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(2002) 2 UPLBEC 1921

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 2646 of 2002

Awadhrani (Smt.)	APPELLANT
Vs	
Director of Education (Basic) and Others	RESPONDENT

Date of Decision: Jan. 24, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Uttar Pradesh Basic Education Act, 1972 - Section 9

Citation: (2002) 2 UPLBEC 1921

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Virendra Kumar, for the Appellant; P.K. Sharma, for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani, J.
This writ petition has been filed for quashing the order dated 18.4.2001 passed by Director of Education (Basic), UP., Lucknow rejecting petitioner"s representation for grant of regular pay-scale as Class-IV employee in Basic School, and for a writ of mandamus commanding the respondents to pay to the petitioner regular salary in the pay-scale of Class-IV employee from the date of absorption i.e. 23.3.1982 with arrears till date with interest of 18% per annum.

2. Heard Sri Virendra Kumar appearing for the petitioner, Sri P.K. Sharma for the respondent No. 3 and learned Standing Counsel.

3. Petitioner was appointed in the year 1968 as Part Time Peon in Primary Pathshala, Bhadrekhi, Tahsil-Kalpi. District-Jalaun on consolidated salary. It was initially fixed at Rs 15 p.m.

UP. Basic Education Act, 1972 came into force on 17.8.1972 providing for constitution of Basic Education Board consisting of an Ex-Officio Director to be Chairman two persons to be nominated the State Government from amongst the Chairman of the Zila Parishad, one person to be nominated by the State Government from amongst the Nagar Pramukh, one person to be nominated by the State Government from amongst the Presidents of the Municipal Board; Secretary to the State Government in the Finance Department (Ex-Officio), Principal State Institute of Education, (Ex-officio), Secretary Board of High School and Intermediate Education, Allahabad Ex-Offcio. President of Uttar Pradesh, Prathmik Shiksha Sangh Ex-officio, two educationist nominated by the State Government an officer not below the rank of Deputy Director of Education, to be nominated by the State Government to be Member Secretary. "Basic education" was defined as education up to the eighth class imparted in schools other than High Schools or Intermediate Colleges. The function of the Board was to prescribe the course of instruction and books for basic education and teacher"s training therefor, to conduct the Junior High School and basic training certificate examination, to lay down by general or special orders in that behalf, norms relating to the establishment of institutions by local bodies and to superintend the Shiksha Samiti in respect of the administration of institutions, to take over management of all basic schools which before the appointed day belonging to any local body etc. Section 7 provides for functions of the Board and subject to any general or special order of the State Government the Board has power subject to the provisions of the Act to spend such sum as it may think fit on objects or for purposes authorised by the Act. Section 13 provides that the Board shall carry out such direction as may be issued to it from time to time by the State Government for efficient administration and in case of any dispute between the Board and the State Government or between the Board and Local Body the decision of the State Government shall be final and binding on the Board or Local Body as the case may be. The Board or Local Body is required to furnish to the State Government such reports, returns and other information as the State Government may from time to time require for the purposes of the Act. The Basic Education Board as such is an instrumentality of the State Government and is wholly owned and controlled by the State Government to carry out the object and purpose to impart basic education in the State of Uttar Pradesh.

4. Section 9 which is relevant for the decision of this writ petition is quoted below :

"9. Transfer of employees.-(1) On and from the appointed day every teacher, officer and other employees serving under a local body exclusively in connection in basic schools (including any supervisory or inspecting staff) immediately before the said day shall be transferred to an become a teacher, officer or other employee of the Board and shall hold office by the same tenure, at the same remuneration and upon the same other terms and conditions of service as he would have held the same if the Board had not been constituted and shall continue to do so unless and until such tenure, remuneration and other terms and conditions are (altered by the rules made by the State Government in that behalf) :

Provided that any service rendered under the local body by any such teacher, officer or other employee before the appointed day shall be deemed to be service rendered under the Board :

Provided further that the Board may employ and such teacher, officer or other employee in the discharge of such functions under this Act as it may think proper and every such teacher, officer or other employee shall discharge those functions accordingly.

