

Mohan Ram Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Apr-10-2009

Reported in : 2009(3)AWC2449

Judge : Sudhir Agarwal, J.

Appellant : Mohan Ram

Respondent : State of U.P. and ors.

Judgement :

Sudhir Agarwal, J.

1. Heard Sri A.N. Rai for the petitioner and Sri J. N. Maurya, learned Standing Counsel for the respondents 1 and 2.
2. The petitioner Mohan Ram has preferred this writ petition under Article 226 of the Constitution of India seeking a writ of mandamus commanding the respondents to pay his salary from the date he has joined his duties pursuant to the appointment letter and, thereafter, to continue to pay salary periodically.
3. With the consent of the learned Counsel for the parties, the writ petition has been taken up for final disposal under the Rules of the Court at this stage.
4. The facts in brief as borne out from the writ petition are that Gandhi Uchchatar Madhyamik Vidyalaya, Rampur Kanungoyan, Ballia (hereinafter referred to as

'institution') is a higher secondary school recognized by the U. P. Board of High School and Intermediate Education, Allahabad under the provisions of U. P. Intermediate Education Act, 1921 (hereinafter referred to as '1921 Act'). The institution is being governed and payment of salary to the staff is being made under the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as '1971 Act'). One Shiv Das Yadav, a Class IV employee, was promoted to the post of Daftari on 1.1.1991 in the institution whereupon institution felt the need of appointing a Class IV employee (Jamadar) for which permission was sought from the District Inspector of School, Ballia (hereinafter referred to as 'D.I.O.S.') but he did not respond to the said letter. The Class IV post (Jamadar) was advertised in daily newspaper 'Purvanchal Sandesh' dated 11.2.1995 and was also notified on the 'Notice Board'. Selection was held on 10.3.1995 wherein it is said that 5 candidates including the petitioner participated and ultimately the petitioner was selected and appointed vide appointment letter dated 10.3.1995 (Annexure 1 to the writ petition). For seeking financial approval of the D.I.O.S., letter dated 10.3.1995 sent which was received in his office (D.I.O.S.) on 11.3.1995. The petitioner said to have joined the institution as Jamadar on 10.3.1995 and is working since thereafter. Having failed to obtain any order from D.I.O.S. despite of several representations, the petitioner approached this Court in Writ Petition No. 23647 of 2000, which was finally disposed of vide judgment dated 20.5.2000 directing the D.I.O.S. to pass an appropriate order in accordance with law within two months. This Court also directed the D.I.O.S. to consider the question of financial approval while deciding petitioner's representation. The D.I.O.S., thereafter, on 29.11.2007 passed an order to ensure payment of salary to the petitioner in accordance with law, but himself not pass any order as to whether he has granted financial approval to the appointment of the petitioner or not. Again the petitioner made some representations and then he preferred this writ petition. On 10.7.2008 when this writ petition came up for admission initially before Hon'ble Dilip Gupta. J., His Lordship was of the view that the D.I.O.S.'s order dated 29.11.2007 did not comply the direction issued by this Court vide judgment dated 20.5.2000, whereby the D.I.O.S. was required to decide petitioner's representation and also to consider the question of financial approval and, therefore, the Hon'ble

Court required the D.I.O.S. to appear before the Court in person on 28.7.2008. The said order was not complied by D.I.O.S. and nobody was present on 28.7.2008 when the matter came up before Hon'ble Rajes Kumar, J when His Lordship granted another opportunity for appearance of D.I.O.S. and adjourned the matter to the next date, i.e., 30.8.2008. On the next date, one Yogendra Kumar Singh appeared and informed that on 29.11.2007, one Sri Umesh Kumar Tripathi was posted as D.I.O.S., Ballia, who has passed the said order for payment of salary. In the circumstances, Hon'ble Rajes Kumar, J. directed the writ petition to be listed on 18.8.2008 with the further direction to the Standing Counsel to ensure presence of Sri Umesh Kumar Tripathi as well as to file his personal affidavit by the next date. This order remained uncomplied with on 18.8.2008 when on the request of the Standing Counsel, indulgence was granted on payment of cost of Rs. 500 and the case was adjourned for 25.8.2008 to enable Sri Umesh Kumar Tripathi, the D.I.O.S., Ballia to appear before the Court. On 25.8.2008 the matter was postponed to 27.8.2008 on which date, Sri J. N. Maurya, learned Standing Counsel, after receiving instructions from Sri Umesh Kumar Tripathi, informed that he was seriously ill and sought adjournment to enable him to comply the Court's order dated 10.7.2008. Accordingly, the matter was adjourned to 5.9.2008 Sri Umesh Kumar Tripathi appeared and filed his personal affidavit on 5.9.2008 stating that a detailed order was passed in the file of the office and copy of the order sheet whereupon he said to have passed order on 29.11.2007 was annexed. The said document did not inspire any confidence having not been shown as part of the official record, hence this Court passed a detailed order on 8.9.2008, which reads as under:

