
Chaman Kumar and others Vs State of U.P. and others

Special Appeal No. 1469 of 2011

Court: ALLAHABAD HIGH COURT

Date of Decision: Feb. 4, 2016

Citation: (2016) 4 ADJ 203 : (2017) 1 AILLJ 231 : (2016) 3 AllWC 2701 : (2016) 116 ALR 343

Hon'ble Judges: Rakesh Tiwari; Shashi Kant, JJ.

Bench: Division Bench

Advocate: Sunil Kumar Srivastava and Ashok Khare, Advocates, for the Appellant

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J. - Heard Sri Sunil Kumar Srivastava, learned counsel for the appellant and learned Standing Counsel for the respondents.

2. This special appeal is preferred against judgment and order dated 24.5.2011 passed by Writ Court in Writ - A No. 29222 of 2011 (Chaman

Kumar and Ors. v. State of U.P. and Ors.) whereby the writ petition filed by the petitioners-appellants has been dismissed.

3. The order impugned is assailed on the grounds that the Writ Court has failed to appreciate the facts pertaining to the case that petitioners-

appellants have been continuously working till date; that controversy with regard to non-payment of salary to members of staff of the institution has

now settled by order passed by Joint Director of Education dated 29.03.2011, sanctioning payment of salary to four other identically

circumstanced teachers of the institution. By his order the Joint Director of Education has upheld the order of approval dated 25.07.1997 passed

by District Inspector of Schools as valid, finding that the order rejecting claim of the petitioners-appellants for receiving salary from Government

Grant passed in the year 2005 is based upon an objection with regard to according approval to the appointment of the petitioners-appellants vide

order dated 25.07.1997 passed by District Inspector of Schools. It is stated that in this view, petitioners-appellants are also entitled to get their

salary from Government grant in the light of the aforesaid order dated 29.03.2011 where under order of approval dated 25.07.1997 has been held

valid.

4. It is contended by learned counsel for the appellant that even observation of learned Single Judge in respect of not challenging of order passed

long back in the year 2005 rejecting claim of the petitioners, as contained in the impugned judgment is assumed to be correct even then learned

Single Judge has failed to take into consideration that Joint Director of Education in his order dated 29.03.2011, sanctioning payment of salary to

four other teachers, holding order dated 25.07.1997 passed by District Inspector of Schools valid, has furnished a fresh cause of action to the

petitioners-appellants to approach this Court because the petitioners-appellants are still working, therefore, they are entitled to receive salary from

State Exchequer because aforesaid order of approval dated 25.07.1997 passed by District Inspector of Schools is found valid and now there is

no impediment for the authority concerned not to make payment of their salary from State Exchequer.

5. From perusal of judgment it is apparent that the Writ Court had noted the fact that controversy pertains to non-payment of salary to the

petitioners-appellants and other member of the staff, which was being processed at different levels; that in pursuance of the order passed by the

Chief Secretary, Director of Education vide order dated 29.9.2008 had constituted a three member committee to finalise sanction of payment of

salary of the teacher and staff of the Govind Ballabh Pant Uchchattar Madhyamik Vidyalaya Sahpur, Tigari Moradabad. The Committee appears

to have submitted its report on 22.12.2008 upon considering the fact and examining the matter. The Court took notice of case of the present

petitioners-appellants and their arguments thus :

It is to be taken note of that the case of the present petitioners was not considered by the said committee since their claim for payment of

salary had already been rejected earlier. The case of the other employees of the institution for payment of salary was also rejected by the

committee. The report of the committee was subject matter of challenge before this Court by four employees of the institution namely,

Ashok Kumar, Smt. Priti Lala, Hridesh Kumar and Hari Shanker in writ petition no. 17277 of 2009 which was allowed by this Court vide

order dated 20.9.2010 and the Regional Committee was directed to reconsider the matter after providing opportunity of hearing to anyone

of the petitioner of the said writ petition whom other petitioners may authorise to represent their claim. In pursuance of the order of this

Court dated 20.9.2010 the Regional Level Committee again considered their case and vide order dated 29.3.2011 granted sanction for

payment of salary to them.

It is contended by learned counsel for the petitioners that respondents authorities have acted with material discrimination and in arbitrary

manner in declining payment of salary to the petitioners from Government grant while identically situated another set of four employees was

accorded approval. It is further submitted that the claim of the petitioners by the committee constituted under the orders of the Chief

Secretary erroneously excluded consideration of the petitioners' claim on the ground that the same had already been rejected earlier.

6. Upon consideration, the Court has dismissed the writ petition holding that :

The argument advanced on behalf of the petitioners is totally misconceived. The claim of the petitioners was considered by the Joint

Director of Education in pursuance of the order passed by this Court on their writ petition and the same was rejected as long back as in

2005. Petitioners never challenged the same and allowed it attain finality. It is only after the claim of other employees of the institution have

been allowed they have approached this Court after six years. Once their claim was rejected the committee constituted under the orders of

the Chief Secretary to consider the case of other employees of the institution rightly excluded the petitioners from consideration. The order

passed against the petitioners in the year 2005 having attained finality it is too late in the day to challenge the same. Further though an

averment has been made in the writ petition that the petitioners are continuously working and discharging their duties till date but no material

has been brought on record to substantiate the allegation and in the absence of any such material, it is difficult to believe that the petitioners

are still working for such a long time without payment of any salary.

From the fact and circumstances what follows is, the present writ petition has been filed only after the petitioners found that the claim of

other employees of the institution for payment of salary was allowed. Having failed to challenge the orders passed against them and the same

attained finality and now after six years writ of mandamus as claimed in the petition, on the ground that sanction of payment to other

employees has been accorded, is not liable to be issued.

