



2026:AH:206043

Reserved

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 48117 of 2010

Smt. Mithilesh Rai

.....Petitioner(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Petitioner(s)	: J. P. Singh
Counsel for Respondent(s)	: B.p.singh, C. S. C.

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. J.P. Singh, learned counsel for the petitioner, Dr. Santosh Kumar Shukla, learned Additional Chief Standing Counsel for the State-respondents and Mr. Manoj Singh Rathore, learned counsel for the respondent no.5 and perused the records.

2. The present petition was allowed by this Court by order dated 08.07.2015, whereby a direction was issued to the District Basic Education Officer to ensure payment of salary to the sole petitioner with effect from the year 1992, i.e. from the date when such payment was admittedly being made to the other teachers and employees of the institution in question. Aggrieved by the aforesaid order, the State of Uttar Pradesh and three others preferred **Special Appeal Defective No. 245 of 2016, State of U.P. and three others v. Smt. Mithlesh Yadav and two others**. The said special appeal was allowed by order dated 30.03.2016, whereby the matter was remanded to the learned Single Judge for fresh consideration on all aspects of the controversy.

3. In view of the aforesaid order of remand passed in special appeal, the matter has consequently been taken up for consideration afresh on merits.

4. The present writ petition has been filed seeking quashing of the impugned order dated 28.06.2010 passed by respondent no. 2, Assistant Director (Basic), Azamgarh Region Azamgarh. A further prayer has been made for issuing a direction to the respondents to ensure payment of salary to the petitioner from the State Exchequer with effect from the date on which the Institution was brought under the grant-in-aid scheme.

5. Placing the brief facts of the case, learned counsel for the petitioner submits that the petitioner was appointed as an Assistant Teacher by the Committee of Management of Kaushalya Kanya Junior High School, Sudaipur, Azamgarh, which is a recognized and aided Junior High School. The petitioner was appointed on 01.07.1973, and her appointment was subsequently approved by the Additional District Basic Education Officer, Azamgarh by order dated 03/06.07.1974.

6. The services of teachers in recognized Junior High Schools are governed by the provisions of the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Rules of 1978"). Rule 4 thereof prescribes the minimum qualifications to be possessed by a candidate for appointment to the post of Assistant Teacher.

7. Thus, under Rule 4 of the Rules of 1978, the minimum qualification prescribed for appointment to the post of Assistant Teacher was Intermediate along with a teachers' training qualification recognized by the State Government, such as HTC, JTC, BTC or CTET. Since the requirement of possessing a training qualification could not be applied retrospectively to teachers who had already been appointed and were in service, such teachers were permitted to acquire the requisite qualification by appearing in the departmental examination conducted by the Registrar, Departmental Examinations, Uttar Pradesh, Allahabad.

8. In this backdrop, the District Basic Education Officer, Azamgarh, by letter/order dated 30.04.1986, required the petitioner to appear in the departmental examination scheduled to be held on 09.05.1986 and 10.05.1986. The petitioner, being one of the left-out candidates, was accordingly permitted to appear in the said examination and was allotted roll number 6939.

9. Thereafter, the State Government issued Government Order dated 05.06.1987, whereby exemption from the requirement of undergoing teachers' training was extended to such untrained teachers who had completed ten years of service. Since the petitioner had been appointed in the year 1973 and her appointment had already been duly approved, she became entitled to the benefit of the aforesaid Government Order and stood exempted from the requirement of obtaining the training qualification.

10. The Institution was subsequently brought within the grant-in-aid scheme in March 1991; however, actual payment of salary from the State Exchequer commenced only in the year 1992. The name of the petitioner was not included in the list of teachers for whom salary was sanctioned, purportedly on the ground that she did not possess the requisite training qualification. Upon realizing the position, the Manager of the Institution subsequently submitted the salary bill in respect of the petitioner, but the same was not passed.

11. Thereafter, on 30.11.1993, the Manager submitted a representation before the competent authority seeking release of salary to the petitioner. A reminder was also submitted on 23.08.1994. Pursuant thereto, the District Basic Education Officer passed an order dated 07.09.1998 requiring the Finance and Accounts Officer to ensure payment of the petitioner's salary after due verification of the relevant records and documents.

12. As the petitioner's salary was still not released, she approached this Court by filing Writ-A No. 35424 of 1998. The said writ petition was

disposed of by order dated 16.11.1998 with a direction to the Finance and Accounts Officer to examine the petitioner's claim and take appropriate action in accordance with law, after affording her an opportunity of hearing.

