

Dr. Dinesh Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-21-2006

Reported in : 2007(2)AWC1793

Judge : Rakesh Sharma, J.

Appellant : Dr. Dinesh Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Avinash Saxena

Disposition : Petition allowed

Judgement :

ORDER

Rakesh Sharma, J.

1. This writ petition was presented on 19.7.1996 and till date no counter-affidavit has been filed by the respondents.

2. At the time of filing of the writ. petition, petitioner No. 1 was working as Research Assistant and has now left the job. Petitioner No. 2 is working as librarian; petitioner No. 3 is working as clerk and petitioner No. 4 is working as peon in the Ayurvedic Evam Tibbi Academy, U.P. Rajkiya Ayurved Maha Vidyalaya Bhawan, Tulsidas Marg, Lucknow, hereinafter referred to as the

Academy. The Government of Uttar Pradesh vide G.O. dated 28.2.1950 sanctioned the establishment of the Academy. By a formal Government order, various posts were created and staff was appointed against the posts created and sanctioned by the Government. The petitioners were engaged in the Academy on the posts indicated above. The members of the staff were given parity with the Government servants and they were treated as employees of the Local Bodies, vide Government Order dated 20.3.1958. It was the responsibility of the State Government to ensure proper functioning of the Academy by providing necessary funds as grant-in-aid and to make payment of salary to the staff regularly every month. These conditions have been spelt out in the Government order dated 17.1.1962, a copy of which has been annexed as Annexure-7 to the writ petition.

3. The petitioners, who are still working in the Academy, have raised a grievance that they have not been paid their salary for the last several years. At the time of filing of the writ petition, they were not paid salary with effect from August, 1994. After filing of the writ petition, the Government had sanctioned some grant-in-aid and part payment of salary was made to the petitioners. As per learned Counsel appearing for petitioners No. 2 and 3, the respondents owe Rs. 11,67,382 to petitioner No. 2 and Rs. 3,56,065 to petitioner No. 3. This calculation has been brought on record by their learned Counsel Sri Avinash Saxena. The petitioners have prayed for payment of their dues through an application for interim relief supported by an affidavit dated 24.2.2005 and other applications.

4. This writ petition is pending disposal for the last about ten years. As per order sheet, several dates were fixed but no efforts were made to file counter-affidavit by the respondents. In view of this, no option is left with the court except to treat the averments made by the petitioners as uncontroverted in view of the decisions of Hon'ble the Supreme Court in Choksi Tube Co. Limited v. Union of India : 1998(97)ELT404(SC) and Naseem Bano v. State of U.P. and Ors. : (1994)ILLJ84SC, in which the Hon. Supreme Court of India has laid down the law that where a plea taken is not controverted in reply, it amounts to admission of the plea. However, learned standing counsel has requested the Court to grant one more opportunity to file counter-affidavit. Since the petitioners No. 2 and 3, as has been informed by the learned Counsel for the petitioners, are still in employment

and employer-employee relations are continuing, in these circumstances, payment of salary is to be made to the employees. The respondents cannot be permitted to take Begar from the petitioners as the same is now prohibited in this country. Under these circumstances, the respondents cannot be allowed further time to file counter-affidavit and to keep this litigation alive for years to come. This Court is already burdened with more than six lac cases, which are awaiting disposal.

5. I have heard the learned Counsel for the parties and perused the record.

6. This Court finds force in the submission of Sri Avinash Saxena, learned Counsel for petitioners No. 2 and 3 that the said petitioners cannot be deprived of their salary. He has placed reliance on State of West Bengal and Ors. v. Pantha Chatterjee and Ors. : AIR 2003 SC3569 ; People's Union for Democratic Rights and Ors. v. Union of India and Ors. : (1982)IILLJ454SC ; State of Gujarat and Anr. v. Hon'ble High Court of Gujarat : 1998 CriLJ4561 ; Suraj Narain v. State of M.P. and Ors. : AIR 1960 MP303 and S. Vasudevan v. S.D. Mital and Ors. : (1963)IILLJ264Bom , in support of his submission that since the petitioners have been discharging duties, functions and responsibilities of their respective posts, they are entitled for the salary, meant for the posts held by them. Fundamental Rule 17, contained in Financial Hand Books II to IV is clear on the subject.

7. In view of above, the writ petition is allowed. The respondents are directed to pay the petitioners their salary regularly every month. The arrears shall be paid within three months from the date of presentation of a certified copy of this order. Other consequences shall follow.

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