

(2012) 12 AHC CK 0189

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 17819 of 2007

Mangali Prasad Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Dec. 20, 2012**Citation:** (2013) 1 UPLBEC 285**Hon'ble Judges:** Arvind Kumar Tripathi, J**Bench:** Single Bench**Advocate:** Ashok Khare, Sri. Sunil Kumar Srivastava, Sri. Siddharth Khare and Sri. Vishnu Shanker Gupta, for the Appellant; A. Kumar, for the Respondent**Final Decision:** Allowed

Judgement

Arvind Kumar Tripathi, J.

The present petition has been preferred with the prayer to issue writ of certiorari quashing the order dated 13.12.2006 passed by the respondent No. 5 District Inspector of Schools, Kanpur Nagar (annexure 15 to the writ petition), by which the representation of the petitioner for payment of pension was rejected. After hearing the parties, the judgment was reserved on 23.11.2012.

2. The brief facts of the case are that the petitioner was appointed as an Assistant Teacher in Primary Section of Harjinder Nagar Intermediate College which is a recognised and aided institution governed by the provisions of the U.P. Intermediate Education Act, 1921 and U.P. Act No. 24 of 1971. The said institution is imparting education from class 1 to class 12 and Primary Section is an integral part of the institution. The Primary Section was brought on the grant-in-aid w.e.f. 1.10.1989 by Government Order dated 6.9.1989 and the name of the present institution was placed at Serial No. 176. The petitioner was appointed in the institution as Assistant Teacher in the year 1961 and at that time the institution was only a Junior High School. Subsequently, in the year 1967, it was recognised as a High School and in the year 1971 recognised as Intermediate College. After the institution was also included under the grant-in-aid w.e.f. 1.10.1989, the salary was

being paid to the petitioner from Government Grant in accordance with the procedure under the U.P. Act No. 24 of 1971 under the joint signature of the office of District Inspector of Schools and the management of the institution. The date of birth of the petitioner is 15.6.1935, hence, after completing the age of superannuation at the age of 60 years, he retired from service on 30.6.1995 at the end of the academic session. The Principal of the institution forwarded the pension papers of the petitioner to the District Inspector of Schools, Kanpur Nagar with covering letter on 15.6.1995. The communication was sent by the Directorate of Secondary Education to the State Government on 30.12.1995 to the effect that the Government Orders were still awaited with regard to payment of pension to the Primary Section of recognised and aided higher secondary school. The principal of the institution sent a communication on 25.3.1996 to the office of the District Inspector of Schools for enabling deduction towards G.P.F. Account for depositing in the G.P.F. account of the petitioner. The pension of the petitioner was not fixed and the matter remained pending. Repeated request and representations were made on behalf of the petitioner to the respondents. On 24.1.1998 a communication was issued by the Director of Education to the Regional Director of Education with copy to the District Inspector of Schools, Kanpur Nagar with the objection to the effect that the Service Book of the petitioner had not been forwarded due to that it was not possible to fix the pension of the petitioner. Further communication was sent by the Directorate of Education on 5.12.1998 to the State Government with regard to the sanction of pension to the petitioner who had retired as Assistant Teacher of Primary Section attached with aided higher secondary school. Without taking any decision for grant of pension to the petitioner, the matter remain pending. Hence, the petitioner filed a Writ Petition No. 42328 of 1999 which was disposed of by judgment and order dated 1.10.1999 directing the District Inspector of Schools, Kanpur Nagar to take a final decision on the representation of the petitioner. Thereafter by order dated 11.2.2000, the representation was rejected by the District Inspector of Schools, Kanpur Nagar. Against which Another Writ Petition No. 24820 of 2000 was filed which was finally disposed of after exchange of counter and rejoinder affidavits by the judgment and order dated 6.9.2006. In the writ petition the objection was raised on the basis of the circular/Government Order dated 28.1.2004 issued by the State Government to the effect that the benefit of pension, family pension, gratuity and Government Provident Fund was sanctioned by the State Government to the Assistant Teachers of Primary Section attached to the higher secondary schools with effect from the aforesaid Government Order. Further, the representation of the petitioner was rejected by the District Inspector of Schools, Kanpur Nagar by impugned order dated 13.12.2006 (Annexure 15 to the writ petition).

3. Learned Counsel for the petitioner submitted that in view of provisions of U.P. State Aided Educational Institution Employees Contributory Provident Fund Insurance and Pension Rules 1964 (hereinafter referred to as "Rules 1964), the

petitioner was entitled for pension. After the Primary Section was included in the grant-in-aid w.e.f. 1.10.1989 which was attached with the Intermediate College and that was an integral part of the institution. He also submitted that cut-off date is arbitrary and discriminatory because by the Government Order dated 28.1.2004, there was discrimination that the pension scheme would be applicable to the primary teachers who retired after the Government Order dated 28.1.2004. Apart from that the petitioner was entitled for the pension under Rule 1964 and not on the basis of the Government Order dated 28.1.2004. Hence, the condition and restriction imposed by Government Order dated 28.1.2004 is arbitrary, illegal and the impugned order dated 13.12.2006 passed by District Inspector of Schools, Kanpur Nagar (Annexure 15) as well as condition of cut-off date imposed by the Government Order dated 28.1.2004 are liable to be quashed and direction be issued to the respondents to permit the petitioner for deposit of Manager's contribution and for payment of the pension with interest till the date of payment.