13. Thereafter, on 14.12.1998, the Finance and Accounts Officer issued a communication requiring the petitioner to produce her appointment letter, the order relating to her appointment, and all relevant educational certificates for verification. Subsequently, by letter dated 07.06.1999, the District Basic Education Officer sought a legal opinion from the learned DGC (Civil) Azamgarh with regard to the petitioner's entitlement to payment of salary. The learned DGC (Civil), upon consideration of the matter, furnished a favourable opinion, opining that the petitioner was entitled to the trained grade and, consequently, to the benefits attached thereto.

14. Accordingly, the District Basic Education Officer, Azamgarh, passed a fresh order dated 22.07.1999, directing the Manager and Headmistress of the Institution to ensure payment of salary to the petitioner, subject to obtaining clearance from the Finance and Accounts Officer. Thereafter, on 31.07.2000, the Finance and Accounts Officer made a recommendation for release of salary to the petitioner in the untrained grade.

15. As the petitioner's salary was still not released despite the aforesaid orders and recommendation, she was constrained to approach this Court by filing Writ-A No. 47062 of 2000. The said writ petition was disposed of by order dated 06.04.2010, directing the Assistant Director of Education (Basic), Azamgarh Region, Azamgarh to examine the recommendations made by the competent authorities and to pass an appropriate order, keeping in view the submissions advanced by the petitioner before this Court.

16. The petitioner, in substance, submitted that having completed the requisite period of service, she was entitled to be placed in the trained

grade and to receive the salary and consequential benefits attached thereto.

17. In compliance with the order dated 06.04.2010 passed by this Court in Writ Petition No. 47062 of 2000 petitioner submitted representation alongwith, certified copy of the order before Assistant Director of Education on 20.04.2010, contending that, since the petitioner's appointment as Assistant Teacher had been duly approved and she had been appointed prior to 1978, she was entitled to receive salary from the State Exchequer. She was also exempted from the requirement of training in terms of the Government Order dated 05.06.1987. Thereafter, respondent no.2 issued notices to the petitioner, the Manager as well as the Headmistress of the institution, fixing 12.05.2010 as the date of hearing. The petitioner, however, could not appear on the said date. Consequently, the impugned order dated 28.06.2010 was passed, rejecting the petitioner's representation.

18. Learned counsel for the petitioner submits that the impugned order has been passed by respondent no.2 proceeding on an erroneous assumption of both fact and law, namely, that the provisions of the U.P. Basic Education Staff Rules, 1973 were applicable to the petitioner's selection and appointment. It is contended that the said assumption is wholly misplaced.

19. Learned counsel for the petitioner submits that the impugned order proceeds on the premise that the institution was granted permanent recognition in 1984 and was subsequently brought under the grant-in-aid scheme in 1991. It has further been observed that salary could be paid from the State Exchequer only to teachers duly appointed against sanctioned posts in accordance with the applicable rules. According to the respondents, there were only four sanctioned posts of Assistant Teachers, whereas the petitioner was appointed by the Manager against an unsanctioned post and without following the prescribed selection procedure. On this basis, it has been held that the State Government could not be saddled with the liability to pay her salary. Consequently,

the petitioner's appointment was treated as irregular, and it was held that neither could her appointment be regularised by exempting her from the requisite training nor could salary be paid to her from the State Exchequer. Her representation was, accordingly, rejected.

20. Learned counsel for the petitioner submits that the impugned order proceeds on an erroneous premise that the petitioner's appointment, made in the year 1973, was required to conform to the provisions of the U.P. Basic Education Staff Rules, 1973 or to the subsequent statutory regime governing recruitment in recognised Junior High Schools. It is contended that the Rules of 1973 were essentially framed in relation to employees whose services stood transferred to the Board under Section 9 of the U.P. Basic Education Act, 1972 and primarily provide the framework relating to disciplinary proceedings and punishment; they do not prescribe the procedure for selection and appointment of teachers in recognised Junior High Schools. The petitioner's appointment having admittedly been made by the Committee of Management in 1973, at a time when the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 had not even come into force, the subsequent requirements prescribed by the Rules of 1978 could not retrospectively be employed to invalidate an appointment already made. The Rules of 1978 themselves came into force only on 13.02.1978 and thereafter provided a statutory mechanism concerning recruitment, selection, approval and appointment of teachers.