(2) Nothing in sub-section (1) shall apply to any teacher, officer or other employee, who by notice in writing in that behalf to the State Government within a period of two months from the appointed day intimates his option for not becoming an employee of the Board and where any employee gives such notice, his service under the local body-shall stand determined with effect from the appointed day and he shall be entitled to compensation from the local body, which shall be as follows :

(a) in the case of a permanent employee, a sum equivalent to his salary (including all allowances) for a period of three months or for the remaining period of his service, which ever is less;

(b) in the case of a temporary employee, a sum equivalent to his salary (including all allowances) for one month or for the remaining period of his service, whichever is less.

(3) Notwithstanding anything in sub-section (1), any person referred to therein, who becomes an employee of the Board shall be liable to be transferred from the school or from the local area in which he was employed immediately before the appointed day to any other school or institution belonging to Board of, as the case may be, to any other local area at the same remuneration and on the same other terms and conditions of service as governed him immediately before such transfer (until such tenure, remuneration and other terms and conditions are altered by the rules referred to in sub-section (1) :

Provided that no teacher of a basic school (which before the appointed day belonged to a local body) shall be transferred to a basic school belonging to any other local body except with his consent.

(4) If any question arises whether the services of any person stand transferred to the Board under sub-section (1) or as to the remuneration and other terms and conditions of service of such employee immediately before the appointed day, it shall be decided by the State Government whose decision shall be final.

(5) Any provident fund maintained by any local body for the employees referred to in sub-section (1) along with all contributions of such employees as well as of the local body which ought to have been but have not been deposited therein before the appointed day, shall be transferred by the local body to the Board, which shall hold it in trust for the employees concerned in accordance with the terms and conditions governing such fund.

(6) The transfer of services of any employee to the Board under sub-section (1) shall not entitle any such employee to any compensation and no such claim shall be entertained by any Court, Tribunal or Authority."

5. By order dated 23.3.1982 passed by District Basic Education Officer, Jalaun at Orai, 75 employees, working in Basic Schools were adjusted in the schools in the same district vide G.O. dated 14.6.1978 on a fixed pay and they were required to take over charge in fixed pay of Rs. 30/- p.m. These petitioner joined with effect from 30.3.1982 and are being paid presently Rs. 165/-p.m. as fixed salary. In Writ Petition No. 23558 of 2000 this Court by its final order dated 22.5.2000 required the Director of Education (Basic), U.P., Lucknow to pass appropriate orders on the representation filed by the petitioner for payment of salary in the minimum pay-scale applicable to any Class-IV employee working under State Government. The said representation has been decided by the Director of Education (Basic), UP., Lucknow by means of order dated 18.4.2001.

6. The basic facts required for decision have been given in the impugned order, and as such with the consent of the parties this writ petition is being disposed of finally at the admission stage under Rules of the Court.

7. As stated above, the Primary Schools in rural and city area, managed and run by the Local Bodies, Zila Parishad, Nagar Mahapalika, Nagar Palika came under the control and management of the Basic Education Board under U.P. Basic Education Act, 1972 with effect from the date it was constituted on 25.7.1972.

The services of all the teachers and other employees were transferred to the Basic Education Board.

8. At the time of transfer of Class-IV employees, the Board received the services of 11,668 employees in regular pay-scale 6,798 employees in fixed pay-scale and some part time employees whose number has not been given in the impugned order. By the G.O. dated 14.6.1978 a direction was issued that Class-IV employees in regular pay-scale should be adjusted towards posts in the regular pay-scale but the said benefit was not given to part time employees. By G.O. dated 20.2.1982, the fixed pay for part time employees were fixed as follows :

(i)	For cleaning primary school	Rs. 15/-
(ii)	For cleaning the up-graded primary school	Rs. 30/-
(iii)	For bringing children from school and taking them back to their home	3 Rs. 30/-

9. The impugned order states that these part time employees are not working on full time basis and are liable to work for only one or two hours in school. Government Order dated 28.2.1992 provided that those part time employees who are not prepared to work on the aforesaid fix pay-scale may be immediately discharged. Government Order dated 27.1.1997 increased the wages of these part time employees to Rs. 150/- p.m. The

impugned order concludes that since these employees are not working on full time basis and that apart from cleaning the school, and for bringing children to the schools and takes them back these employees do not perform any other work, confined only to few hours, they cannot be treated as full time employee. Posts have not been sanctioned to these employees. The representation dated 2.6.2000 was consequently rejected.

