

Shailendra Kumar Srivastava and Another Vs District Inspector of Schools and Others

Court: Allahabad High Court

Date of Decision: Feb. 14, 2013

Acts Referred: Uttar Pradesh Municipalities Act, 1916 & Section 73

Citation: (2013) 4 ADJ 26 : (2013) 2 AWC 2063 : (2013) 2 UPLBEC 953 : (2013) 1 UPLBEC 720

Hon'ble Judges: B. Amit Sthalekar, J

Bench: Single Bench

Advocate: Anil Bhushan, for the Appellant; Miss Rashmi Tripathi, S.C. Srivastava and Sushil Kumar, for the Respondent

Final Decision: Allowed

Judgement

B. Amit Sthalekar, J.

This writ petition has been filed by the petitioners seeking a direction in the nature of mandamus commanding the

respondent No. 3, Principal, Nagar Palika Inter College, Mughalsarai, Chandauli to allow the petitioners to work in the institution on their

respective Class-IV posts and also to pay their salary of the said post. The facts of the case, in brief, are that there is an institution known as Nagar

Palika Inter College, Mughalsarai, Chandauli, which is a recognised institution under the provisions of the U.P. Intermediate Education Act, 1921,

and the said institution is also receiving grant-in-aid from the State Government. Two posts for Class-IV fell vacant, one for Ardali/Peon and

another for Book Binder. The said posts were advertised on 26.12.1997. The petitioners amongst others also applied and as per their quality point

marks obtained by the candidate the petitioners having the highest marks were found to be the best candidates for appointment and, accordingly,

they were selected for appointment. The Principal, respondent No. 3 sought approval by his letter dated 21.10.1997 from the District Inspector of

Schools for making the appointment on the said posts of Ardali/Peon and Book Binder. Approval was granted by the District Inspector of Schools

by his letter dated 30.10.1997, Annexure 2 to the writ petition. In pursuance thereof, the posts were advertised and applications were invited from

the eligible candidates. Among others who applied, the petitioners also applied and on the basis of the quality point marks were selected for

appointment on the posts of the Ardali/Peon and Book Binder. Thereafter the Principal by his letter dated 20.1.1998, Annexure 3 to the writ

petition, submitted the entire papers to the District Inspector of Schools seeking financial approval for payment of salary of the petitioners on the

post of Ardali/Peon and Book Binder. A reminder was also sent on 21.1.1998 for releasing the salary of the petitioners for the month of January,

1998. It is also stated that during this period the petitioners were placed under suspension on 21.1.1998 but the said suspension was revoked by

the District Inspector of Schools, Chandauli by his letter dated 5.2.1998. Thereafter, the petitioners were again suspended on 13.2.1998 and they

approached the District Inspector of Schools, Chandauli, who again revoked the order of suspension on 13.4.1998, Annexure 9 to the writ

petition. Thereafter, the petitioners represented before the District Inspector of Schools, Chandauli for payment of salary but no orders have been

passed so far. Aggrieved the petitioners have filed the present writ petition.

2. At the time of admission this Court passed the following order on 21.5.2001.

The contention of the petitioners is that their suspension having been revoked by the District Inspector of Schools vide order dated [filed as

Annexure-9 to the writ petition], they are not being permitted to join in Nagar Palika Inter college, Mughalsarai, Chandauli.

Issue Notice. Notice on behalf of respondent Nos. 1 and 2 has been accepted by the standing counsel. Notice be sent to respondent Nos. 3 and

4 by RP/AD fixing a date in the week commencing 30.7.2001. Steps to be taken within ten days. The respondents may file their counter-affidavit

on or before 23.7.2001. Rejoinder-affidavit may be filed on or before the date fixed.

List in the week commencing 30.7.2001.

An interim mandamus is issued to respondent Nos. 3 and 4 to permit the petitioners to join on the post of Class-IV employees within six weeks in

the college, as their suspension has been revoked or to show-cause within the same period.

3. I have heard Sri Anil Bhushan, learned counsel for the petitioners and learned Standing Counsel.

List has been revised. None appears for the respondent Nos. 3 and 4.

