

**(2012) 09 AHC CK 0225**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 47847 of 2007

Dr. Santosh Mittal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 25, 2012

**Citation:** (2012) 11 ADJ 335 : (2013) 2 AWC 1168

**Hon'ble Judges:** Arvind Kumar Tripathi, J

**Bench:** Single Bench

**Advocate:** Jitendra Singh, for the Appellant; H.N. Singh, B. Narayan Singh and C.S.C., for the Respondent

**Final Decision:** Allowed

### **Judgement**

Hon'ble Arvind Kumar Tripathi, J.

Rejoinder-affidavit filed today is taken on record.

Heard learned counsel for the petitioner, learned Standing Counsel and perused the record.

The present writ petition has been filed with the prayer to issue a writ of mandamus directing the respondent No. 3 to release the salary of the petitioner from the date of joining i.e. 18.12.1997, not the date of order passed by this Hon'ble Court and direct the respondent No. 3 to modify his order dated 22.12.2006 to the extent to pay petitioner's salary w.e.f. 19.12.1997 in place of 9.3.2006.

The brief facts of the present case is that the institution known as Sri Tika Ram Kanya Inter College, Aligarh, District Aligarh is a recognized institution. After retirement of three lecturers in Hindi, Education and Social Science three posts of lecturer fell vacant. The vacancy of lecturer was substantive vacancy. Thereafter, three Assistant Teachers working in L.T. Grade namely Deo Kumari, Shashi Sharma and Shashi Bala Agarwal were promoted to lecturer grade. On account of promotion of three teachers from the L.T. Grade there was short-term vacancy of the L.T. Grade Teachers. The committee of management communicated this to the authority

concerned. Thereafter, selection committee was constituted and the petitioner was selected as ad hoc Assistant Teacher on short-term vacancy. The papers were forwarded to the D.I.O.S. and the appointment letter was issued on 18.12.1997. However, the approval was refused by the D.I.O.S. on 17.1.1998 with the observation that there was ban on all kinds of appointment hence the committee of management has no jurisdiction to make any direct appointment. Subsequently, almost the identical orders were issued on 19.1.1998 and 15.3.1999 those orders were challenged in the Writ Petition No. 21307 of 1999 and those orders were quashed by this Court on 9.3.2006 with the direction to consider the approval of the petitioner on ad hoc appointment as L.T. Grade teacher on short-term vacancy afresh in accordance with law, preferably, within a period of three months. Thereafter, the matter of the petitioner was considered and approval was granted. However, direction was issued for payment of the salary from 9.3.2006 when the order of the D.I.O.S. refusing the approval was quashed by the High Court. Hence the present petition has been filed.

2. Counsel for the petitioner submitted that petitioner was appointed on a short-term vacancy. The papers were forwarded to the D.I.O.S. on 18.12.1997. The approval was refused on 17.1.1998 on the ground that there was ban on all kinds of appointment by the State Government, which was quashed by the High Court. In view of provision of para 2 of the Removal of Difficulties IIInd Order, 1981 if D.I.O.S. fails to communicate the order regarding approval then it will be deemed that the approval have been given hence the petitioner is entitled for payment of salary from the date of appointment i.e. 18.12.1997.

3. Learned Standing Counsel opposed the aforesaid prayer and submitted that in view of the fact, it is clear that earlier no prior approval was obtained. However, subsequently the matter was considered and approval was refused on 17.1.1998. The High Court quashed the order of refusal passed by the D.I.O.S. by order dated 9.3.2006 and from that date the petitioner is entitled for salary. The impugned order has rightly been passed hence no interference is required. He further submitted that after short-term vacancy converted into substantive vacancy the short-term vacancy ceased to exist in view of the full Bench judgment of this Court in case of Smt. Pramila Mishra Vs. Deputy Director of Education and Others, and the petitioner is not entitled to continue in service from that date.

Counsel for the petitioner further submitted that the petitioner, who was selected in accordance with the procedure, and if there was no appointment of regular selected candidate by Selection Board the petitioner was entitled to continue on the post of Assistant Teacher.

Considered the submission of counsel for the parties. There is no dispute regarding the selection of the petitioner and short-term vacancy. There is no dispute regarding the procedure of selection and there is no averment that there was any irregularity. The approval was refused by the D.I.O.S. merely on the ground that there was ban

on all kinds of appointment by the State Government. However, when it was held by the High Court that the ban by the Government was not applicable for short-term vacancy and order of refusal was quashed by the High Court on 9.3.2006 then the appointment of the petitioner on short-term vacancy for L.T. Grade was liable to be approved. The appointment of the petitioner was under the provisions of U.P. Secondary Education Service Commission (Removal of Difficulties) IIInd Year, 1981 and in view of para 2(III) (i) the D.I.O.S. was required to communicate his decision within seven days from the date of particulars received by him, failing which it will be deemed that the approval have been given. The date is not clear when the papers were received. However, at least the petitioner was entitled from the date of approval. The approval was refused on 17.1.1998. Had there been no refusal on the ground of ban of appointment by the State Government, the approval might have been granted. When the approval has been given by the D.I.O.S. for appointment of the petitioner on short-term vacancy as L.T. Grade Teacher the petitioner is entitled for salary w.e.f. 19.1.1998 when first time approval was refused by the D.I.O.S. As far as the second issue is concerned, that is not a issue raised in the present petition. There is no information by either of the parties that the vacancy of L.T. Grade have been converted into substantive vacancy. Hence no order is required on that point and that has to be considered in accordance with law.

The impugned order for payment of salary w.e.f. 9.3.2006 is hereby set aside and the authority, concerned will consider the payment of salary w.e.f. 17.1.1998. The respondents will also ensure payment of arrears as expeditiously as possible within a reasonable period.

Accordingly, present writ petition is allowed. No order as to cost.