

**Court No. - 18**

**Case :-** WRIT - A No. - 341 of 2023

**Petitioner :-** Ram Niwas Singh And 5 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko And 5 Others

**Counsel for Petitioner :-** Girish Chandra Verma, Manvendra Singh

**Counsel for Respondent :-** C.S.C., Ajay Kumar

**Hon'ble Manish Mathur, J.**

1. Heard Mr. Girish Chandra Verma, learned counsel for petitioners and learned State Counsel appearing on behalf of opposite parties 1 to 5. No-one has put in appearance on behalf of opposite party no.6, who even otherwise is a proforma party.

2. Petition has been filed seeking implementation of order dated 30.06.2021 issued by the State Government pertaining to payment of salary to petitioners. Further prayer for arrears of salary on the respective posts with effect from March 1998 up to June 2021 or till the date of superannuation has also been sought.

3. It has been submitted that earlier petitioners had been appointed as Assistant Teachers and on Class IV posts respectively in the institution concerned whereafter financial approval was granted and they were being paid salary in lieu thereof. It is submitted that the institution in question is a recognized and aided Junior High School. It has also been submitted that subsequently, vide order dated 09.10.1998 salary payment was stopped and vide order dated 15.07.1999, the earlier approval granted to petitioners was cancelled leading to filing of various writ petitions, leading petition being WRIT - A No. - 37807 of 1999 (Smt. Rajmuni Devi & others v. Director of Education, Allahabad and others). Details of all the petitions

have been indicated in the order dated 30.06.2021. The aforesaid petitions were thereafter disposed of by means of judgment and order dated 02.11.2016. The said judgment clearly indicates the submission that the institution in question was brought under grant-in-aid in year 1978 and Teachers and other employees were paid salary through State Funds with effect from 01.07.1984 whereafter a formal order of approval was also granted. Intermittently, certain disputes arose but payment of salary continued to employees of the institution whereafter order dated 15.07.1999 was passed. This Court vide its judgment and order dated 02.11.2016 thereafter remitted the matter for a decision to the Director of Education to pass appropriate orders for purposes of satisfaction of grievance of the employees and their entitlement as per the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment & Condition of Service of Teachers) Rules, 1978.

4. It is in pursuance of this direction that order dated 30.06.2021 has been passed by the State Government.

5. Learned counsel for petitioners submits that by means of aforesaid order, the State Government has found the petitioners of the present writ petition qualified and eligible for being granted salary through State Exchequer after noticing the fact that their appointments were valid. It is submitted that however only prospective application of aforesaid order has been made and salary payment to petitioners with effect from March 1998 has been withheld.

6. It is submitted that the direction issued by this Court and subsequent finding recorded by the State Government would be applicable from the date when such salary was withheld particularly in view of fact that the initial appointment of petitioners was found to be valid and as per the rules.

7. Learned counsel for petitioners has placed reliance on following judgments:-

(i) decision of Hon'ble the Supreme Court in Man Singh v. the State of U.P. through Secretary & others reported in 2022 SCC Online SC 726.

(ii) decision of Hon'ble the Supreme Court in Delhi Jal Board v. Mahinder Singh, reported in (2000) 7 SCC 210;

(iii) decision of Delhi High Court in Sweety Bhalla v. Industrial Financial Corporation of India Ltd., reported in 2019 SCC OnLine Del 6409

8. Learned State Counsel on the basis of counter affidavit has refuted the submissions advanced by learned counsel for petitioner with the submission that since there is no direction of the State Government in order dated 30.06.2021 for its retrospective applicability and for payment of arrears, there is no question of grant of salary or arrears with effect from March 1998 and the order dated 30.06.2021 would in fact be applicable prospectively and in pursuance thereof, salary payment has already been made.

9. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it appears from judgment and order of this Court dated 02.11.2016 and the consequent order dated 30.06.2021 passed by the State Government that admittedly the institution in question was a recognized aided Junior High School which was brought under grant in aid and salary payment to employees including petitioners was being made through State Exchequer till passing of orders dated 09.10.1998 and 15.07.1999. The said order was thereafter challenged and directions were issued by this Court as indicated herein above. The dispute clearly pertained to validity of appointment of petitioners and their right to be granted salary through the State Exchequer. The

dispute therefore clearly arose due to passing of orders dated 09.10.1998 and 15.07.1999.

10. A perusal of order dated 30.06.2021 passed by the State Government makes it evident that after consideration of all the material on record, the State Government has clearly found the petitioners' initial appointment to be valid and in consonance with the relevant Rules. The order also stipulates that the petitioners are eligible for salaries through State Exchequer while also indicating that they had already been paid salaries for a period of nine years from 1989 till 1998. Directions were thereafter issued for payment of salaries from State Exchequer.