10. The preamble of the Constitution of India dedicated the constitution to the people of India to constitute India into a sovereign socialist, secular, democratic republic and to secure to all its citizens; justice, social, economic and political, liberty of thought, expression belie, faith and worship equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. Article 14 removes equality of all kinds and Article 16 provides a guarantee of equality in employment. This equality is not confined only to the opportunity for being appointed, but also for all conditions of employment including the emoluments received as reward of labour or service rendered.

11. Article 23 prohibits traffic in human beings and Begar, is quoted as below :

"(1) Traffic in human beings and Begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

12. Begar means Labour or service exacted by Government or a person in power without giving remuneration for it.

Article 23 has to be read with directives in Articles 39(c), 41, 42 providing that the health and strength of workers, men and women, and the tender age of children arc not to be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 mandates the State within the limits of its economic capacity and development to make effective provisions for securing the right to work to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 mandates, that the State shall make provisions for securing just and humane conditions of work and for maternity relief.

In case of Private employment The Minimum Wages Act, 1948, provides for fixation of statutory minimum wages for employment covered by schedule to the Act. Minimum wage is to be fixed with reference to the cost of living index number and the Wages has been defined under the Act as all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, expressed or implied, were fulfilled, be payable to a person employed in respect of his employment or of work

done in such employment. These minimum wages have also been made applicable to employment in primary educational institutions provided in Item 58 to Schedule I by U.P. Gazette dated 18.8.1983 (para 4) (gha) Est P-2 (17). The State Government is obliged by the aforesaid provisions of the Constitution of India and Minimum Wages Act, 1948 to provide remuneration to its employees, having regard to the nature of work, a minimum pay, which is commensurate with cost of living index number. The Pay Commissions constituted by Governments from time to time to equate the wages with the cost of living index number and for this purpose a present emolument and wages recommended by Fifth Pay Commission have been implemented to the State Government Employees in the State of U.P. So far as the Primary Schools are concerned, recommendations of Fourth Pay Commission are applicable and that looking into the burden on the State Exchequer, recommendation of Fifth Pay Commission are still to be implemented in primary and secondary schools.

13. In employment under State a concept of part time employee is not known. The respondents have not been above to point out any rule or service condition which provide for part time employment under the State. Taking into consideration the present case on the basis of the fact enumerated in the impugned order, the Court finds that the nature of the employment of the petitioner is to look after small children in primary schools. The petitioner is required to bring the children from their respective homes to the school and to take them back after the school hours. Small and tender children are put under the care of the petitioner named as "School Mata". The nature of these duties by themselves suggest that working hours of the petitioner starts much before schools opens, and long after the school closes. The petitioner is not only required to lookafter the children but also to maintaining cleanliness in the school. It is rather surprising that all other employees who may devote less hours, are being termed as full time employees and that the petitioner is being treated as a part time employee. The nature of duties performed by the petitioner cannot be treated as part time employment. The work involves regularity, responsibility and same, if not more working hours as regular employees.

14. The U.P. Recognised Basic Sohools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984, made in exercise of powers under sub-section (1) of Section 19 of the U.P. Education Act, 1972, provide for appointment, minimum qualification, eligibility, age, nationality, reservation, character and martial status etc. for employment in Basic Schools. For the purpose of Payment of Salary Rule 18 provides that the scale of pay admissible to person appointed to any post under these rules whether on substantive or officiating capacity or on temporary in nature shall be such as were determined by the State Government. Rule 19 provides for increment, confirmation or deemed to have been confirmed employee at the expiration of the period of probation. Rule 20 provides superannuation at the age of 58 years for clerks and 60 years for Group-D employees. Rules 21 to 24 provide for termination of service, leave, disciplinary proceedings and temporary appointment.

