

Committee of Management, Janta Inter College, Sonughat, Deoria and Another Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: March 23, 2012

Acts Referred: Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 "Section 3(3)

Uttar Pradesh Intermediate Education Act, 1921 "Section 1

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 "Section 1

Hon'ble Judges: Sudhir Agarwal, J

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

Heard Sri Rahul Jain, learned counsel for petitioner, learned Standing Counsel for respondents 1, 2 and 3 and Sri

Ankush Tandon, who has put in appearance on behalf of respondents no. 4 and 5. Sri Pradeep Kumar, Advocate, has also assisted the Court

appearing for newly impleaded respondent no. 6.

2. The Court proceeds to decide this matter with the consent of learned counsels for parties on the basis of pleadings already on record at this

stage under the rules of the Court.

3. Writ petition is directed against the order dated 1.8.2011 (Annexure 21 to writ petition) issued by Director of Education (Secondary)

(hereinafter referred to as "D.E. (S)") in respect to verification of B.Ed. degree of respondents 4 and 5 and their right to claim salary. The D.E.(S)

has said that the matter has already been decided and conveyed by letter dated 15.6.2010 (Annexure 13 to writ petition) and does not require any

further reply. Petitioners have further sought a writ of certiorari for quashing order dated 31.3.2011 (Annexure 18 to writ petition) addressed to

Manager/Principal of Janta Inter College, Sonughat, Deoria (hereinafter referred to as "College") informing that accounts of College will be

operated by single operation under Section 3 (3) of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other

Employees) Act, 1971 (hereinafter referred to as "Act, 1971") and payment of salary to the Teachers whose B.Ed. certificates were under

process of verification i.e. respondents 4 and 5 shall be made by Finance and Accounts Officer in the Office of District Inspector of Schools,

Deoria (hereinafter referred to as "DIOS") until further orders.

4. Facts, giving rise to the present dispute and stated in the writ petition may be summarized as under.

5. The College is a recognised Intermediate College and governed by provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to

as "Act 1921"), Act, 1971 and U.P. Secondary Education Service Selection Board Act, 1982 (hereinafter referred to as "Act, 1982). However,

Act, 1971 is applicable only to staff upto High School since the recognition of the College upto Intermediate is without any financial assistance

(for foghu). Sri Babban Yadav, son of Sri Ram Chandra Yadav, respondent no. 4, was appointed as Assistant Teacher (L.T. Grade) on ad hoc

basis on 26.3.1991 which was duly approved by DIOS on 4.4.1991. While seeking appointment, he has submitted documents including the copy

of his B.Ed. degree claimed to be issued by Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (hereinafter referred to as "Gorakhpur

University, Gorakhpur"). Similarly respondent no. 5, Rama Shankar Yadav was also appointed as Assistant Teacher (L.T. Grade) on ad hoc basis

on the basis of his B.Ed. degree said to have been issued by Gorakhpur University, Gorakhpur.

6. A complaint was made by one Srikant Singh on 30.12.2008 that respondents 4 and 5 have obtained their appointment on the basis of bogus

and forged degrees of B.Ed. Thereupon the Manager of College required respondents 4 and 5 to submit their explanation about genuity of

marksheet and degree of B.Ed. Vide letter dated 30.9.2008, both the respondents, namely, respondents 4 and 5 claimed that their marksheet and

degree are genuine. They filed self attested copies of marksheets which have been filed as Annexure 5 and 6 to this writ petition.

7. Respondent no. 4's letter is Annexure 5 which says that he appeared with roll no. 20926 from Satish Chandra College, Ballia in B.Ed.

Examination 1987 conducted by Gorakhpur University, Gorakhpur and obtained 225 marks in written and 150 marks in practical. Similarly,

respondent no. 5, namely, Rama Shankar Yadav also claimed to have appeared in B.Ed. Examination 1986 with roll no. 21947 from Sri Murli

Manohar Town Post Graduate College, Ballia and the examination was conducted by Gorakhpur University, Gorakhpur.

8. The Joint Director of Education also required DIOS to conduct enquiry regarding genuity of B.Ed. marksheets of respondents 4 and 6 vide

letter dated 17.1.2009 pursuant where to DIOS appointed Principal, Government Inter College, Deoria as Inquiry Officer by his order dated

30.1.2009.

9. In the meantime Management of College also made an enquiry from Gorakhpur University and the Examination Controller vide letter dated

12.10.2009 informed the Manager that marksheets of both respondents 4 and 5 is false. Before any action could be taken, the D.E.(S),

respondent no. 2, in the meantime, by letter dated 23.7.2009, referring to a complaint made by a Member of Parliament raising doubt and

suspicion on the enquiry regarding genuity of B.Ed. certificates of respondents 4 and 5, required DIOS to send entire record to Directorate so that

matter may be enquired thereat. The DIOS in furtherance thereof, vide his letter dated 4.8.2009, required the Principal of the College to send

entire record for further transmission to Directorate.