In view of aforesaid facts and discussions, the writ petition is devoid of any merits and accordingly stands dismissed in limine.

7. A perusal of the impugned judgment shows that no material had been brought on record by the petitioners-appellants to substantiate their

allegations that he had been working for very long time and that too without any wages as such the case of the petitioners-appellants was rightly

disbelieved.

8. Though counsel for the petitioners-appellants has placed reliance upon Annexure 11 to show that the post on which he was appointed was a

sanctioned post yet this appears to be incorrect in view of the judgment dated 20.09.2010 rendered by this Court in Civil Misc. Writ Petition

No.17277 of 2009 -Ashok Kumar and others v. State of U.P. and Ors., appended as Annexure 21 to the writ petition along with appeal, which

reads :

In the present case petitioners have approached this Court questioning the validity of the decision dated 22.12.2008 communicated by

Regional Joint Director of Education, Moradabad Region Moradabad wherein claim of the petitioners have been rejected for ensuring

payment of salary to them as Assistant Teacher in L.T. Grade at Govind Ballabh Pant Uchchattar Madhayamik Vidyalaya, Sahpur, Tigri

Moradabad. Petitioner's claim that they have been validly appointed as Assistant Teachers in L.T. Grade in the aforesaid institution. Said

institution has also included in the grant-in-aid list of the State Government and the provision of U.P. Act 24 of 1971 has been made

applicable, petitioners submit that they are also entitled to get their salary under the aforesaid provision. Petitioners have claimed that their

name have been forwarded in the Manager's return has and have also mentioned that their appointments has been duly approved on

25.07.1997 but in spite of the same salary has not been ensured.

Regional Level Committee constituted under Government Order dated 19.12.2000 in its meeting dated 22.12.2008 has considered the

matter and has recorded finding that copy of approval dated 25.07.1997 is not at all recorded in the dispatch register maintained in the

office of District Inspector of Schools, Moradabad, and appointments have not been validly made as per the provisions U.P. Act No. II of

1921, in such a situation and in this background no order could be passed in respect of payment of salary of the petitioner.

Petitioners" in the present writ petition have proceeded to mention that there are ten post of Assistant Teacher in C.T. Grade in the institution and only six incumbents are being paid their salary and qua remaining posts no payment whatsoever has been ensured. In respect

of approval dated 25.07.1997 petitioners submit that finding which has been recorded that same is not on record is incorrect and petitioners

submit that they have already requested to the District Inspector of Schools for supplying of certified copy of the dispatch register by moving

applications dated 07.01.2009 and 24.01.2009 but same has not at all been supplied. Petitioners in paragraphs-41, 42,43 and 44 have

proceeded to mention that till date no information has been furnished under Right to Information Act, 2005. Petitioners further submit that

approval order dated 25.07.1997 is in existence on the record.

In the present case entire foundation and basis for passing of the order is absence of entry of letter dated 25.07.1997 in the dispatch register

and appointment being contrary to U.P. Act No. II of 1921.

Once petitioners are contending before this Court that order of approval dated 25.07.1997 is existence on dispatch register as has been

requested in the direction and are also contending before this Court that appointment has been made in accordance with law and as in the

present case accepted position is that order has been passed without providing opportunity to the petitioners, as such order passed by

Regional Level Committee dated 22.12.2008 is hereby quashed and set aside. Regional Level Committee is directed to reconsider the

matter after providing opportunity of hearing to any one of the petitioner whom petitioners authorise to represent their claim. Needless to say

that reasoned decision shall be taken on the same within three months from the date of presentation of certified copy of this order.

With the above direction present writ petition is allowed and disposed of.

No order as to cost.

9. The petitioners-appellants had filed writ petition praying for following relief :

(1) issue a writ, order or direction of suitable nature commanding the respondents not to interfere in the working of the petitioners as

assistant teacher in L.T. Grade in Govind Ballabh Pant Uchchatar Madhyamik Vidyalaya, Sahpur, Tigari, Moradabad and to pay the

petitioners their regular monthly salary from Government grant regularly every month ignoring the orders dated 8.4.2005 and 4.4.2005

passed by the Joint Director of Education, Moradabad (Annexure Nos.17-A and 17-B to the writ petition) or alternatively if it is so necessary to quash the said orders.

(2) issue a writ, order or direction of suitable nature commanding the respondents to sanction payment of salary to the petitioners from

Government grant in consonance with the order dated 29.3.2011 issued from the office of the Joint Director of Education, Moradabad

Region, Moradabad within a period to be specified by this Hon"ble Court.

(3) issue a writ, order or direction of suitable nature commanding the respondents to sanction and disburse to the petitioners the arrears of

their salary from Government grant with effect from 1.12.1998 till date within a period to be specified by this Hon"ble Court.

10. In paragraph 5 to 9 and 13 of the counter affidavit it has been averred that petitioners-appellants were part-time employees. This averment has

been rebutted in para 8 of the rejoinder affidavit stating that there is no material on record to this effect. Therefore, the petitioner-appellants cannot

claim parity with those employees who were appointed as full time employees against substantive posts in a legal and valid manner as admittedly

the petitioner-appellants were part time employees and alleged to have been appointed on the basis of forged documents. They, therefore, cannot

be granted relief as sought for in the writ petition.

11. In view of the aforesaid reasons, we do not find any illegality or infirmity in the order passed by learned Single Judge. Therefore in the facts and

circumstances, stated above, the appeal is dismissed.

12. No order as to costs.