4. The aforesaid prayer was opposed by learned Standing Counsel who submitted that earlier there was no order or clarification and the query was made by the Directorate of Secondary Education from the Government to pass the order for payment of pension and such clarification and order was issued by the Government on 28.1.2004 in which there is a clear provision that those teachers of Primary Section would be entitled for pension who retired after 28.1.2004. There was also condition that those teachers would be entitled whose contribution of C.P.F./G.P.F. was deposited.

5. Considered the submission of learned Counsel for the parties. There is no dispute that the petitioner was Assistant Teacher who was appointed in the year 1961 and the Primary Section is attached with Intermediate School, hence it is an integral part of the institution which is governed under the provisions of U.P. Intermediate Education Act 1921 and U.P. Act No. 24 of 1971. The Primary Section was also included in the grant-in-aid which was at Serial No. 176 in the Government Order dated 6.9.1989 and the same came in the grant-in-aid w.e.f. 1.10.1989, hence, the teachers were entitled for the retiral benefits including pension in view of the provisions of Rules 1964. According to Rule 3 of the Rules, it shall apply to the permanent employees serving in the State aided institutions of the following categories run either by a local body or by a private management and recognised by a competent authority as such for the purpose of payment of grant-in-aid.

1. Primary Schools;
2. Junior High Schools;
3. Higher Secondary Schools;
4. Degree Colleges;
5. Training Colleges.

According to Rule 4, it was a triple benefit scheme of contributory provident fund insurance and pension.

According to Rule 5(G), employees means a permanently employed person borne on the whole time teaching or non teaching of an aided institution excluding

(a) The inferior staff;

(b) The ministerial staff of the institution maintained by a local body;

And according to Rule 5 (L), institution means an aided school or college referred to in Rule 3.

6. If there was delay in issuing the clarification for payment of pension to the teachers of the primary Section attached with the Intermediate College. There is no fault on behalf of the employee including the petitioner of the recognised and aided institution. The Principal of the College has already sent a communication on 25.3.1996 to the Accounts Officer, Office of the District Inspector of Schools, for enabling deduction towards G.P.F. being deposited towards G.P.F. Account of the petitioner. If there was no deduction towards G.P.F. and group insurance contribution then there is no fault of the petitioner, as recommendation was also made by the College after the college was included in grant-in-aid list. The condition and cut-off date mentioned in the Government Order dated 28.1.2004 is arbitrary and discrimination amongst the teachers who retired before 28.1.2004. The pension is not being claimed or to be provided under the Government Order dated 28.1.2004 but that is only clarification. Merely due to the fault from part of the respondents for deduction from the salary of the petitioner towards G.P.F., etc. and delay in issuing the clarification, it cannot be accepted that the petitioner is not entitled for the pension under Rules 1964, though it was applicable to the Primary teachers as well as teachers of the higher secondary education.

7. In Writ Petition No. 75746 of 2005, Smt. Shanti Solanki v. State of U.P. and Others, the petition was allowed on 6.9.2006 and the petitioner was permitted to deposit the Management's contribution within a period of six weeks and the respondents were directed to extend the benefit of the Government Order to the petitioner within a further period of six weeks and the cut-off dated fixed by the Government Order dated 26.7.2001 was quashed.

8. The Writ Petition No. 17033 of 2012, Lal Chandra Singh v. State of U.P. and Others, was disposed of on 5.4.2012, in terms of the judgment and order dated 6.9.2006 passed in the petition of Smt. Shanti Solanki (supra).

9. In the case of [Smt. Ram Keshi Devi Vs. State of U.P. and Others](#), it was decided that the petitioner was entitled for payment of pension who continued to work for about 30 years out of which 18 years were after 1972 when Basic Shiksha Parishad controlled and managed the institution in question though she was not a trained teacher.

10. Hence, in view of the aforesaid discussion, impugned order dated 13.12.2006 passed by District Inspector of Schools, Kanpur Nagar, respondent No. 5 as well as the condition imposed by Government Order dated 28.1.2004 fixing the cut-off date are hereby quashed. The respondents are directed to permit the petitioner, for deposit of the Management's contribution with interest within a period of two months and after deposit of the contribution, the respondents shall extend the benefit to the petitioner of the Government Order dated 28.1.2004 and Rules 1964 for payment of pension to the petitioner w.e.f. 1.7.1995 within a further period of two months. The petitioner is entitled for payment of the arrears of salary with 12% interest w.e.f. 1.7.1995 till the date of payment. Accordingly, the present petition is hereby allowed. No order as to cost.