10. Principal having failed to send the record, DIOS issued another letter dated 2.9.2009 stopping payment of salary to the Principal as well as

respondents 4 and 5. In the meantime respondents 4 and 5 were also stopped, by the Principal of the College, from signing attendance register and

they were also told of non payment of salary. The respondents 4 and 5 thus approached this Court in Writ Petition No. 52430 of 2009 wherein

the Court noticing the statement of Principal of College that University has verified that certificates of B.Ed. submitted by respondents 4 and 5 are

false, and information is being transmitted to the competent authority for further action, disposed of writ petition without any further order.

11. The Principal thereafter transmitted entire record with requisite information it had received from University, to DIOS vide letter dated

20.10.2009. He also submitted a letter dated 23.10.2009 requesting DIOS to release his own salary since he has transmitted the record and

complied with DIOS's order. Thereafter DIOS transmitted entire record to Directorate on 4.11.2009 and by order dated 17.11.2009 released

salary of Principal but not of respondents 4 and 5.

12. It is the D.E.(S) who passed an order on 10.2.2010 requiring the DIOS to pay salary to respondents 4 and 5 till genuineness of their B.Ed.

marksheets is under verification. This letter of D.E.(S) has been placed on record by Sri Pradeep Kumar, assisted by Sri Uma Nath Yadav,

learned counsel appearing on behalf of respondent no. 6 along with his ""Brief of Events"" which has been taken on record with the consent of

learned counsel for parties so as to have complete set of record before this Court.

13. This letter reads as under:

14. DIOS however sought necessary directions from Deputy Director of Education, Directorate, Allahabad vide letter dated 29.3.2010 about

payment of salary to Sri Babban Yadav and Sri Rama Shankar Yadav in the light of this Court's order passed in Writ Petition No. 52430 of

2009. It is said that in reply thereto, D.E. (S) issued a letter dated 15.6.2010 (Annexure 13 to writ petition) stating that B.Ed. certificates of

concerned two Teachers, namely, Sri Babban Yadav and Rama Shanakr Yadav have been sent to ViceChancellor, Meerut University for

verification who has furnished verification letter which is appended thereto and further proceedings be taken accordingly. The writ petition does not

contain the alleged verification received from Meerut University, said to be appended with letter dated 15.6.2010. DIOS however to have sought

further guidance by letter dated 3.7.2010 whereafter D.E.(S) issued letter dated 7.7.2010 (Annexure 14 to writ petition) reiterating what it has

already said in letter dated 15.6.2010. Thereafter DIOS sent a letter dated 21.9.2010 (Annexure 15 to writ petition) addressed to

Principal/Manager of College informing that B.Ed. certificates of respondents 4 and 5 have been got verified by D.E.(S) and, therefore, payment of

salary to both these persons be ensured. Manager sent a letter dated 28.1.2011 requiring DIOS to furnish a copy of verification letter received

from the concerned University but did not receive any reply and thereafter sent another letter dated 5.3.2011 informing that both respondents 4

and 5 claimed to have passed B.Ed. from Gorakhpur University and the said University has already verified that the two certificates and

marksheets of B.Ed. submitted by respondents 4 and 5 are false, yet it is not clear as to in what circumstances D.E.(S) has made verification from

Meerut University when the said University has nothing to do with this matter and in what circumstances direction for payment of salary has been

issued. It further said that there is something seriously wrong and the matter required further enquiry.

15. Another letter along with certain documents sent by Management to DIOS on 8.3.2011. It appears that DIOS got irritated with this defiant

attitude of Management and passed order on 31.3.2011 for single operation under Section 3 (3) of Act, 1971. He directed that salary to

concerned Teachers i.e. respondents 4 and 5 shall be paid by Finance and Accounts Officer (in the Office of DIOS) until further orders. He

treated Management guilty of victimization of concerned Teachers i.e. respondents 4 and 5 and deprecated for such endeavour. Management

represented against the said order vide letter dated 8.7.2011 again informing all the facts. Realizing that involvement of Meerut University in the

matter was apparently erroneous, DIOS deferred his letter dated 31.3.2011 until further orders till the matter is further enquired from D.E.(S) and

passed order to this effect on 14.7.2011. He sent a copy of the said letter to D.E.(S) also enquiring as to in what circumstances, verification sought

from Meerut University instead of Gorakhpur University which has verified that certificates are false. It is in furtherance of DIOS" order date

14.7.2011, D.E.(S) sent the impugned letter dated 1.8.2011 reiterating its letter dated 15.6.2010 and expressed its desire that no further enquiry

would be admissible in this matter. It is in these circumstances, the petitioners have come to this Court in the present writ petition.

