

**(2005) 02 AHC CK 0110**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 1308 of 2002

Satendra Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Feb. 15, 2005

**Citation:** (2005) 5 AWC 4267 : (2005) 2 ESC 1058 : (2005) 2 UPLBEC 1315

**Hon'ble Judges:** Sunil Ambwani, J

**Bench:** Single Bench

**Advocate:** B.D. Mandhyan and S.C. Mandhyan, for the Appellant; Ajay Kumar Sharma and Sudhakar Upadhyaya and S.C., for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Sunil Ambwani, J.

I have heard Sri B.D. Mandhyan, Senior Advocate for the petitioners; Sri Ajay Kumar Sharma for Committee of Management and Sri Sudhakar Upadhyay for District Basic Education Officer, Saharanpur.

2. In Writ Petition No. 1308 of 2002, the petitioners have prayed for, a direction to the respondents to extend to the petitioners the benefit of Junior High School (Payment of Salary of Teachers and Other Employees) Act 1978 (in short the Act of 1978), from the date of their initial appointment and to pay salary and allowances as admissible to teachers of recognised primary schools and primary sections as per Government Order issued from time to time.

3. The petitioner No. 1 is Intermediate, Adeeb-e-Kamil and U.T.C. (Urdu) and petitioner No. 2 is B.A., B. Ed. It is contended that the Nehru Kisan Vidhyalaya (Junior High School) Nakur, Saharanpur was initially established as a Primary School and was given permanent recognition on 3.9.1965. In the year 1967, it was raised to the level of Junior High School. The recognition was given by the Director of Education, 1st Region, Meerut vide letter dated 4.11.1977, with certain conditions. It is alleged that both the Primary School and the Junior High School are integral parts and are

being run in the same building. They have common Head Master and they are administered by same Committee of Management. The petitioner No. 1 was issued appointment letter by the Committee of Management on 25.7.1997 and was appointed as Urdu Teacher on 7.10.1998. The petitioner No. 2 was appointed by the Committee of Management as Assistant Teacher by letter dated 27.11.1998 and he joined on 1.12.1998. Their appointments were approved by the Basic Shiksha Adhikari, Saharanpur on 25.7.2000 but they have not been paid salary from the state account. A joint representation was made by them and various reminders were sent. The Junior Section of the School is getting grant-in-aid since April, 1984 and that the teachers of the Junior Section have been given the benefit of Junior High Schools (Teachers and Other Employees) Payment of Salaries Act 1978.

4. It is contended by Sri B.D. Mandhyan that by Government Order dated 6.9.1989, 393, Primary Sections running in the same campus under the same management attached to the High Schools sections, were given grant by the State Government and the teachers of such primary sections are being paid regular salary. The petitioners, however, have not been given these benefits and have been discriminated. The Basic Shiksha Adhikari had recommended for payment of their salary. The Additional Director (Basic) U.P. (Arth-I) received the recommendation dated 17.1.1998, but no action has been taken. The representation of some of the similarly situate assistant teachers were rejected by the Basic Shiksha Adhikari Saharanpur on 14.2.1998. They have filed Writ Petition No. 24926 of 1998 challenging the order and for a writ of mandamus for payment of salary under the Act of 1978, in which affidavits have been exchanged. Sri B.D. Mandhyan has relied upon Ram Ji Tiwari's case (Writ Petition No. 19258 of 1991) and Smt. Vinod Sharma and Ors. v. State of U.P. (Writ Petition No. 24478 of 19998), which were followed in Smt. Pritibha Mohan's case (Writ Petition No. 35179 of 1997) decided on 23.10.1997 by which directions were issued to pay salary the teachers of primary sections against which Special Appeals and thereafter SLP was dismissed.

5. Sri Ajay Kumar Sharma, appearing for the Committee of Management submits that the Nehru Kisan Vidyalaya Shiksha Parishad is a registered society. It is running two institutions, out of which one is the Junior High School namely Nehru Kisan Vidyalaya, Nakur, and other is the Primary School namely Nehru Primary Pathsala. Clause-5 of the bye laws of the society provide for two separate Committee of Managements for these institutions to manage the affairs of these two institutions. Accordingly two Committee of Management are constituted and are recognised by the educational authorities. Sri Anil, Kumar and Sri Rajpal Singh are the managers of Primary School and Junior High School respectively. Provisional recognition was granted upto Junior High School dated 24.11.1966, with conditions and subsequently permanent recognition was granted on 4.11.1977. Both the institutions are separate and are running in separate buildings and have different head masters. Sri Ram Swaroop is the Head Master of Primary institution while Sri Sadhu Ram Rathor is Head Master of Junior High School. The order dated 25.4.2000

was obtained by misrepresentation to the District Basic Education Officer, Saharanpur. An enquiry was directed to be made through the Assistant Basic Shiksha Adhikari. The petitioners and others misbehaved with the Assistant Basic Shiksha Adhikari during inspections. He has submitted a report on 28.5.2003 and has also lodged First Information Report.