21. Learned counsel further submits that the petitioner's appointment by the Management in 1973 and the approval accorded by the competent educational authority in 1974 are not in dispute. The respondents, therefore, cannot now disregard the contemporaneous approval and the subsequent departmental orders merely by referring to the fact that the institution obtained permanent recognition in 1984 or was subsequently brought within the grant-in-aid scheme in 1991. The subsequent recognition or grant-in-aid status cannot, by itself, retrospectively alter the legal character of an appointment made several years earlier. The

very scheme of the 1978 Rules recognises the Management as the body responsible for filling vacancies and, after the prescribed selection process and approval, expressly contemplates appointment by the Management.

22. It is further submitted that respondent no. 2 has failed to distinguish between the validity of an appointment at the time it was made and the conditions subsequently prescribed for appointments made after commencement of the statutory rules. The petitioner cannot be subjected retrospectively to qualifications, selection procedures or training requirements introduced by a later statutory regime unless there is a clear provision giving such requirements retrospective operation. The settled judicial approach is that service conditions and qualifications prescribed by subsequent rules cannot ordinarily be invoked to invalidate an appointment which had already been made before those rules came into force. The Allahabad High Court has, in a case concerning appointments made before the Rules of 1978 came into force, specifically examined the distinction between such pre-existing appointments and the elaborate recruitment mechanism subsequently introduced by the Rules of 1978.

23. Learned counsel also submits that the respondents have completely overlooked the earlier departmental proceedings and reports in which the petitioner's position was considered and, pursuant to the Government Order then applicable, she was exempted from the requirement of training and directions were issued for payment of salary. Such orders, having been passed by the competent authorities upon consideration of the petitioner's appointment and service record, could not have been brushed aside by respondent no. 2 without examining their legal effect and without recording cogent reasons for taking a contrary view. The impugned order, instead of addressing these material circumstances, proceeds on the assumption that the petitioner's appointment was liable to be tested under a later regime.

24. It is further contended that the finding that the petitioner was appointed against an "unsanctioned post" is unsupported by any proper

determination of the sanctioned strength applicable to the institution at the relevant point of time. The subsequent statement that only four posts were sanctioned cannot, by itself, establish that the post against which the petitioner was appointed in 1973 did not exist or was not permissible under the then prevailing arrangement. The relevant question was whether the appointment was valid under the law applicable on the date of appointment and whether the competent authority thereafter accepted or approved the same. Respondent no. 2 has failed to undertake that exercise.

25. Learned counsel, therefore, submits that the impugned order suffers from a fundamental error in law in judging a 1973 appointment by standards introduced subsequently. Once the petitioner's appointment by the Management and its approval by the competent educational authority in 1974 are undisputed, and particularly when the department itself had subsequently recognised her status, exempted her from training and directed payment of salary, the petitioner's claim could not have been rejected merely by retrospectively applying the 1973 or 1978 regulatory framework. The impugned order, being founded upon an incorrect legal premise and ignoring material orders and circumstances bearing directly upon the petitioner's status, is liable to be set aside.

26. Learned counsel for the petitioner submits that the requirement of possessing a recognised teacher-training qualification cannot be retrospectively applied to the petitioner's appointment made in the year 1973. It is contended that Rule 4 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, which came into force on 13.02.1978, expressly prescribed, for the first time under the statutory recruitment regime governing recognised Junior High Schools, Intermediate qualification together with a recognised teacher-training course, such as HTC, JTC, BTC or Certificate of Training, as the minimum qualification for appointment to the post of Assistant Teacher. The said provision, however, cannot by itself establish that an identical training qualification

was a mandatory statutory requirement for an appointment made in 1973, several years prior to the commencement of the Rules. The validity of the petitioner's appointment, therefore, has to be examined with reference to the legal and regulatory regime actually prevailing on the date of her appointment and not by importing qualifications subsequently prescribed by the Rules of 1978. Unless the respondents establish that, in the year 1973, there existed a statutory provision applicable to the petitioner's institution which mandatorily required such training qualification, the subsequent prescription contained in Rule 4 of the 1978 Rules could not legitimately be used to invalidate her earlier appointment.

27. Learned counsel for the petitioner has placed reliance upon **Smt. Sarla Srivastava v. District Inspector of Schools, Allahabad and another, 1998 (1) AWC 250**, wherein this Court held that the qualifications prescribed under the Rules of 1978 could not be retrospectively applied to an appointment made before the enforcement of the said Rules. In the absence of any statutory provision requiring existing teachers to undergo screening on the ground of subsequently prescribed qualifications, their salary could not be withheld merely because they did not possess the qualifications subsequently introduced.