16. While entertaining writ petition, on 28.9.2011 this Court passed a detailed order directing that entire record of matter shall be ""sealed"" and

produced before the Court. Learned Standing Counsel was also directed to ensure that authorities concerned shall get the entire record relating to

enquiry conducted against respondents 4 and 5 sealed and D.E.(S), respondent no. 2, was directed to file his personal affidavit to explain, how

such directions were issued by him. Petitioner was also directed to produce record/documents pertaining to respondents 4 and 5 which they

submitted at the time of appointment. The impugned order was stayed and respondents 4 and 5's salary was also directed not to be paid salary

until next date of listing.

17. Sri Sanjay Mohan, holding office of respondent no. 2, has filed his affidavit. The basic facts have not been disputed therein. It has also filed

copy of letter dated 24.6.2009 sent by Principal, Government Inter College, Deoria, Inquiry Officer, appointed by DIOS for making enquiry

regarding genuity of B.Ed. certificates of respondents 4 and 5. The aforesaid letter dated 24.6.2009 sent by Inquiry Officer to Registrar

(Examination), Gorakhpur University, Gorakhpur sought verification of marksheets and certificates of B.Ed. of respondents 4 and 5. It has also

filed copy of letter dated 13.8.2009 sent by Controller of Examination, Gorakhpur University verifying B.Ed. documents of respondents 4 and 5 as

false. It has admitted that some complaint was received by D.E.(S) regarding the aforesaid enquiry from a Member of Parliament from Salempur

constituency, District Deoria and pursuant thereto D.E.(S) decided to make enquiry at its own level. Hence, it summoned entire record from DIOS

vide letter dated 23.7.2009. It is, however, said that record which was transmitted to Directorate by DIOS had a letter dated 20.10.2009 of the

Principal of College in which respondents 4 and 5 were stated to have passed B.Ed. in 1987 from D.A.V. College, Muzaffarnagar. Copy of the

said letter has been filed as Annexure 7 to the affidavit. It is explained that Annexure 7 is a forged document which was made available by DIOS

to Directorate along with record and this fact came to be noted on 10.1.2012 when Principal of the College made it clear in subsequent enquiry

conducted by Directorate in January, 2012. The documents of respondents 4 and 5 showing their B.Ed. certificates and marksheets of Gorakhpur

University were also made available to Joint Director of Education at the time of enquiry it had conducted in January, 2012, vide Principals letter

dated 10.1.2012 (Annexure 9 to the affidavit).

18. In the meantime, Meerut University also informed by letter dated 12.1.2012 that documents sent for verification pertaining to respondents 4

and 5 are not correct and suspicious. The D.E.(S) found that it is on account of letter dated 20.10.2009 of Principal of the College (copy whereof

was made available to Director by DIOS vide his letter dated 4.11.2009) wherein B.Ed. degree of Meerut University was referred which has

caused entire confusion and it is in these circumstances, it found DIOS responsible for this fraud and misrepresentation. He thus got DIOS

suspended vide Government's by order dated 16.1.2012, besides lodging first information report against respondents 4 and 5 at Police Station

Kotwali Sadar, Deoria.

19. A separate counter affidavit has been filed by respondents 4 and 5 claiming that they never sought appointment on the basis of B.Ed.

marksheets and certificates of Gorakhpur University. They claim to have passed B.Ed. examination from Meerut University. No document,

however, has been appended to the counter affidavit to show that they passed B.Ed. examination from Meerut University.

20. However, there is another short counter affidavit filed on behalf of respondents 4 who has appended a copy of statement of marks of B.Ed.

examination of 1987 claimed to have been issued by Meerut University showing roll no. of respondent no. 4 as E664022 and enrolment no.

M8600076 and name of the College as D.A.V. College, Muzaffarnagar.

21. During the course of arguments, learned counsel appearing for respondents 4 and 5 could not dispute that respondents 4 and 5 actually have

claimed appointment along with documents of B.Ed. Examination pertaining to Gorakhpur University and not that of Meerut University. Even

otherwise their claim about Meerut University is clear false. Claim of respondents 4 and 5 that they passed B.Ed. Examination from Meerut

University also stands belied from reply which has been given by Meerut University filed as Annexure 11 to the affidavit of respondent no. 2 stating

that enrolment number and roll number of respondents 4 and 5 with which they claim to have passed B.Ed. examination from Meerut University

(D.A.V. College) were actually allotted to some other students and, therefore, the aforesaid documents are clearly suspicious and not correct. The

contents of aforesaid letter of Meerut University dated 12.1.2012 are reproduced as under:

