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**(2013) 07 AHC CK 0260**

**Allahabad High Court**

**Case No:** W.A. No. 6322 of 2006

Urmila Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** July 11, 2013

**Acts Referred:**

- Right of Children to Free and Compulsory Education Act, 2009 - Section 3(1), 6(1)(a)

**Citation:** (2013) 139 FLR 318 : (2013) 3 LLJ 623

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

**Bench:** Single Bench

**Advocate:** S.K. Chaubey, for the Appellant; K.S. Shukla and P.D. Tripathi, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Arvind Kumar Tripathi, J.

The present writ petition has been filed by the petitioner, who is a female attendant (Dai) with the prayer to issue writ of mandamus directing the respondents to regularise the services of the petitioner as IVth class employee (Dai) in Primary School (East) Sirsa, District Allahabad with further prayer to pay differences of arrears of salary since July, 1989 to June, 2002 and to pay the arrears of salary since July, 2002 till date. Heard learned counsel for the parties and perused the record.

2. Learned counsel for the petitioner submitted that the petitioner was engaged as Dai (class-IV) employee in Primary School (East), Sirsa, District Allahabad on 13.12.1981. Initially salary was as Rs. 20 per month and thereafter, since 1983 she was paid as Rs. 30 per month. From 1988 to June 2002 salary has been paid @ 150 per month and from July 2002 the salary has been stopped without any reason. In the year 1988 the petitioner filed an application u/s 33-C-2 of the U.P. Industrial Dispute Act, 1947 for the relief for payment of differences of salary on the post held

by her, which was allowed by the Presiding Officer, Labour Court by order dated 2.6.1989 directing the respondents to pay difference of salary to the petitioner within a period of three months, which was to the tune of Rs. 48,609/-, annexure 1 to the writ petition. When the amount was not paid then an application u/s 6(H)-I read with Rule 33 of the U.P. Industrial Dispute Act, 1947 was moved for recovery of the amount awarded by the labour court. The recovery certificate was issued. After the recovery certificate was issued a restoration application was filed on behalf of the respondent No. 2, District Basic Education Officer, Allahabad and he denied appointment of the petitioner. The Presiding Officer, Labour Court, by order dated 29.8.2003 rejected the restoration on merit after considering the objection raised by respondent No. 2. The aforesaid order was not challenged before any competent court hence the same has become final. Subsequently, from July, 2002 the respondent No. 2, stopped payment even minimum payment of salary, to the petitioner i.e. Rs. 150/- per month though she continued to work on her post. He also submitted that payment of salary to the petitioner was made through Bank since 16.8.1983. As per government order dated 7.10.1998 the salary to the class IV employees, peon/dai, has been revised by the government. The pay scale from Rs. 740 to 940 was revised to 2550-3200. The petitioner is working as Dai since 1981 though any written appointment letter was not issued. She has rendered the service for a long period without any complaint hence petitioner is entitled to be regularised and the direction be issued for payment of differences as awarded by the labour court as well as full salary, which was revised, in view of the government order dated 7.10.1998.

3. The prayer was opposed by the counsel for the B.S.A. and State of U.P. It was submitted that the government of U.P. has made provision for engagement of Safai Wala, Schoolmate (Dai) for the part time and for limited work, in the primary school, run and controlled by the Basic Shiksha Pari shad, on fixed wages basis. The work of the sweeper is only to clean the school before it is opened and started for teaching and no further work is taken from him and the work of schoolmata (dai) was to bring the girls from their home to school, thereafter, from school to their home. Hence their work is purely casual in nature. He also submitted that earlier the primary schools were situated at a considerable distance and the people were not interested to send girls to school, however, at present the schools are situated within about one km. distance and likewise the students even the girls are getting admission in the school, who themselves come to school and go back to their houses on management by their parents, hence there is no need to engage the school Dai for bringing the girls students from houses and to send them to their houses from schools. About 50% female teachers are being appointed in the basic schools and free books are being supplied to the students. Apart from that several schemes have been started to provide education to the girls and females. The Dai, who was already working, limited works are being taken from them. They are being paid Rs. 150 per month in view of the government order dated 27.1.1997 by which

