

AFR

2025:AHC:80895

Reserved :- 05/05/2025

Delivered :- 16/05/2025

Court No. - 6

Case :- WRIT - A No. - 17029 of 2013

Petitioner :- Smt. Maya

Respondent :- Zila Basic Shiksha Adhikari Baghpat And Ors.

Counsel for Petitioner :- Siya Ram Sahu

Counsel for Respondent :- Rajesh Yadav

Hon'ble Saurabh Shyam Shamshery,J.

1. Petitioner has claimed that her husband was initially appointed on 01.10.1957 as untrained Teacher in a Primary School, Karmalipur Garhi, Baghpat, Meerut. She further claimed that her husband obtained training from 19.05.1960 to 30.05.1960 from a training camp based at Sarurpur Kalan. She further claimed that her husband was thereafter appointed as an untrained Assistant Teacher on 19.11.1963 at a Primary School, Karmalipur Garhi, Baghpat, Meerut where he worked up to 30.06.1991 i.e. till his retirement.

2. Petitioner has further claimed that her husband worked for about 34 years from his initial appointment i.e. 01.10.1957 till his retirement i.e. 30.06.1991. It is further case of petitioner that despite her husband worked for such long time, he was denied pension and for that he has submitted various representations.

3. In aforesaid circumstances, petitioner's husband has filed a Writ A No. 20312/1999, which was disposed of vide order

dated 08.05.1999, that B.S.A., Meerut will decide claim of petitioner regarding retiral benefits in accordance with law.

4. In pursuance of above order, claim of petitioner's husband was considered, however, by an order dated 25.01.2000, it was rejected on a ground that in terms of a Government Order dated 30.05.1973 petitioner's husband could not be exempted from training since before cut off date i.e. 25.07.1973, he was required to complete service of 15 years, but he has completed service of only 9 years 8 months and 6 days. Date of appointment of petitioner was taken on 19.11.1963 when he was appointed as untrained teacher.

5. Aforesaid order was thereafter challenged at behest of petitioner's husband by way of filing Writ A No. 30422/2000 which was allowed vide order dated 04.01.2008 and relevant part thereof is quoted below :-

"In view of the above chronology of events, it is clear that the petitioner was not afforded opportunity of hearing to put forth his case before the Basic Shiksha Adhikari. The circular dated 4.12.82 (sub para 1) clearly provides that if an untrained teacher has completed 10 years service on 30.06.78, he was entitled for all the benefits as spelt out in the relevant Government Orders and circulars Moreover, even if the petitioner's services are counted with effect from 01.10.1957 he had completed 15 years service much before 25.07.73. Thus, it appears that material facts have been excluded from consideration and re-hearing and re-appraisal or material on record is required in the interest of justice.

In view of the above, the writ is allowed and the order dated 25.01.2000

passed by the Basic Shiksha Adhikar, Meerut is quashed. The Basic Shiksha Adhikari, Meerut is directed to call for the record, fix a date of hearing for taking into account the version of the petitioner. It shall be open for the petitioner to place all the relevant Government Orders and circulars to support his case. The Basic Shiksha Adhikari after appreciating the material on record and taking into account the version of the petitioner shall pass appropriate order in accordance with law within a period of one month from the date of presentation of a certified copy of judgment and order. This court is issuing such direction as the petitioner is a poor school teacher aged about 76 years of age and as such early disposal of the dispute is necessary."