22. The fraud and misrepresentation on the part of respondents 4 and 5 is then well established and proved. This Court finds it strange that for

such short matter such a long time was taken by respondent no. 2 and 6 in completing the enquiry and that too when the enquiry was already

conducted by Principal of College as well as Principal, G.I.C., Deoria who was appointed Inquiry Officer by DIOS. Instead of taking a

consequential appropriate action thereupon, the D.E.(S) hampered the enquiry and consequential action. Purporting to act on a complaint received

from a Member of Parliament, Salempur Constituency, District Deoria, he got the entire record transmitted to his office so that consequential

action may be deferred at the end of the Management and DIOS. This was actually deferred giving benefit to respondents 4 and 5 inasmuch

various letters and correspondence which have taken place between D.E.(S) and DIOS show that some resistance was shown by DIOS but D.E.

(S) continued to insist upon to close the matter and pay salary to respondents 4 and 4. This Court has no reason but to believe that the same must

be under some political consideration for the very reason that entire record was got transmitted to Directorate instead of allowing the Management

as well as DIOS to take consequential action in furtherance of the result of verification of B.Ed. certificates of respondents 4 and 5 from

Gorakhpur University and thereby getting the matter deferred with vague orders suggested that payment of salary to respondents 4 and 5 was the

prime objective of D.E.(S). He was more interest to restore payment of salary to respondents 4 and 5 instead of purity of system. His attempt also

appears to get the matter virtually dropped or deferred indefinitely. taking and matter virtually should be dropped or be deferred indefinitely.

23. In the counter affidavit filed by Sri Sanjay Mohan, Director (Secondary) he has not averred categorically as to how and in what circumstances,

on just a complaint received from the Member of Parliament, he called the entire record from DIOS to his own office but did not take any positive

action on the information given by Gorakhpur University. He however has tried to hold DIOS responsible for diverting the matter to Meerut

University.

24. At this stage, this Court do not intend to record its finding that entire mischief and collusion with respondents 4 and 5 involve only the D.E.(S)

or some other Officers/officials in Directorate including DIOS and political persons and leave this matter to be enquired into by an appropriate

investigating agency.

25. However, this Court has no hesitation in holding that not only appointment of respondents 4 and 5 based on fraud and misrepresentation and

bogus documents pertaining to educational qualification is void and a nullity, but payment of salary to them pursuant to such void and null

appointment is also unauthorized and wholly illegal. It amounts to defrauding public exchequer and, therefore, they should be accounted for the

entire amount.

26. Since the matter involves not only high educational authorities including D.E.(S), i.e., Sri Sanjay Mohan, who himself has filed his affidavit, the

role of the Member of Parliament, who made complaint so as to hamper the enquiry warrants investigation by Police, in my view, it is a fit case

where investigation must be conducted by a Special Task Force which would be constituted by Government. It shall be headed by some Senior

Police Officer in the cadre of Indian Police Service so that mischief of responsible persons may see the light of day at the earliest and appropriate

action may also be taken against them without any further delay.

27. In view of above, writ petition is allowed with following directions:

(i) Impugned order dated 1.8.2011 (Annexure 21 to writ petition) is hereby quashed.

(ii) The appointment of respondents 4 and 5 being a nullity, they shall not be paid any further salary.

(iii) A criminal case shall be registered against the respondents 4 and 5, the then D.E.(S) Sri Sanjay Mohan, the Member of Parliament from

Salempur Constituency (District Deoria) and others.

(iv) The criminal investigation shall be made through specially constituted investigating team i.e. Special Investigation Team headed by a senior

Police Officer in the cadre of Indian Police Service.

(v) The aforesaid investigation shall be completed within three months subject to submission of first progress report to this Court on 4.5.2012.

(vi) Subject to direction (vii) below, the respondents educational authorities shall proceed to recover the amount, whatsoever, already paid to

respondents 4 and 5 towards salary pursuant to illegal, void and null appointments. The educational authorities shall determine the entire amount

and issue a notice within ten days from today directing respondents 4 and 5 to pay the same within one month from the date of receipt of notice

failing which such amount shall be recovered as arrears of land revenue by issuing recovery certificate.

(vii) However, it is further clarified that for the period salary has been paid to respondents 4 and 5 under orders of D.E.(S) after the same was

stopped by DIOS vide order dated 2.9.2009, the same shall be recovered from such other persons including the then D.E.(S) who are found in

collusion to have acted and cooperated in the matter enabling respondents 4 and 5 to get salary despite verification of their educational qualification

by Gorakhpur University otherwise.

(viii) Petitioner shall be entitled to cost which is quantified to Rs. 10,000/.

(ix) This case shall be listed on 4.5.2012 only for the purpose of perusal of progress report and necessary direction, if any, but for all other

purposes, it is finally decided, as above.