6. The respondents have annexed, an order of the District Basic Education Officer, Saharanpur dated 14.2.1998 by which in pursuance of directions of this Court dated 5.12.1997 the representation of Ram Swaroop Tyagi, Pahal Singh, Vijayendra Singh and Shashi Rani was decided with the findings that both the institutions are separate and thus the primary section is not entitled to salary under the Act of 1978. Sri Anil Kumar, Manager of the Committee of Management has also enclosed with his counter affidavit, an order of the Special Secretary, Shiksha Anubhag-VI dated 27.11.1998 (Annexure No. 13), by which the representation of Ram Swaroop Tyagi, Pahal Singh, Vijayendra Singh and Shashi Rani was decided and rejected. This order was passed in pursuance of the order of this Court dated 5.12.1997 in Writ Petition No. 59535 of 1997 the representation was decided and rejected. In this order the State Government found that these Assistant Teachers working in primary school are not entitled to payment of salary under the Act of 1978.

7. In Writ Petition No. 24926 of 1998, Sri Ram Swaroop Tyagi and others have challenged the order dated 14.2.1998 passed by District Basic Education Officer, Saharanpur rejecting their representation. The petitioners in this writ petition namely Sri Ram Swaroop Tyagi, Pahal Singh, Vijayendra Kumar and Shashi Rani were appointed on 1.2.1982, 15.7.1992, 15.7.1993 and 20.8.1994 respectively. They have also prayed for same reliefs on same facts and circumstances, claiming that both the primary and junior high school sections are run by the same Committee of Management and in the same campus with the students of Class-V to Class-VI, and are as such entitled to the benefit of Government Order dated 6.9.1989 by which 393 primary sections running in the same institutions as High Schools and Intermediate were brought under the Act of 1978, for payment of salary.

8. I have considered the respective submissions made by the parties. In Writ Petition No. 1308 of 2002 the petitioners have filed an amendment application, on 2.11.2004 at the time of hearing. The order of State Government dated 27.11.1998 by which their representations were considered and rejected has been challenged after five years. Although they have stated in paragraph-6 of the amendment application that they had no knowledge of the order earlier then 28/29.10.2004, I am not inclined to believe the fact that they had no knowledge of this order passed by State Government for five years, and which was made on the representation of Ram Swaroop Tyagi & three others in pursuance of directions issued in Writ Petition No. 39535 of 1997. All these teachers are teaching in the same institution.. No good ground has been made out to condone the delay of five years to challenge the order dated 27.11.1998. The amendment application is accordingly rejected.

9. Sri B.D. Mandhyan, Senior Counsel for the petitioners has relied upon an order dated 9.12.1997 passed by Division Bench in Special Appeal (239) of 1997 in State of U.P. v. Ram Ji Tiwari in which the stay order was vacated on the ground that the State Government had taken a decision to implement the judgment with regard to primary section of D.A.V. Inter College, Azamgarh. The directions of general nature have been stayed by the Division Bench, until the hearing of the Writ Petition (Civil) 81 of 1994 between Satya Pal Anand v. Union of India by the Supreme Court. Both the counsel are not in a position to state that whether Satya Pal Anand's case has been decided by the Supreme Court. I find that the judgment in Ramji Tiwari's case was given in the fact of that case in which the primary section of DAV Inter College, Azamgarh was integrally connected with the High School and Inter college. For the purposes of giving benefit of the Government Order dated 6.9.1989 each case has to be considered on its own facts, to find out whether the conditions prescribed in Government Order are applicable. The general mandamus in Ramji Tiwari's case is not applicable until the Supreme Court decides the Satya Pal Anand's case.

10. The benefit of Government Order dated 6.9.1989 was given to 393 institutions in respect of which the State Government had made a detailed enquiry and had found that the primary section was run in the same campus under the same management and that the students of Class V were promoted to Class VI of the same institution. The benefit of the grant and payment of salaries Act of 1978 is not automatic. It depends upon the conditions prescribed in the Government Order dated 6.9.1989. The petitioners have made an attempt to deny the facts given in the counter affidavit of Sri Anil Kumar. They have, however, not produced sufficient material to contradict statement of facts and the documents, which have been annexed by Sri Anil Kumar and which go to establish that both the primary and junior sections are managed by different Committees of Management, and are running in different buildings.

11. I further find that the application for grant annexed as Annexure-RA-6, is alleged to have been signed by Sri Sadhu Ram Rathor and the Manager and certified by Assistant Basic Education Officer, Saharanpur for the purpose maintenance grant prepared on 15.1.1998, does not disclose the name of the petitioners Satyendra Singh and Raj Kumar as teachers in the institution. This document, therefore, does not come to rescue the petitioners in Writ Petition No. 1308 of 2002. In any case the District Basic Education Officer has accepted the objections of the management that both the institutions are different.

12. For the aforesaid reasons, I find that the petitioners have not made a case for getting the benefit of Government Order for the grant-in-aid for the teachers of the primary section, for payment of salaries under the Act of 1978. The general mandamus issued in Ramji Tiwari's case is still subject matter of judicial review of Supreme Court and as such the petitioners are not entitle to the benefit of the judgment, at this stage.

13. Both the writ petitions are accordingly dismissed.