A personal affidavit has been filed by Sri Umesh Kumar Tripathi, the then D.I.O.S., Ballia annexing therewith an alleged copy of the order sheet whereupon he has said to have passed order on 29.11.2007 pursuant to this Court's order dated 22.5.2000. Learned Standing Counsel has produced before this Court the alleged original copy of the said note sheet. A perusal thereof shows that neither it is part of any official record since it does not contain any page number nor even any whole of thread is there showing that it was ever made part of the official file. Both the papers are yellow in colour and are old papers. The note-sheet shows the note prepared by some person to whom Sri Tripathi identified as Brijendra Singh, who

has signed the same but there is no date behind his signature and on the same date, the said D.I.O.S. said to have passed the order. Both the papers are separately maintained though the remaining original file contained tagged documents. He also submitted that the said Clerk is still posted in the office of D.I.O.S. Ballia. From a bare perusal thereof, it appears to be a subsequently manufactured document after various orders having been passed by this Court in this very writ petition. This is a very serious matter showing the extent to which a person like deponent of the personal affidavit, i.e., Shri Umesh Kumar Tripathi, holding the office of D.I.O.S., a Government servant, can go.

Further, from the record of the file which has been produced before this Court, it also appears that it no where suggested preparation of any separate note sheet. On the query, learned standing counsel stated that such is the normal procedure of the office of D.I.O.S., Ballia. That being so, he shall produce some other files supporting his contention that such type of note sheets are prepared in that office.

Learned standing counsel also prays that he wants to file a counter-affidavit to the writ petition.

Let this matter be listed for further hearing on 19.9.2008. In the meantime, learned standing counsel may file counter-affidavit to the writ petition.

On the next date, Shri Umesh Kumar Tripathi, the then D.I.O.S., Ballia and Sri Brijendra Singh, Clerk, said to be posted in the office of D.I.O.S. Ballia, both shall remain present before the Court.

Shri Umesh Kumar Tripathi is present in the court pursuant to this Court's order dated 18.8.2008. His appearance is not dispensed with. Learned standing counsel shall communicate this order to Sri Brijendra Singh for compliance.

Copy of this order be supplied to learned standing counsel for compliance by 8.9.2008.

5. Thereafter, this matter was listed on 5.12.2008, 9.1.2009, 27.2.2009, 6.3.2009, but on every occasion, indulgence was sought by learned Standing Counsel by asking for time. Today, when the matter was taken up, Sri J. N. Maurya, learned

Standing Counsel informed this Court that despite of his several letters sent to the authorities concerned including Shri Umesh Kumar Tripathi, he has not received any response till date and he referred to the dates of his letters as 12.9.2008, 6.12.2008, 12.1.2009, 27.2.2009 and 6.3.2009. He informed that the letter dated 27.2.2009 was communicated by fax dated 4.3.2009 to the authorities concerned. In these circumstances, this Court has no option but to proceed to consider the matter on merits besides the conduct of the respondents in showing such disregard to the orders of this Court.

6. The learned Standing Counsel sought to argue that the petitioner is not entitled for any salary for non-compliance of Regulation 101 inasmuch there is no prior approval obtained from the D.I.O.S. before making appointment of the petitioner, hence the writ petition is liable to be dismissed.

7. On the contrary, the petitioner's counsel placed reliance on proviso to Regulation 101 as interpreted by a Division Bench of this Court in Jagdish Singh v. State of U.P. 2006 (2) UPLBEC 1851 : 2006 (6) AWC 6481 and contended that for appointment on the post of Jamadar, there is no requirement of 'prior approval' but the Regulation 101 uses the word 'permission' only which can be obtained even subsequently and, therefore, the appointment of the petitioner cannot be said to be illegal.

