

NavIn Chandra Vs. Basic Shiksha Adhikari and ors.

NavIn Chandra Vs. Basic Shiksha Adhikari and ors.

SooperKanoon Citation : sooperkanoon.com/492092

Court : Allahabad

Decided On : Nov-30-2004

Reported in : 2005(1)ESC510; (2005)2UPLBEC1227

Judge : Arun Tandon, J.

Acts : Uttar Pradesh Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978; Basic Education Act

Appeal No. : C.M.W.P. No. 8060 of 1999

Appellant : NavIn Chandra

Respondent : Basic Shiksha Adhikari and ors.

Advocate for Def. : Anupam Shukla and ;P.K. Sharma, Advs. and ;S.C.

Advocate for Pet/Ap. : L.N. Mishra and ;Anil Bhushan, Advs.

Disposition : Petition allowed

Judgement :

Arun Tandon, J.

1. Heard Sri Anil Bhushan on behalf of the petitioner, Standing Counsel on behalf of respondents 1, 3 and 4, Sri Anupam Shukla and Pramod Kumar Sharma on behalf of respondent No. 2.

2. The institution by the name of Junior High School, Rustamgarh, district Etah, is a recognised institution under the provisions of the Basic Education Act and is also on the grant-in-aid list of the State. The provisions of the U.P. Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978 are fully applicable to the said institution. The said institution was taken on the grant-in-aid list of the State on 2.11.1985, w.e.f. 1984 and at the relevant time one post of Principal, 5 posts of teachers, clerk and class IV employees were duly sanctioned for the said institution. According to the petitioner the services of one Srimati Sudha Yadav who was working as Assistant Teacher in the institution and was being paid salary under the grant-in-aid upto the year 1996, were terminated by the Committee of Management the resolution whereof was approved by the Zila Basic Shiksha Adhikari by order dated 22.11.1996. In the vacancy so caused the management applied for permission to make fresh appointment, after the permission was granted necessary advertisement was made and a selection committee was constituted. The petitioner applied for the said post in pursuance of the said advertisement. The selection committee found the petitioner to be most suitable and accordingly recommended the petitioner for appointment. Relevant papers for approval of the Zila Basic Shiksha Adhikari were forwarded by the Committee of Management. The Zila Basic Shiksha Adhikari vide order dated 6.2.1997, approved the said selection and granted permission for appointment of the petitioner. The Committee of Management issued appointment letter dated 7.2.1997, in favour of the petitioner. In pursuance of the said appointment letter the petitioner joined on 8.2.1997, and since then is continuously working in the institution as Assistant Teacher. The salary bill submitted by the management of the institution in respect of the petitioner was not cleared and an objection was raised by the Accounts Officer, respondent No. 4. The matter as such was referred to the Director of Education (Basic). The Director of Education (Basic) vide order dated 19.12.1998, turned down the claim of the petitioner for payment of salary on the ground that under the orders of this Court one Sri Ram Prakash was entitled to be adjusted against the vacancy which has been caused due to termination of services of Srimati Yadav in view of the fact that there were only 5 sanctioned posts of Assistant Teacher and if payment of salary is made to the petitioner it may amount to sanction of an additional post of Assistant Teacher. In compliance of the

aforesaid order the Basic Shiksha Adhikari refused to grant permission for payment of salary to the petitioner vide letter dated 1.1.1999, with the remark that the vacancy which has been caused due to resignation of Srimati Sudha Yadav is to be adjusted by the appointment of Sri Ram Prakash. It is against the aforesaid order that the present writ petition has been filed.

3. It is contended on behalf of the petitioner that Sri Ram Prakash had filed Writ Petition No. 14467 of 1996 with the allegation that he was appointed as Assistant Teacher in the institution in the year 1987. When the institution was taken on the grant-in-aid list his name was wrongly left out from being included as valid teacher for the purposes of payment of salary under the U.P. Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978. The writ petition filed by Sri Ram Prakash was allowed by means of judgment and order dated 25.8.1997 and it was held that Sri Ram Prakash is entitled to payment of salary from 1984 till date as well as future salary also. The operative portion of the order passed by this Court in the said writ petition is as under :

'In the result this petition succeeds and is allowed. Opposite party No. 2 is directed to pay salary of petitioner from 1984 till date and continue paying the same.'