4. It has been submitted by the learned counsel for the petitioners that in terms of the interim order of this Court dated 21.5.2001 the petitioners

have been permitted to join on the post of Class-IV but till date they have not been paid any salary. It has further been submitted by the learned

counsel that under the Regulation 100 framed in exercise of power u/s 15 of the U.P. Intermediate Education Act, 1921 the Appointing Authority

of Class-III and Class-IV is the Principal and in the present case also it is the Principal, who had appointed the petitioners on Class-IV posts.

5. The provisions of Regulations 100 and 101 reads as follows:

6. It is further submitted that Regulation 101 specifically stipulates that no post in a recognised aided educational institution shall be filled up without

the approval of the District Inspector of Schools. Learned counsel submits that in the present case the post was advertised with the approval and

sanction of the District Inspector of Schools and only thereafter the selection was held and the two petitioners were selected on the basis of the

quality points secured by them. He further submits that on two occasions when the Principal suspended the petitioners, the petitioners represented

to the District Inspector of Schools and it is the District Inspector of Schools who revoked the orders of suspension of the petitioners. A

presumption would therefore arise that approval had been granted for appointment of the petitioners by the District Inspector of Schools,

otherwise the District Inspector of Schools would not have bothered to interfere in the matter of suspension of the petitioners.

7. In the counter-affidavit filed on behalf of the respondents it is stated in paragraph 5 thereof that the Appointing Authority in the matter of Class-

III and Class-IV employees in the Municipality is the Chairman/Executive Officer in terms of the provisions of Section 73 of the U.P.

Municipalities Act, 1916.

8. The provisions of Section 73 of the U.P. Municipalities Act, 1916 reads as follows:

73. Appointment, etc., of servants on the educational establishment--(1) Subject to the provisions of sub-section (2), the appointment of persons

on the educational establishment of a Municipality shall be made by such authority as may be specified in this behalf by the State Government, and

different authorities may be specified for different classes or posts on the establishment.

(2) The State Government may make Rules regulating the recruitment, punishment, appeal and other conditions of service of persons appointed to

the educational establishment of a Municipality.

Provided that the appointment of a teacher or Head of an institution shall be governed by the provisions of the Uttar Pradesh State Universities

Act, 1973, or the Intermediate Education Act, 1921, as the case may be.

9. The learned Standing Counsel further submitted that the Regulations 100 and 101 have no application in the case of institutions set up by the

Nagar Palika and, therefore, the U.P. Intermediate Education Act, 1921 also has no application as far as appointment of Class-III and Class-IV

employees are concerned in the educational institutions set up by Nagar Palika.

10. Having gone through the provisions of Section 73 of the Municipalities Act and the provisions of Section 100 and Section 101 of the

Regulation framed under the U.P. Intermediate Education Act as well as the provisions of Section 16-H of the Act, 1921 the submissions made on

behalf of the respondents appears to be clearly flawed. The proviso to Section 73 of the U.P. Municipalities Act clearly provides that the

appointment of a Teacher or Head of an institution shall be governed by the provisions of the Uttar Pradesh State Universities Act, 1973, or the

Intermediate Education Act, 1921 as the case may be.

11. Sub-section (2) of Section 16-H of the U.P. Intermediate Education Act, 1921 lays down that in the case of recognised institutions maintained

by a local body, the State Government made declare that all any of the provisions referred to in sub-section (1) shall not apply or shall apply

subject to such alterations, modifications or additions as it may make and the provisions, if any, so made applicable, shall have effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Sub-sections (1) and (2) of Section 16-H read as follows:

16-H. Exemption of certain classes of institutions from the operation of certain Sections.--(1) The provisions of Sections 16-A, 16-B and 16-C,

sub-section (2) to sub-section (13) of Section 16-D and Sections 16-E, 16-F and 16-G shall not apply to recognised institutions maintained by the

State Government or the Central Government.