8. I find substance in the submission of petitioner's counsel.

9. Regulation 101 Chapter III of the Regulations framed under 1921 Act reads as under:

fu;qDr inkf/kdkjh] fojh{kd ds iwokZuqeksnu ds flok; fdlh ekU;rkizklr] lgk;rkizklr laLFkk ds f'k{k.ksRrj LVkQ dh fdlh fjfDr dks ugh Hkjsxk %izfrcU/k ;g gS fd teknkj ds in dh fjfDr dks fujh{kd }kjk Hkjus dh vuqefr nh tk ldrh gS A

10. A bare perusal of the above provision shows that while in the main part the word 'prior approval' has been used, in the proviso, it only talk of 'permission'. This has been considered by the Division Bench in Jagdish Singh (supra) and in para 18 of the judgment, it has held, as under:

18. ...The first part of the Regulation provides that Appointing Authority except with prior approval of inspector shall not fill up any vacancy of non-teaching post of any recognised aided institution whereas second part of the Regulation provides that permission for filling of post of sweeper (Jamadar) can be given by inspector.... Regulation 101 provides prior approval with regard to vacancy of non-teaching staff and permission is contemplated only for filling the post of sweeper. Regulation thus indicates that when the permission is given to the Appointing Authority to fill up post of sweeper. There is no further approval is required. This provision being in nature of proviso to the main Regulation shall operate as an inception to the first part of Regulation.

11. From the view taken by the Division Bench, it is evident that this Court has distinguished 'permission' contemplated in proviso from 'prior approval' contemplated in main part of Regulation 101. The proviso is in the nature of exception to the first part. That being so, it is well settled that if the statute does not talk of 'prior approval' and only 'permission' is required, it can be obtained from the competent authority subsequently also and, if granted, would relate back to the date of appointment. It is not the case of the respondents that any such permission has been refused by D.I.O.S. and on the contrary, the order impugned in this writ petition, i.e., 29.11.2007 in my opinion, amounts to granting a tacit approval/permission by D.I.O.S. otherwise there was no occasion for D.I.O.S. in directing the Principal of the institution to ensure payment of salary to the petitioner. The Statute nowhere provides any particular form in which permission under proviso to Regulation 101 Chapter III of the Regulations would be granted by D.I.O.S. In my view, it can be inferred from the conduct and the correspondence made by D.I.O.S., if it is reasonably possible to infer so therefrom, i.e., by necessary implication. In the absence of any particular mode and manner in which an authority is required to exercise his power, it can be inferred from the record if that is reasonably possible. In the case in hand, the direction of the D.I.O.S. to the Principal to ensure payment of salary to the petitioner and sending copy of the said letter to the Treasury Officer, Finance and Accounts Officer etc., in my view, can reasonably be construed as if he has granted permission to appointment of the petitioner on the post of Jamadar in the institution concerned.

12. In the result, I do not find any reason justifying non payment of salary to the petitioner. The writ petition, therefore, deserves to be allowed.

13. However, before parting, as observed earlier, since the respondent authorities of the State have shown a total disregard and defiant attitude to various orders of this Court and have not responded despite of several judicial orders, here is a fit case where an exemplary cost should be awarded against the respondents. This Court cannot be oblivious of the fact that due to the defiant attitude shown by the respondents and their authorities, the petitioner is also suffering since disposal of his case on merits has prolonged his agony without any reason whatsoever. In the result, the writ petition is allowed. The respondents are directed to pay salary to the petitioner on the post of Jamadar from the date it became due, i.e., the date of his joining on the post without any further delay. The arrears of salary shall be paid to the petitioner within three months but current salary shall be paid henceforth as and when it fall due.

14. Cost of Rs. 50,000 is awarded against the respondents 1 and 2 out of which 25,000 shall be borne by the State and 25,000 shall be borne by the then D.I.O.S., who was posted at Ballia on 29.11.2007. This Court also directs Secretary, Secondary Education, U.P., Lucknow to take immediate disciplinary proceeding against the erring officers concerned and take appropriate decision in accordance with law and to recover the cost of this writ petition, which is paid from the State exchequer from those erring officers.