11. The only dispute required to be adjudicated upon in the present writ petition is with regard to whether order dated 30.06.2021 would have any retrospective application or would be applicable only prospectively.

12. With regard to aforesaid dispute, it is quite evident as narrated herein above that petitioners were initially appointed in the School in question on various dates from 1975 onward. As per order dated 30.06.2021 itself, it is indicated that they were paid salaries from the State Exchequer from 1989 till 1998 whereafter it was stopped in year 1998 and subsequently vide order dated 15.07.1999. The said order was challenged before this Court in year 1999 itself with such petition being decided vide judgment and order dated 02.11.2016 and in pursuance thereof the order dated 30.06.2021 has been passed finding petitioners eligible and qualified in terms of the rules ever since the date of their initial appointment. Clearly, the dispute pertaining to petitioners' eligibility, qualification and entitlement for being paid salary through State Exchequer relates back to orders dated 09.10.1998 and 15.07.1999 whereby salary through the State Exchequer was stopped. It is

thus apparent that the dispute has continued ever since 09.10.1998 continuously without any break and therefore in the considered opinion of this Court, the dispute would relate back to the date when the initial order dated 09.10.1998 was passed.

13. Vide order dated 30.06.2021 as well, it is the initial appointment of petitioners which has been held to be valid whereafter the State Government itself has found petitioners to be eligible for payment of salary from the State Exchequer. In such circumstances, in the considered opinion of this Court, the order dated 30.06.2021 would relate back to the date when the initial order dated 09.10.1998 was passed stopping salary payment to petitioners. The mere fact that the State has omitted to pass any orders with regard to arrears of salary to petitioners would be irrelevant in view of the aforesaid fact, since the dispute itself related to the initial appointment of petitioners.

14. Hon'ble the Supreme Court in **Man Singh**(supra) has held that even if appointment is irregular and persons have discharged duties in lieu thereof, they have to be paid their salaries since the State cannot take work from any employee without payment of any salary. The aforesaid judgment is squarely applicable in the present facts and circumstances of the case since admittedly petitioners have continued in service ever since the date of initial appointment and have now as well been found to be eligible for salary payment through State Exchequer.

15. Considering aforesaid circumstances, it is evident that order dated 30.06.2021 would be covered by the doctrine of relation back as has been explained by Hon'ble the Supreme Court in **Delhi Jal Board**(supra) in the following terms:-

*"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending*

disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry.....".

16. The Delhi High Court in **Sweety Bhalla**(supra) has also considered the said aspect of the doctrine in the following manner:-

*'15. Learned counsel further submits that the principle of 'relation-back' was mention in order of the chief Commissioner for Disabilities dated 12.04.2006. The Black's Law Dictionary defines 'relation back' as : - "The doctrine that an act done at a later time is, under certain circumstances, treated as though it occurred at an earlier time". This doctrine has international relevance and application and has been highlighted in the 2010 judgment of the US Supreme Court in the case of "Krupski v. Costa Crociere S.P.A.", wherein the American Supreme Court allowed Krupski's amendment to add a new defendant, after the period of limitation was over, to relate back to the time of the original filing, thereby satisfying the applicable statute of limitations. In India, this doctrine or rule has been incorporated in a number of legislations and service jurisprudence including number of Judgments of the Hon'ble Supreme Court of India. In the case of Delhi Jal Board v. Mahinder Singh, (2000) 7 SCC 210, the Supreme Court applied the Doctrine of Relation Back in service Jurisprudence by holding that the findings of a disciplinary enquiry exonerating an Officer would have to be given effect to as they relate back to the date on which the charges are framed."*

17. It is thus quite evident that doctrine of relation back would be applicable in service matters particularly when subsequent exoneration or order passed in favour of an employee relates to the initial dispute.

18. In view of aforesaid, the opposite parties are directed to implement the decision dated 30.06.2021 upon the petitioners with retrospective effect from 09.10.1998. As a consequence thereof, the petitioners would be eligible for payment of their arrears of salary with effect from March, 1998 till June, 2021 or till the date of their superannuation, as applicable.

19. Opposite party no.2 and other competent authorities shall ensure payment of arrears of salaries to petitioners within a period of four months from the date a certified copy of this order is produced before authority concerned.

20. Consequently, the writ petition succeeds and is **allowed**. Parties to bear their own costs.

**Order Date :- 4.7.2024**

kvg/-