(2) In the case of recognised institutions maintained by a local body, the State Government made declare that all any of the provisions referred to in

sub-section (1) shall not apply or shall apply subject to such alterations, modifications or additions as it may make and the provisions, if any, so

made applicable, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

12. Learned Standing Counsel has not been able to point out whether any such alterations have been made by the State Government to the effect

that the provisions of various sections referred to in sub-section (1) of Section 16-H have been specifically ousted in the matter of appointment of

Class-III and Class-IV employees in educational institutions established by a Nagar Palika Parishad.

13. Reference in this regard may also be made to the provisions of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of

Salaries of Teachers and other Employees) Act, 1971. The preamble to the Act reads as follows:

An Act to regulate the payment of salaries to teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the

State funds and to provide for matters connected therewith.

14. From the reading of the preamble to the Act, 1971 there is no doubt that the Act of 1971 has been framed to regulate the payment of salary to

teachers and other employees of High Schools and Intermediate Colleges receiving aid out of State funds.

15. The word ""Institution"" has been defined in Section 2-B of the Act, 1971 to mean a recognised institution for the time being receiving

maintenance grant from the State Government and includes the Sanskrit Mahavidyalaya or Sanskrit Vidyalaya receiving maintenance grant from the

State Government.

16. It is not in dispute between the respective parties that the institution in question, namely, Nagar Palika Inter College, Mughalsarai, Chandauli is

a recognized institution receiving maintenance grant from the State Government. u/s 2 (f) of the Act, 1971 "Employee" is defined to mean non-

teaching employees in respect of whose employment maintenance grant is paid by the State Government to the institution.

17. Section 2 (f) of the Act, 1971 reads as follows:

(f) ""Employee"" of an institution means non-teaching employees in respect to whose employment maintenance grant is paid by the State Government

to the institution.

18. In para 2 of the writ petition, the petitioners have specifically averred that the institution in question receives grant-in-aid from the State

Government. This averment has not been denied in para 5 of the counter-affidavit filed by the State respondents or in para 3 of the counter-

affidavit filed by the respondent Nos. 1, District Inspector of Schools. Thus the institution in question undisputedly receives grant from the State

Government and the petitioners being Class IV employees, of the institution are, therefore, "Employee" within the meaning of the term as defined in

Section 2 (f) of the Payment of Salaries Act, 1971.

19. Therefore, on a conspectus of facts and the provisions of the U. P. Intermediate Education Act, 1921 and the regulations framed thereunder

and the Payment of Salaries Act, 1971 it cannot be said that the Appointing Authority of Class-III and Class-IV employees in an educational

institution established by a Nagar Palika Parishad is the Chairman/Executive Officer, Nagar Palika Parishad and that the Payment of Salaries Act,

1971 is, therefore, not applicable to educational institutions established by a Nagar Palika.

20. The view taken by me finds support in another decision of this Court in Shyam Lal and another v. State of U.P. and others, 2011 (3) ADJ

2142.

21. It is, therefore, clearly established that the Appointing Authority of the petitioners was the Principal of the Nagar Palika Inter College,

Mughalsarai, District Chandauli and it is he who has issued the appointment letter of the petitioners.

22. The selection has been held with the approval of the District Inspector of School, Chandauli and even on two occasions when the petitioners

were placed under suspension the order of suspension was revoked by the District Inspector of Schools. Therefore, a necessary presumption

would arise that there was an express and tacit sanction as well as approval of the District Inspector of Schools in the matter of appointment of the

petitioners and, therefore, the petitioners are entitled for payment of salary under the Payment of Salaries Act, 1971. This writ petition is, therefore,

allowed and a mandamus is issued to the District Inspector of Schools, Chandauli, respondent No. 1 to issue necessary order for releasing the

salary of the petitioners after granting financial approval and the petitioners will not only be entitled to salary from month to month but also from

2.1.1998 when they joined the institution in question and it is not disputed that the petitioners have been working in the institution under the interim

order of this Court dated 21.5.2001. Payment to the petitioners will commence within two months from the date a certified copy of this order is

received by the District Inspector of Schools and the payment of the arrears of the salary shall be paid to the petitioners within a further period of

four months.