6. In aforesaid order, there is a reference of a Circular dated 04.12.1982 and for reference, said Circular is quoted below :-

“प्रशिक्षण मुक्त लाभ का आदेश

(2)/6751 04/13 10(1)/0203

शिव दत्त त्रिवेदी

संयुक्त शिक्षा निदेशक (प्रशिक्षण)
शिक्षा निदेशालय, उत्तर प्रदेश
इलाहाबाद दिनांक दिसम्बर, 4, 1982

प्रिय श्री निगम,

कृपया अपने प० शा० पत्रांक जी-1/2453/81-82 दिनांकित 27.12.81 एवं जी-1/1524-82-83 दिनांक 07.10.82 का अवलोकन करने का कष्ट करे जो सहायता प्राप्त जूनियर हाईस्कूलों एवं प्राइमरी स्कूलों में कार्यरत अप्रशिक्षित अध्यापक/अध्यापिका को प्रशिक्षण योग्यता से मुक्ति प्रदान करने के सम्बन्ध में है।

उपर्युक्त सन्दर्भित पत्रों द्वारा की गई जिज्ञासाओं के सम्बन्ध में मुझे आपको निम्नवत सूचित करने की निर्देश हुआ है-

1 जिन अप्रशिक्षित अध्यापको/अध्यापिकाओं की अविरल सेवा अवधि 30-6-1978 को 10 वर्ष या इससे अधिक पूरी हो चुकी हो, उन्हें प्रशिक्षण से मुक्ति का लाभ 1-7-75 में देय होगा, भले ही आप द्वारा मुक्ति प्रदान किये जाने से सम्बन्धित आदेश उक्त तिथि के बाद ही निर्गत किये जाये।

2 राजाज्ञा संख्या/2186/15(13)/1499(7)/17 दिनांक 20-7-79 एवं राजाज्ञा/2104 (1)/15 (13) /1499 (ii) / 11 दिनांक नवम्बर 1, 1971 द्वारा प्रदत्त प्रशिक्षण से मुक्ति की सुविधा अशासकीय मान्यता प्राप्त प्राइमरी तथा जूनियर हाईस्कूलों के प्राधानाध्यापकों को भी देय होगी। किन्तु इस सम्बन्ध में जो आदेश आप द्वारा निर्गत किये जाये, इसमें इस बात का स्पष्ट उल्लेख कर दिया जाना चाहिए कि प्रशिक्षण से प्रदान की गई मुक्ति का आशय, उन्हें प्रशिक्षित अध्यापक मानना मात्र है। प्रधान अध्यापक/प्रधान अध्यापिका के पद पर उनकी नियुक्ति/पदोन्नति तभी मान्य होगी जब वे अधिसूचना संख्या 8988 पन्द्रह-20(11/72) दिनांक फरवरी 13, 1978 द्वारा विज्ञापित तथा 13 फरवरी 1979 से प्रभावी उ०प्र० असाशकिय मान्यता प्राप्त बेसिक (जूनियर हाईस्कूल) अध्यापकों की भर्ती और सेवा नियमावली 1978 द्वारा निर्धारित शैक्षिक योग्यता बाद प्रतिबन्ध भी पूरी करते हो।

3 ऐसे अध्यापकों/अध्यापिकाओं जिनकी सेवा अवधि में व्यवधान हो के प्रकरण निदेशालय को विवरण सहित प्रशिक्षण हेतु भेजे जाये तथा निदेशालय की सहमति प्राप्त होने के पश्चात ही उनको प्रशिक्षण से मुक्ति से सम्बंधित आदेश आप द्वारा किये जावे।

भवदीय
(शिव दत्त त्रिवेदी) ”

7. In aforesaid circumstances, claim of petitioner's husband was again considered, however, by order dated 05.03.2008, it was again rejected on same ground on which earlier order was passed though it was later on set aside by this Court. For reference, relevant part of order dated 05.03.2008 is quoted below :-

“विवेचना

श्री शालग्राम के द्वारा प्राप्त कराये गये अभिलेखों के परीक्षण से स्पष्ट होता है कि-

1. श्री सालग्राम द्वारा एक प्रमाण पत्र उर्दू में लिखित प्रस्तुत किया है जिसका अनुवाद कराया गया। उसके अनुसार इनकी जन्मतिथि 03.07.1930 है, जो दर्जा चार (04) पास की है तथा दिनांक 13.05.1947 की सदर बागपत से जारी किया गया है।