28. Reliance has further been placed upon the Division Bench judgment in **State of U.P. and others v. Rosalia Minj Sohanta and another, reported in 2003 SCCOnline 517**, wherein the Court considered an appointment dated 17.07.1973 and noticed that the statutory Rules of 1975 came into force only on 01.07.1975. The Division Bench held that, when the appointment was made, the qualifications subsequently prescribed by the statutory Rules were not in force and the State had failed to establish what qualification was prescribed on the date of appointment. It was consequently held that, in the absence of a prescribed qualification applicable on the date of appointment, the subsequent qualification could not be retrospectively employed to invalidate the appointment.

29. Learned counsel has also relied upon **Smt. Meenakshi Sharma and another v. State of U.P. and others, 2026 (8) ADJ 559**, wherein this Court reiterated the principle that an appointment which has been duly considered and approved by the competent authority and followed by long and continuous service cannot be reopened and unsettled on technical grounds without due regard to the earlier approval and the circumstances in which the employee was permitted to continue in service. The decision also emphasises the significance of absence of fraud or deliberate misrepresentation and the impermissibility of reopening matters beyond the scope of the proceedings in which they had earlier been considered.

30. The cumulative effect of the aforesaid authorities, as relied upon by learned counsel for the petitioner, is that the validity of an appointment must ordinarily be examined with reference to the law and qualifications applicable on the date of appointment. A qualification or condition introduced by a subsequent statutory rule cannot, in the absence of express retrospective operation, be imported into an earlier appointment so as to invalidate it. Where, in addition, the appointment was subsequently approved by the competent authority and the incumbent was permitted to continue for a long period, the subsequent authorities must identify a legally sustainable basis for reopening such appointment; mere reliance upon a later prescription of qualification would not, by itself, suffice.

31. Learned counsel for the petitioner has already submitted that the petitioner's appointment was duly approved by the competent authority at the relevant point of time, when the U.P. Education Act was not applicable to the institution in question. It is further submitted that the Government Order granting exemption from the training qualification to teachers appointed prior to the enforcement of the Rules of 1978 was squarely applicable to the petitioner, and, in pursuance thereof, the petitioner was being paid salary by the respondent authorities themselves. Thus, once the petitioner's appointment had been duly

approved and the benefit of the aforesaid Government Order had been extended to her, the respondents could not subsequently deny her salary by applying the provisions or requirements introduced at a later stage. In view of the aforesaid facts and circumstances, learned counsel submits that the petitioner is entitled to payment of salary from the State exchequer. The judgments relied upon by the petitioner, as noticed hereinabove, also lend substantial support to the aforesaid contention.

32. Learned counsel for the petitioner further submits that, as already argued hereinabove, the U.P. Basic Education Staff Rules, 1973 were not applicable to recognised Junior High Schools and, therefore, could not govern or invalidate the petitioner's appointment made in the year 1973. It is contended that the petitioner's appointment was required to be examined with reference to the legal regime applicable to the institution and prevailing on the date of her appointment.

33. Learned Standing Counsel appearing for the respondents, as well as learned counsel appearing for the Committee of Management, could not dispute the aforesaid facts, as placed before the Court by learned counsel for the petitioner.

34. Having regard to the foregoing discussion, this Court is of the considered view that the petitioner has made out a case for interference with the impugned order. The petition, accordingly, deserves to be allowed and is hereby allowed.

35. The impugned order dated 28.06.2010, passed by the respondent no.2 is hereby **quashed**.

36. A writ of mandamus is issued to respondent no. 3, the District Basic Education Officer, Azamgarh, to ensure payment of salary to the petitioner with effect from the year 1992, from which date such payment was admittedly being made to the other teachers and employees of the institution in question. The petitioner shall accordingly be entitled to the

arrears of salary, or the arrears of difference of salary, as the case may be, for the period during which she was denied such payment.

37. The petitioner shall further be entitled to all consequential monetary and service benefits accruing to her under the provisions of the U.P. Payment of Salaries Act, 1978, including all retiral dues to which she may otherwise be legally entitled.

38. The aforesaid exercise shall be completed and the admissible amount shall be paid to the petitioner within a period of six months from the date of production of a certified copy of this order before respondent no. 3.

39. There shall be no order as to costs.

(Mrs. Manju Rani Chauhan,J.)

October 1, 2026
Jitendra/-