15. The petitioner along with other employees have been absorbed as employees of the Basic Education Board under the provisions of Section 9 of the Act, in 1982, and services rendered by her under the local body shall be deemed to service rendered by her with the Board. The question of remuneration was to be decided by the State Government. From the nature of the duties and responsibilities performed by the petitioner, her employment can neither be termed as part time or temporary. The petitioner and similarly situate employees, were working with the Zila Parishad, Municipal Corporation and other local bodies and after the establishment of Basic Education Board, as the nature of duties and responsibilities of the petitioner and other similarly situated employees arc not inferior to the nature of duties and responsibilities to all other employees who have been described as employees on regular pay-scale arc not different, it is declared that the petitioners are also regular Class IV employees working under the Basic Education Board and that the payment of a fixed pay-scale at Rs. 165/- to these employees is arbitrary, discriminatory" and violative of Articles 14 and 16 of the Constitution of India. Since these employees belongs to poor section of the society who could not have been in a position to ask for high wages and were under threat to loose the employment, the work taken from them @ Rs. 30/- p.m. from 1982 to 1997, and thereafter @ Rs. 150/- p.m.amounts to "Begar" which is prohibited under Article 23 of the Constitution of India. The State Government cannot be permitted to exact work from its employees for wages which are less than minimum wages, and in case the State Government forces labour at such ridiculously low rate, on which no humane being can maintain himself or even exist, the exaction of work cannot be treated other than a exploitation of humane labour, violating basic human rights and right to work with dignity violating Article 21 of the Constitution of India.

16. In People"s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , the Supreme Court explained and expanded the meaning of the term "Begar" and held in the context of deduction of Minimum Wages from the Labourers employed by private employers in Asiad Projects as "forced labour" relying upon universal declaration of human rights, 1930 and opted convention No. 29 on International Labour Organisation laying down that every member of the ILO which ratifies this convention shall suppress the use of forced or compulsory labour in all its form and further elaboration in convention No. 105 by International Labour Organization in 1957, expanding the definition of forced labour and further upon Article 4 of European Convention of Human Rights and Article 8 of International Covenant on civil and political rights. The Apex Court treated Article 23 to be in the same strain and a prohibition against forced labour in whatsoever form it may found. The Court depricated the practice of economically powerful section of community to exploit the poor and weaker sections by resorting to other forms of forced labour and regarded as a pernicious practice sufficient to attract the condemnation of Article 21. It found that Begar does not only mean labour without remuneration but also includes other similar forms, namely. where a workman is paid a lessor amount than minimum wages. Ordinarily no one would willing to supply labour or service to any other for less than minimum wages, when he known that under the law he is entitled to get minimum wages for the labour or service provided by him. It may, therefore, be legitimately presumed that

when the persons provides labour or service to another against receipt of remuneration which is less than the minimum wages, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled to receive and thus processed the forced labour which is prohibited under Article 23 of the Constitution of India. In Sanjit Roy Vs. State of Rajasthan, , the Supreme Court declared the payment of lessor wages than the prescribed Minimum Wages Act, to workers employed on relief work undertaken in drought and famine affected areas to operate against Article 14 of the Constiution of India and held that the rights of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. In Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , the Apex Court directed its attention on the bonded labour and held that whenever it is shown that a labour is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour. The employment in Twenty-First Century under the State Government for a sum of Rs. 165/- p.m., amount to force labour which is not permissible in law.

17. In the aforesaid circumstances, the writ petition is allowed. The impugned order dated 18.4.2001 passed by the Director of Education (Basic), UP, Allahabad is quashed, and that it is provided that the petitioner shall be treated as a regular Class-IV employee, and shall be put in the time scale of pay payable to the regular Class-IV employees working in primary schools under Basic Education Board. She shall be paid difference of pay between the fixed pay drawn by her and the regular pay-scales along with interest at bank rates since her absorption w.e.f 23.3.1982 and shall be continued to be paid regular pay-scale in the time scale payable to a Class-IV employees. The mandamus will be carried out within a period of four months. In the facts and circumstances of the case the costs of the petition are quantified at Rs.5.000/-.