the remuneration to the Safai Karmchari was fixed hence the same was being paid to the petitioner. The learned counsel for the basic education officer further submitted that the writ petition No. 491/06 and 24757/01 were filed by the casual workers, which were dismissed and the special appeal No. 902/01 was also dismissed by this Court. The petitioner was never appointed by any authority. After death of her mother-in-law on 13.12.1981 without following any procedure of appointment, she was allowed to work by the then Pradhanadhyapika (Head Mistress) Purvi Basic Primary School, Sirsa town area, Block Uruva Allahabad. Neither there was any advertisement nor any procedure was followed for appointment of the petitioner. The appointing authority of class IV employees is District Basic Shiksha Adhikari. The State of U.P. by government order dated 22.4.2003 amended the earlier provisions regarding casual workers and provided that they may not be paid wages as pay but they would be paid honorarium from the contingency fund and accordingly, the earlier government order dated 22.2.1982 and 27.1.1987 were amended hence it is clear that she illegally obtained her appointment. She started working in collusion with headmistress and since it was illegal appointment hence rightly the wages was stopped. She was never paid salary but the payment of wages was from contingency fund. He also submitted that from perusal of copy of pass book, it appears that it belongs to some other Urmila Devi, who is wife of Gaya Prasad. The name of husband of petitioner is Gyan Singh Chaudhary (Nishad). Neither the petitioner was legally appointed nor there is provision to regularise her services and for payment of regular salary hence she is not entitled for relief sought for and as such the present petition is liable to be dismissed.

4. On 2.2.2006 the detailed order was passed by this Court directing the respondent No. 1, Secretary Education (Basic) to file a comprehensive affidavit in view of the fact and observation, considering the requirement to enhance the salary in view of the minimum wages, according to the norms of the State for ensuring a better education system at the basic level throughout the State. The observation by the court was that the government order dated 20.2.1982 and 27.1.1997 do not reflect any deliberation by the government, which may indicate on overriding public interest so as to completely abolish and do away with requirement of such employees in the Primary and Junior High School throughout the State. On the other hand in the aided junior high school, high school and intermediate and in the government run high school intermediate, there are a provision for appointment of class IV employees, whose salary are being paid from the State funds. The respondents No. 2 and 3 were directed to file the counter affidavit in the light of the observation. Supplementary counter affidavit was filed by Mr. Sunil Kumar, Principal Secretary, Basic Education, Government of U.P., Lucknow stating therein that under the Right of Children to Free and Compulsory Education Act, 2009, there is no provision requiring the State Government to appoint a class IV employee in the primary school run by the board of basic education and local authorities. Hence

neither there is any sanction of class IV employees in primary school nor class IV employees are posted in the primary school run by the basic education or local authorities. It was further stated that there is no private primary schools recognized to run the classes from I to Vth, which are aided institution run by the Committee of Management. Hence there is no question of sanction of class IV employees in such institution. According to government order dated 21.5.1979 the primary sections (Class Ist to 5th) attached to girls junior high school for sanctioning of grant will be deemed to be ineligible after the date of government order dated 25.3.1975 and the primary classes, which was attached prior to that date will be deemed to be eligible for the sanction of grant. The post of class IV employees sanctioned in every non government aided junior high school run by the management, which is clear from the government order dated 14.9.1990. No policy has been issued by the State Government to take and recognize primary schools, in grant-in-aid list and there is no provision of budget for the same. Hence class IV employees are not being paid salary in such institution from the State exchequer. It has further been stated that there is no provision to appoint a class IV employees in the primary school run by the board of basic education U.P. but it was provided that if class IV employees were already working in the upper primary school run by the board then can be filled up only by compassionate appointment. The school Management Committee constituted by the school level ensures to discharge responsibility leveled upon him by Right and compulsory Education Act, 2009. Section 6(1)(a) of the Right of Children to Free and Compulsory Education Act, 2009 provides that the school has to be established by the appropriate government or the local authorities shall be in respect of children in class I to V a school within a walking distance of one km. of the neighbourhood. According to government order dated 28.2.1982 and 27.1.1997 in primary school situated in urban/rural areas, where there were toilet facilities and for cleaning the same part time Safai Karmi are working and such part time Safai Karmi already working ought to be paid Rs. 150 per month as wages. Paragraph 2 of the government order dated 27.1.1997 says that the services of some female named as schoolmata (Dai), Khadina etc. are taken to bring the girls students from their house to primary and junior high schools and to send their houses and the wages to be paid to such part time worker was fixed Rs. 150/- per month and now it has been enhance to Rs. 450/- per month. It was further decided that after those part time workers completed 60 years of age, their services may be discharged, against those vacancies no new engagement will be done because their services are not required. In view of the government order dated 25.10.2010 as it has been provided in the aforesaid government order that the Safai Karmi appointed in the revenue villagers will do the work of cleaning outside and inside of the primary/junior high school run by the Board of Basic Education, U.P. also. According to section 3(1) of the Act, 2009 every child of the age of 6 to 14 years shall have a right to free and compulsory education in neighbourhood school till completion of elementary education. According to section 2(C) a "child" means a male or female child of the age of 6 to 14 years. There is no pre-nursery. Normally classes in the primary school run by the