2. जू० हाईस्कूल परीक्षा 1952 में उत्तीर्ण होने का प्रमाण पत्र प्रस्तुत किया है।

3. 01.10.1957 से नवम्बर 1963 तक सहायता प्राप्त पाठशाला क्रमअलीपुर गढ़ी विकास क्षेत्र बागपत में कार्य करने का प्रमाण पत्र प्रस्तुत किया है। किस तिथि तक कार्य किया है इसका कोई उल्लेख नहीं है। यह प्रमाण पत्र मान्य नहीं है क्योंकि प्रमाण पत्र जिस संस्था में कार्य किया है उस संस्था द्वारा जारी नहीं किया गया है। प्रधान

अध्यापक प्रा०पा० विलोचुपरा द्वारा दिनांक 10.04.1970 को जारी किया गया है जिसका कोई सम्बन्ध नहीं है। सक्षम अधिकारी से प्रतिहस्ताक्षरित भी नहीं है, वेतन एवं भत्तो का भी उल्लेख नहीं है।

4. वादी द्वारा उक्त अवधि में 15 रुपये प्रतिमाह वेतन प्राप्त करना बताया है। वेतन प्राप्त करने का कोई रजिस्टर, बैंक पास बुक आदि प्रस्तुत नहीं किया गया। ग्राम प्रधान का प्रमाण पत्र प्रस्तुत किया है। विद्यालय प्रधान अध्यापक का वेतन देने सम्बन्धी कोई प्रमाण पत्र प्रस्तुत नहीं किया गया।

5. उक्त विद्यालय में पी.एफ. आदि कटने सम्बन्धी कोई भी प्रमाण पत्र प्रस्तुत नहीं किया है।

6. नियुक्ति पत्र के अनुसार दिनांक 19.11.1963 को प्रा० पा० कर्मअलीपुर गढी में कार्यभार ग्रहण करने का प्रमाण पत्र प्रस्तुत किया गया है।

7. सचिव, उ०प्र० बेसिक शिक्षा परिषद के पत्र सं० बे०शि०प० / प्रशि०मु०/ 24157-24215/85-86 दिनांक 06.09.1985 के अनुसार जिन अध्यापकों ने निरन्तर सेवा 15 वर्ष पूर्ण कर ली हो और निर्धारित शैक्षिक योग्यता रखते हो बी०टी०सी० प्रशिक्षण से छूट प्रदान करने के निर्देश प्रदान किये गये हैं।

8. जिला बेसिक शिक्षा अधिकारी मेरठ के पत्रांक ई० (1) 2339-40/91-92 दिनांक 23.10.91 द्वारा बेसिक शिक्षा परिषद के पत्र दिनांक 16.09.85 के अनुक्रम में प्रशिक्षण से मुक्ति प्रदान की गयी है, जो त्रुटि पूर्ण है क्योंकि 19.11.63 से पूर्व की सेवायें मान्य नहीं है तथा निर्देशों के अनुसार शैक्षिक योग्यता भी पूर्ण नहीं करते हैं। कम से कम शैक्षिक योग्यता इण्टरमीडियेट या समक्ष होनी चाहिये।

9. श्री शालग्राम की दिनांक 25.07.73 को मान्य सेवाये 9 वर्ष 8 माह 6 दिन होती है। जो 15 वर्ष से अत्यधिक कम है।

निर्णय

श्री शालग्राम अप्रशिक्षित (सेवानिवृत्त) स०अ० प्रा०पा० क्यामपुर की मान्य नियुक्ति तिथि 15.11.63 है। सचिव बेसिक शिक्षा परिषद इलाहाबाद के आदेश दिनांक 16.09.85 के अनुसार 25.07.73 को कुल मान्य अप्रशिक्षित सेवाए 9 वर्ष 8 माह 6 दिन है जो 15 वर्ष से कम है। निर्धारित तिथि को शैक्षिक योग्यता भी पूर्ण नहीं करते हैं। सी.पी.एफ./जी.पी.एफ. योजना में भी सम्मिलित नहीं है। निर्धारित शर्तें पूर्ण नहीं करते इसलिए नियमों के अन्तर्गत पेंशन के अधिकारी नहीं हैं।

