

Shri Pal Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Dec-05-2000

Reported in : 2001(1)AWC761

Judge : V.M. Sahai, J.

Acts : U.P. Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 - Sections 7; U.P. Recognised Basic School (Junior High School Recruitment and Conditions of Services of Teachers) Rules, 1978; U.P. Intermediate Education Act; U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971

Appeal No. : C.M.W.P. Sahai, J.

Appellant : Shri Pal

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Yogesh Kumar Saxena, Adv.

Judgement :

V. M. Sahai, J.

1. Sri Raghuvar Singh Samta Vidyalay, Auraiya is arecognised and aided institution under the U. P. Recognised Basic School (Junior High School Recruitment and Conditions of Services of Teachers) Rules, 1978 (in brief Rules 1978). The institution is managed by a private committee of management and is not maintained by the Board. Therefore, the provisions of U. P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 (in brief Salaries Act) is applicable. The service condition of teachers working in the institution are governed by Rules 1978.

2. The institution was granted permission on 30.7.1988 to open a new section. But no posts were created or sanctioned by the Director, as provided by Section 7 of the Salaries Act. A post of assistant teacher was vacant in the institution. The management advertised the vacancy and the petitioner was selected. And appointment letter was issued to him on 28.6.1992. He Joined on 1.7.1992. Approval to his appointment was granted on 20.12.1997 by the District Basic Education Officer, Etawah (in brief B.S.A.). Salary was not paid to him even after approval by the B.S.A. He filed Civil Misc. Writ Petition No. 19781 of 1999. This petition was disposed of on 13.5.1999 with the direction to the concerned respondent to decide the representation of the petitioner. In compliance of the order passed by this Court, B.S.A. sent a query to Director of Education (Basic) U. P. on 14.9.1999 that post on which the petitioner was working had been created and sanctioned or not as the petitioner was claiming salary from the date of his appointment as assistant teacher. And whether in absence of creation of post, salary could be paid. A communication was sent from the office of the Director that if the post has been created and the petitioner has been validly appointed, then the petitioner may be entitled for salary. The B.S.A. was directed to take a decision at his end and to send details of posts which had been created in the institution. The B.S.A. on 10.3.2000 informed the Director that there were nine sections in the institution and 12 teachers including the Head Master were being paid salary from the grant-in-aid received from the Government. Thirteenth teacher in the institution, the petitioner was not being paid salary as post of assistant teacher had not been created, though as per the standard fixed, there should be 13.5. teachers in the institution. The B.S.A. sought a clear direction from the Director sending the details that approval had been granted to the appointment of the petitioner on

20.12.1997, as to whether salary should be paid to the petitioner. By letter dated 6.6.2000 issued from the office of the Director by Deputy Director of Education (Finance), the B.S.A. had been directed to comply with the order dated 13.5.1999 passed by this Court and pay salary to the petitioner. But no salary has been paid to the petitioner, therefore, he has filed this writ petition for a direction to the respondents to pay salary to him w.e.f. 28.6.1992.

3. Learned counsel for the petitioner Sri Yogesh Kumar Saxena has vehemently urged that as per the section standard fixed, 13.5. teachers were required in the institution and permission to open new section was granted by the respondents in 1988. Therefore, it would be deemed that post of assistant teacher had been created in the institution and the petitioner is entitled for salary from the date of his appointment. He relied on a decision of this Court in Arjun Singh v. State of U. P. through Secretary, 1997 (3) AWC 1475. Learned counsel for the petitioner lastly urged that office of the Director has issued a direction to the B.S.A. after perusing the records and in compliance of the order dated 13.5.1999 passed in Civil Misc. Writ Petition No. 19781 of 1999 for payment of salary to the petitioner, therefore, his salary should be paid. On the other hand, Smt. Champa Singh, learned standing counsel has urged that Arjun Singh (supra) was of no help to the petitioner in view of Full Bench decision of this Court in Copal Dubey v. District Inspector of Schools, 1999 (1) UPLBEC 1. The learned standing counsel vehemently urged that since the institution was receiving grant-in-aid, therefore, in absence of creation of post under Section 7 of the Salaries Act, no salary could be paid to the petitioner from the Government fund. Learned standing counsel further urged that approval to the appointment of the petitioner was granted by the B.S.A. with a condition that if any fact was found to have been concealed, while granting approval, the approval would automatically come to an end. She urged that since management had concealed the fact that the post was not sanctioned, the petitioner is not entitled for any salary. The learned standing counsel has lastly urged that the impugned order issued by the Deputy Director of Education (Finance) from the office of the Director, did not amount to a direction for payment of salary to the petitioner. She pointed out that a perusal of order dated 16.6.2000 clearly demonstrates that the order for payment of salary to the petitioner was made under misapprehension of the order passed on 13.5.1999 by this Court in