board or Local Authorities. Hence there is no requirement to engage a schoolmata (dai) in the school. Since a student of less than 6 years of age are not admitted in the primary school and the primary school has to be established within a walking distance of one km. of the neighbourhood hence services of schoolmata or dai to bring the girls students from their houses to primary/junior high school and to send them to their houses are not required. In view of the facts and circumstances, the present writ petition being devoid of merit is liable to be dismissed.

5. Learned counsel for the petitioner further submitted that in view of the judgment of this Court in case of [Awadhrani \(Smt.\) Vs. Director of Education \(Basic\) and Others](#), part time or temporary employees be treated as regular class IV employees and they will be entitled for time scale as well as arrears with interest. It was observed by this Court that in employment such concept of part time employees was not known. The respondents being State it is not open to appoint part time employee. Hence petitioner is also entitled to be regularised, who is working for a such long period.

6. Considered the submission of learned counsel for the parties. In view of the fact, admittedly the petitioner was appointed by oral order of the then Head Mistress (Pradhanadhyapika) of the primary school after death of her mother-in-law, who was working as Dai in the institution. No procedure for appointment was followed. She was not appointed by the appointing authority/Deputy Basic Education Officer, however, the wages were being paid to her since she was providing her part time services in the institution. Those Dai/Schoolmata were already working were allotted to work, in view of the Government Order dated 27.1.1997 and the wages were enhanced to Rs. 150/- from Rs. 30/-. It has been informed that now the fixed remuneration has further been enhanced to Rs. 450/- per month and those schoolmata/dai, who were working will be allowed to work till 60 years of age and there would be no new engagement. Since the primary schools has been established or has to be established within a working distance of one km. of the neighbourhood and childrens from the age of 6 to 14 years are being admitted. The children below 6 years of age are not being admitted in the primary school run by the district board or by the local authorities hence it was decided that there was no requirement of schoolmata or dai to bring girls students from their houses to school and to send them to their houses from the school. However, it has also been decided that the Safai Karmi, who are appointed in the local authorities will do the work of cleaning outside and inside of the primary school run by the board of basic education U.P. Also.

7. According to counter affidavit filed on behalf of the respondents No. 1 to 3, it has been decided that appointment of any permanent class IV employees are not required in the primary school run by the district board or local authorities to whom the payment has to be made from the State funds. However, the State Government is required to re-consider this aspect that for the purposes of maintaining toilet

facilities for children, for opening and cleaning the school before and after classes, for closing school and to look after the children to provide water at least one class IV employee/female employee is required. If in the junior high school, high school and intermediate colleges services of the class IV employees are required and they are being appointed then it requires to be considered at the level of State Government for providing the services of at least one class IV employee/female attendant at the primary school and junior high school run by the State Government, District Board or Local Authorities. The Secretary (Basic) U.P. is directed to consider the matter afresh and place this matter before the Minister (Basic Education) U.P. and the Chief Minister, U.P.

8. As far as the case of Awadhrani (Smt.) v. Director of Education (Basic) and others (supra) is concerned in that case petitioner was already working in the primary school run by the local body, which was taken over by the Basic Education Board and thereafter, her services stood transferred to the board. However, the regular pay scale was not being paid on the ground that she was part time worker though it was found that in view of the nature of work of the petitioner, the working hours of petitioner starts much before schools open and long after the school closed, who are not only required to look after the children but also to clean and maintain the school. Hence the observation was that the petitioner could not be treated as part time employee and as such the direction was issued to treat as a regular class IV employees and for payment of time scale. Hence that case is not applicable in the present case. Now the wages has already been enhanced from Rs. 150 to Rs. 450 hence in view of the facts and circumstances the respondents are directed to ensure payment of wages, as per government policy, to the petitioner, in view of the government order, till she attains the age of 60 years. If the back wages has not been paid the respondents will ensure payment of the back wages as per government policy in view of the government orders within two months, after furnishing the certified copy of this order and will continue to make payment till she attains age of 60 years. Accordingly, present writ petition is allowed. No order as to costs.