अतः श्री शालग्राम का प्रत्यावेदन निस्तारित करते हुए निरस्त किया जाता है।”

8. Petitioner's husband thereafter filed a Contempt Petition that his claim was not considered by order dated 05.03.2008 in terms of earlier order dated 25.01.2000 passed by this Court.
9. Contempt application was finally decided on 21.11.2012 whereby notices were discharged and liberty was granted to assail the correctness of the order dated 05.03.2008.
10. Before order in contempt proceedings was passed, unfortunately, petitioner's husband died on 19.04.2011.
11. In aforesaid circumstances, petitioner has approached this Court by way of filing present writ petition with a prayer to quash order dated 05.03.2008, with a further prayer to accord her husband pension and accordingly to grant family pension to her.
12. Petitioner has declared her age to be 73 years when this writ petition was filed in the year 2013, as such, today she must be around 85 years old.
13. Petitioner's husband has fought a very long legal battle. He was substantively appointed on 19.11.1963. Earlier appointment being not against substantive post cannot be included in his service as well as alleged training could not be considered to be a training for purpose of appointment of teachers. Petitioner has worked from 19.11.1963 to 30.06.1991 i.e. about 27 years and thereafter he was before this Court firstly in 1999, secondly in 2000 and even after impugned order was passed on 05.03.2008, he was before this Court in

contempt proceedings which was disposed of vide order dated 21.11.2012 after his death.

14. Therefore, petitioner's husband was before this Court for almost 12 years and thereafter her wife is before this Court by way of filing present writ petition in the year 2013 and she is waiting for a just decision for last more than 12 years.

15. Sri Vishnu Gupta, learned Senior Advocate assisted by Sri Siya Ram Sahu, learned counsel for petitioner, on basis of aforesaid undisputed facts, has placed heavy reliance on a Government Order dated 04.12.1982 which was directed to be considered when by order dated 04.01.2008, second writ petition filed by petitioner's husband was allowed.

16. Learned Senior Advocate has further submitted that aforesaid Government Order dated 04.12.1982 was not considered and again claim of petitioner's husband was rejected on the basis of subsequent Government Order dated 16.09.1985 as well as it was wrongly held that petitioner's husband was not qualified for appointment on post of Assistant Teacher since he has not passed Intermediate examination. For reference, contents of G.O. dated 16.09.1985 are quoted below :-

“उपर्युक्त विषयक कृपया अपने पत्रांक सं० 2837/88/भशि०मु०/85-86 दिनांक 05.08.85 का सन्दर्भ ले जो उक्त अध्यापिका को प्रशिक्षण से मुक्ति प्रदान करने में है।

इस सम्बन्ध में आपसे यह कहना है कि उप सचिव उ०प्र० शासन शिक्षा-13 अनुभाग लखनऊ के पत्र संख्या 1274/15/19-1499/6/61 दिनांक 10.09.73 में उल्लिखित राजाज्ञा संख्या 1386/15/13/1450/56/73 दिनांक 30.05.73 के द्वारा राज्यपाल महोदय ने जुलाई 25, 1973 को जिन अध्यापक अध्यापिकाओं ने 15 वर्ष की निरन्तर सेवा पूर्ण कर ली हो और उक्त दिनांक को निर्धारित शैक्षिक योग्यता रखते हो की भी टी०सी० प्रशिक्षण से छूट प्रदान कर दी है। इसके लिये किसी अधिकारी के

आदेश की आवश्यकता नहीं है। इसमें आपको केवल इतना ही देखना है कि उक्त तिथि में उसकी 15 वर्ष की निरन्तर सेवा पूर्ण हो चुकी हो तथा निर्धारित शैक्षिक योग्यता रखते हो।

कृपया शासन के दिये गये निर्देशों के अनुरूप निर्धारित शैक्षिक योग्यता रखने वाले ऐसे शिक्षक/शिक्षिका जिन्होंने 25.07.72 को 15 वर्ष की सेवा पूर्ण कर ली हो प्रशिक्षण से मुक्त समझे जायेंगे तथा उन्हें दि० 25.07.72 के उपरान्त प्रशिक्षित वेतनक्रम दिया जाये।”

17. It was a communication in regard to case of another person wherein a reference was given of G.O. dated 30.05.1973 which was basis of rejection of claim of petitioner’s husband in first round of litigation, therefore, it was wrongly relied upon.

