.2013 passed by respondent no.2 that the petitioner was undisputedly working since his appointment as Class-IV employee, therefore, he was entitled for payment of honorarium as a contractual appointment, in terms of the Government Order dated 24.05.2008.

16. In this regard, the Court takes note, details of payment as disclosed by the respondent in paragraph no.10 of the affidavit filed on behalf of respondent no.2 dated 06.02.2024 and for reference the same is reproduced herein below:

"10. That a bare perusal of the office bill register would demonstrate that the payment of salary to the petitioner was made from March 2013 to November 2013 to the tune of Rs.2,550/- per month amounting to a sum of Rs.22,950/-, from December 2013 to February 2014 to the tune of Rs.10,200/- by the office of answering respondent. Thereby total sum of Rs.40,800/- was paid to the petitioner from March 2013 to June 2014 by the office of answering respondent."

17. No document is placed on record as to how the honorarium would be increased. Now the question remains to consider, whether in light of the interim order dated 16.12.2015, petitioner has worked or not. Since, interim order has specifically directed if petitioner is working honorarium fixed shall be paid to him.

18. According to the counsel for the petitioner, it is specific case of the petitioner that he has worked on basis of the interim order. However, since he was denied to mark his attendance, no honorarium was paid considering him to be absent from service.

19. *Per contra*, it is the case of contesting respondents that he has not worked in pursuance of the interim order and there is no material with the petitioner which would contradict it.

20. In order to consider above dispute, if the Court goes strictly by pleading the petitioner has no proof that he has worked on basis of interim order as there is no attendance register as well as that there

is complete denial by the State-respondents.

21. In the above background, the Court also takes note that still there is a requirement of Class-IV employee at the office of respondent no.2 as there is nothing on record that the said vacancy is filled by any substantive appointment or any other contractual appointment.

22. At this stage, the Court has also takes note that subsequently the State of U.P. has issued a G.O. dated 06.01.2011 whereby a ban was imposed to appoint Class-IV employees by outsourcing though it may have prospective effects as well as that the interim order dated 16.12.2015 is still in currency.

23. The Court also takes note that the petitioner is about 35 years old and he has still years to work. Till date no order has been passed to disengage him. Only dispute is that whether the petitioner has worked on the basis of interim order or not. It is again observed initially nature of appointment was daily wage and later on it was considered as contractual on basis of honorarium. No scheme or provision was brought on record that such nature of appointment may be regularized.

24. In the aforesaid circumstances, this writ petition is disposed of with following observations / directions :-

i) Petitioner will be allowed to work at the Office of respondent no.2 only as a contractual appointee on basis of honorarium and his engagement be extended year to year, subject to his satisfactory service till any substantive appointment is made or he attained age of superannuation. Any dispute in regard to the determination of honorarium being a separate cause of action and for that the petitioner will have a liberty to approach before the concerned respondent, if so advised.

ii) As referred above, there is a serious dispute whether the petitioner has worked after the interim order or not and since the Court has passed the above referred direction, therefore, in the interest of justice, for period after the interim order was passed on 16.12.2015 till date, the contesting respondent no.2 is directed to pay him a lump sum amount of Rs.1,25,000/-. This order is passed since there was an interim order in the present and its modification or vacation was not pressed effectively by the concerned

respondents.

25. The writ petition is accordingly, disposed of.

Order Date :- 9.4.2025 / RKM