Civil Misc. Writ Petition No. 19781 of 1999. It is urged that order dated 13.5.1999 has been filed as Annexure-4 to the writ petition and only direction issued was for deciding the representation by the concerned authority and no direction was issued for payment of salary to the petitioner. Therefore, in absence of any direction from this Court for payment of salary, the B.S.A. rightly did not pay salary to the petitioner as the post on which he was working was neither created nor sanctioned by the Director.

4. The question that arises for consideration is whether the petitioner is entitled for payment of salary on the post of assistant teacher when on the admitted facts of this case, it is clear that the post of assistant teacher was not created under Section 7 of the Salaries Act by the Director, Section 7 of the Salaries Act mandates that no college shall create a new post of a teacher or employee except with the previous approval of the Director of Education or such other officer empowered in that behalf by the Director. The post of assistant teacher had not been created in the institution under Section 7 of the Salaries Act. In absence of any creation of post, the petitioner could not be paid any salary from the grant-in-aid received by the institution. Even though permission to open a new section was granted in 1988 but that by itself was not sufficient. It was incumbent on the management to have applied to the Director for creation of post. In the absence of any creation of post, it could not be deemed that a post of assistant teacher has been created in the institution. A similar controversy arose on the appointment of assistant teacher under the U. P. Intermediate Education Act and Regulations framed thereunder and Section 9 of the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. This controversy has been resolved by a Full Bench of this Court in Gopal Dubey (supra) and it has been held by the Full Bench of this Court that in absence of creation of post, merely because permission has been granted to teach some subjects in the institution, it would not amount to creation of post, therefore, unless the post is created under Section 9 of the Salaries Act, 1971, no salary could be paid to the assistant teacher. The decision in Gopal Dubey (supra) can be gainfully applied to the facts of this case.

5. It was next urged that in view of recent decision of the Apex Court in Chandigarh Administration and others v. Rajni Vali (Mrs.) and others, (2000) 2 SCC 42, non-payment of salary to the petitioner is discriminatory as other teachers working in the institution are being paid salary from the grant-in-aid received from the Government. This question has been considered by the Court in C.M.W.P. No. 29097 of 1998, Mohd. Fuzail Ansari v. State of U. P. and others, decided on 30.11.2000, therefore, for the same reasons, I do not find any merit in the submission of the learned counsel for the petitioner.

6. The other argument of the learned counsel for the petitioner that approval to his appointment has been granted by the B.S.A., therefore, he is entitled for salary is also devoid of any merit. It appears that B.S.A. had granted approval to the appointment of the petitioner on 20.12.1997 under a mistake as the post was not created and the management appears to have concealed this fact from the B.S.A.. Even the subsequent letter of B.S.A. by which he informed the Director that approval was granted in 1997 on a post, which was not created itself demonstrates that a mistake was committed by the B.S.A., while granting approval on 20.12.1997, therefore, such approval automatically came to an end as per the clear terms of the order of approval. And no right could accrue on the post to the petitioner on the basis of approval dated 20.12.1997.

7. The last argument of the learned counsel for the petitioner is that since the direction has been issued by the office of the Director to the B.S.A. for payment of his salary, therefore, he is entitled for salary is also devoid of merit. The order clearly states that in view of the directions of this Court in Civil Misc. Writ Petition No. 19781 of 1999 decided on 13.5.1999, salary be paid to the petitioner. I have gone through the order passed by this Court which has been filed as Annexure-4 to the writ petition. There is no direction for payment of salary to the petitioner and only direction issued by this Court was for deciding the representation of the petitioner by the concerned authority. The order dated 16.6.2000 that has been issued by the office of the Director had been issued under a mistake that this Court directed the respondents for payment of salary to the petitioner. If salary of the petitioner has not been paid by the B.S.A., he has not committed any illegality as the post of assistant teacher was not created, therefore, no salary could be paid

to him.

8. However, it is always open to the management to apply to the Director for the creation of the post of assistant teacher.

9. For the aforesaid reasons, I do not find any merit in this writ petition.

10. The writ petition fails and is accordingly dismissed.

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