18. Learned Senior Advocate has placed reliance on judgments of this Court in **State of U.P. and others vs. Rosalia Minj Sohanta (Smt.) and another, 2003 (3) UPLBEC 2513; Shaukat Ali Khan vs. State of U.P. and others, 2024 (9) ADJ 797; Sarla Srivastava vs. DIOS, Allahabad, 1998(1) AWC 250.**

19. Sri Ashutosh Mishra, learned counsel for respondents has supported impugned order and placed reliance on an order dated 25.07.1973, however, he has failed to explain why not the G.O. dated 04.12.1982 was taken note despite an order was passed by this Court with a specific direction to consider claim of petitioner’s husband in view of said G.O.

20. As referred above, it is a case of long legal battle. Claim of petitioner’s husband was directed to grant exemption from training on basis of G.O. dated 25.07.1973 which requires that there must be 15 years of regular service as on cut off date i.e. 25.07.1973 and undisputedly, petitioner’s husband has served only less than 10 years, therefore, no advantage could be granted of said G.O.

21. However, by way of a subsequent letter dated 04.12.1982, exemption from training could be granted to teachers who have served regularly for 10 years i.e. up to 30.06.1978 and in given set of facts, since petitioner's husband was appointed on 19.11.1963, he has served about 14 years and 6 months as on cut off date i.e. 30.06.1978, therefore, it completely applies to case of petitioner's husband and exemption from training could have been granted, however, its effect was not taken note of.

22. As referred above, G.O. dated 04.12.1982 was completely ignored by concerned State-respondents and subsequent G.O. dated 01.06.1985 was considered which has referred earlier G.O. dated 30.05.1973 without considering subsequent G.O. dated 04.12.1982.

23. In aforesaid circumstances, Court proceeds to consider whether petitioner's husband was qualified or not. The petitioner's husband was appointed on 19.11.1963. His qualification was 'Middle' i.e. Class- VIII and he was considered to be unqualified on a ground that in terms of relevant Rules of 1978, he was required to be 12th qualified.

24. In this regard, Court is of considered view that admittedly when petitioner was appointed in the year 1963, there was no specific provision of minimum qualification for appointment of teacher. In 1978, when Rules were enforced, there was no requirement for teachers' appointed earlier, to pass minimum qualification except to get a training certificate and subsequently, there are Government Orders, where exemption from training was also provided subject to period of service.

25. In aforesaid circumstances, impugned order dated 05.03.2008 is set aside and its legal consequence will follow.

26. As referred above, petitioner's husband died in the year 2011 after his retirement in the year 1991. Thus, benefit of pension cannot be granted or it could be granted only on notional basis. Now the question left is to grant family pension to present petitioner who is fighting present legal battle for last 12 years.

27. At present, petitioner must be aged about 85 years and at this stage, to determine amount of family pension would be difficult and probably she may require a lumpsum amount to survive, therefore, in the interest of justice and after considering aforesaid facts and circumstances, this writ petition is **disposed of** with a direction that a lumpsum amount of Rs. 7,50,000/- (Rs. Seven Lakh Fifty Thousand Only) shall be paid to petitioner in her bank account only, after due verification and for that, concerned State-respondent will communicate her in accordance with law.

28. This order is passed in above referred peculiar circumstances, therefore, it shall not be treated as a precedence.

Order Date :- May 16, 2025
Sinha_N.

[Saurabh Shyam Shamshery, J.]