4. In this background it is submitted that admittedly Sri Ram Prakash was paid salary under the orders of this Court with effect from 1984 i.e., from the date the institution was taken on the grant-in aid list and further during this period Srimati Sudha Yadav was also permitted to work as Assistant Teacher and was also paid her salary under the grant-in-aid. It is, therefore, submitted that continuance of Sri Ram Prakash as Assistant Teacher and payment of salary to him under the orders of this Court has nothing to do with the vacancy which has been caused due to removal of Srimati Sudha Yadav. According to the petitioner the orders passed by the Director of Education (Basic) and the Basic Shiksha Adhikari dated 29.12.1998 and 1.1.1999 respectively are based on misconception of fact in so far as they direct adjustment of Ram Prakash against the vacancy caused by the removal of Srimati Sudha Yadav. Reference may also be had to the fact that one Sri Dharam Pal Singh whose name was included in the list of teachers entitled for payment of salary after the institution was brought on the grant-in-aid list has left the institution

and, therefore, adjustment, if any, of Ram Prakash could be made against the vacancy caused due to Sri Dharam Pal having left the institution.

5. On behalf of the State it is submitted that the orders passed by the Director of Education (Basic), dated 29.12.1998, and that passed by the Basic Shiksha Adhikari in compliance thereof dated 1.1.1999, have been issued in compliance of the judgment and order dated 25.8.1997 passed in the writ petition filed by Ram Prakash referred to above. There is no illegality in the said orders and the writ petition is liable to be dismissed.

6. I have heard learned counsel for the parties and gone through the record. It is an undisputed fact that the claim set up by Ram Prakash for payment of salary under the grant-in-aid was based on his right to be included in the list of teachers entitled for payment of salary under the U.P. Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978, after the institution was brought on the grant-in-aid list. The said claim of Sri Ram Prakash has been upheld by this Court vide judgment and order dated 25.8.1997, passed in Writ Petition No. 14467 of 1996. The question of adjustment of Sri Ram Prakash in such circumstances against the vacancy which was caused due to resignation of Srimati Sudha Yadav is totally uncalled for and cannot be the basis for refusing salary to the petitioner. Payment of salary to 5 teachers was being made without including the name of Sri Ram Prakash when the institution was taken on grant-in-aid which was a cause for Sri Ram Prakash to approach this Court by means of writ petition referred to above. Therefore, if this Court has upheld the claim of Sri Ram Prakash for being included in the list of teachers entitled for payment of salary from the grant-in-aid fund, it necessarily means that the respondents were obliged under law to sanction one more post of Assistant Teacher for payment of salary to Sri Ram Prakash as at the relevant time Sudha Yadav with other teachers was already on the list of approved teachers entitled for salary under grant-in-aid. It is not in dispute between the parties that Srimati Sudha Yadav has continued as Assistant Teacher in her independent right upto the year 1996 and her continuance was against the post which was not dependent in any manner on the claim set up by Ram Prakash in the aforesaid writ petition. In the opinion of the Court the payment of salary to Sri Ram Prakash in such circumstances is not at all

dependent upon the post which has fallen vacant due to removal of Srimati Sudha Yadav and further there is no occasion for adjustment of Sri Ram Prakash against the vacancy which has been caused due to removal of Smt. Sudha Yadav.

7. In view of the above the order passed by the Director of Education (Basic) dated 29.12.1998, and the order dated 1.1.1999, passed by the Basic Shiksha Adhikari are illegal inasmuch as they are based on misconception of fact that Sri Ram Prakash was liable to be adjusted against the vacancy which has been caused due to removal of Smt. Sudha Yadav. It is held that the vacancy which has been caused due to removal of Smt. Sudha Yadav is an independent vacancy which has nothing to do with the payment of salary to Sri Ram Prakash nor the right of the petitioner can be defeated on the ground that Ram Prakash should be adjusted against the vacancy caused due to removal of Smt. Sudha Yadav.

8. In view of the aforesaid the writ petition is allowed. The order passed by the Director of Education (Basic) dated 29.12.1998 and the order dated 1.1.1999, passed by the Basic Shiksha Adhikari are quashed. The Zila Basic Shiksha Adhikari is directed to re-consider the claim of the petitioner for payment of salary strictly in accordance with the observations made hereinabove, within a period of one month from the date a certified copy of this order is filed before him.