

Court No. - 9

1. Case :- WRIT - A No. - 32670 of 2007

Petitioner :- Smt. Poonam Shukla & Others

Respondent :- State of U.P. & Others

Counsel for Petitioner :- Sunil Kumar Srivastava, Ashok Khare, Krishna Mohan, Siddharth Khare

Counsel for Respondent :- C.S.C., Chandan Sharma, Vivek Verma

2. Case :- WRIT - A No. - 32315 of 2008

Petitioner :- Nutan Shukla & Others

Respondent :- State of U.P. & Others

Counsel for Petitioner :- A.R. Dube, Prabhakar Awasthi, Rajesh Kumar Mishra, Rama Pati Tripathi, Shobhit Dubey

Counsel for Respondent :- C.S.C., Chandan Sharma

3. Case :- WRIT - A No. - 7244 of 2008

Petitioner :- Smt. Jyotsna Shukla Misra

Respondent :- State of U.P. & Others

Counsel for Petitioner :- A.R. Dube, Shobhit Dubey

Counsel for Respondent :- C.S.C., Chandan Sharma, Vivek Verma

Hon'ble Rohit Ranjan Agarwal, J.

1. These three connected petitions are listed under the heading "Supreme Court Expedited Cases". With the consent of the parties, they are being heard and decided together.

2. There are thirty-seven petitioners in Writ Petition No.32670 of 2007, three petitioners in Writ Petition No.32315 of 2008 and single petitioner in Writ Petition No.7244 of 2008.

3. Nagar Nigam, Kanpur Nagar is duly constituted for local area notified as Nagar Nigam, Kanpur Nagar (*hereinafter called as "Nigam"*) under the provisions of U.P. Municipal Corporation Act, 1959 (*hereinafter called as "Act of 1959"*). It runs 11 recognized higher secondary schools in the local area for meeting the educational requirements. They are established and administered by Nigam, which are as under :

- (i) Uchchar Madhyamik Vidyalaya, Kakadev, Kanpur Nagar,
- (ii) Uchchar Madhyamik Vidyalaya, Chunniganj, Kanpur Nagar.
- (iii) Uchchar Madhyamik Vidyalaya,, Kidwai Nagar, Kanpur Nagar.
- (iv) Uchchar Madhyamik Vidyalaya,, Juhi, Kanpur Nagar.

- (V) Nagar Nigam Balika Inter College, Civil Lines, Kanpur Nagar.
- (vi) Nagar Nigam Balika Inter College, Tilak Nagar, Kanpur Nagar.
- (vii) Nagar Nigam Balika Inter College, Hiranman Purva, Kanpur Nagar.
- (viii) Gandhi Smarak Inter College, Govind Nagar, Kanpur Nagar,
- (ix) D.P.S. inter College, Nawabganj, Kanpur Nagar.
- (x) R.B.R.D. Inter College, Nawabganj, Kanpur Nagar.
- (xi) Sri Ratan Shukla Inter College, Juhi, Kanpur Nagar.

4. Section 108-A of Act of 1959 provides for appointment of teachers in institutions maintained by Nigam. It was inserted by U.P. Act no. 10 of 1978 and is extracted hereas under :-

"108-A. Appointment of teachers of institutions maintained by Corporations - Notwithstanding anything in Sections 107 and 108,-

(a) the appointment of a teacher in any college, affiliated to any University as defined in the Uttar Pradesh State Universities Act, 1973 and maintained by a Municipal Corporation, shall be made in accordance with the provisions of that Act, and

(b) the appointment of a teacher or Head of an institution recognized in accordance with the Intermediate Education Act, 1921 and maintained by the Municipal Corporation shall be made in accordance with the provisions of that Act."

5. Sub-section (a) of Section 108-A was enforced with effect from 1.12.1997 while Sub-section (b) of Section 108-A came into force from 25.4.1978.

6. Section 108-A refers to applicability of U.P. Intermediate Education Act, 1921 (*hereinafter called as "Act of 1921"*), but contains no reference to U.P. Secondary Education Services Selection Board Act, 1982. Act of 1921 was amended in the year 1986 by U.P. Act no.18 of 1987, which received the presidential assent on 19th July, 1987 and was published in U.P.Gazette on 30th July 1987 whereby Section 7-AA and 7-AB was inserted, which reads as under :-

"3. Insertion of new Sections 7-AA and 7-AB. - After Section 7-A of the principal Act, the following sections shall be inserted, namely:-

"7-AA. Employment of part time teachers or part-time instructors.-(1) Notwithstanding anything contained in this Act, the management of an institution may, from its own resources, employ-

(i) as an interim measure part-time teachers for imparting instructions in any subject or group of subjects or for a higher class for which recognition is given or in any section of an existing class for which permission is granted under Section 7-A;

(ii) part-time instructors to impart instructions in moral education or any trade or craft under socially useful productive work or vocational course.

(2) No recognition shall be given and no permission shall be granted under Section 7-A, unless the Committee of Management furnishes such security in cash or by way of Bank guarantee to the Inspector as may be specified by the State Government from time to time.

(3) No part-time teacher shall be employed in an institution unless such conditions as may be specified by the State Government by order in this behalf are complied with.

(4) No part-time teacher or part-time instructor shall be employed unless he possesses such minimum qualifications as may be prescribed.

(5) A part-time teacher or a part-time instructor shall be paid such honorarium as may be fixed by the State Government by general or special order in this behalf.

(6) Nothing in this Act shall preclude a person already serving as a teacher in an institution from being employed as a part-time teacher or a part-time instructor under Section 7-AA.

"7-AB. Exemption. - Nothing in the Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (U.P. Act No. 24 of 1971), or the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 (U.P. Act No. 5 of 1982), shall apply in relation to part-time teachers and part-time instructors employed in an institution under Section 7-AA."

7. This amendment provided for appointment of part-time teachers appointed by the management and salary paid from the funds of the management. It was for meeting the additional teaching requirement in a recognized educational institutions. The part-time teacher appointed at the institution level for meeting the additional requirement was of three categories :-

(1) Institutions granted recognition subsequent to 14.10.1986 but were not in grant-in-aid;

(ii) pre existing recognized institutions, which were granted recognition at higher level or for additional category of subjects in an unaided institution subsequent to 14.10.1986; and

(iii) pre existing institutions with pre existing recognition prior to 14.10.1986 in which additional sections were opened with the permission of District Inspector of Schools subsequent to 14.10.1986 but for which no additional staff was sanctioned by the department.

8. The amending Act of 1987 envisages appointment of part-time teachers for meeting out the requirement in the above categories.

9. For regulating the appointment of such part-time teachers, State Government has issued a Government Order on 15.10.1986. It was amended vide another Government Order dated 03.08.1987. Another Government Order was issued on 16.11.1998 specifying the emoluments to be paid to part-time teachers under Minimum Wages Act, 1948. It was on 10.08.2001 that State Government superseded its earlier Government Order and passed a fresh Government Order for regulating the appointment of such part-time teachers.

10. Out of 11 educational institutions run by the Nigam, 4 educational institutions, namely, (i) Uchchar Madhyamik Vidyalaya, Kakadev, Kanpur Nagar; (ii) Uchchar Madhyamik Vidyalaya, Chunniganj, Kanpur Nagar; (iii) Uchchar Madhyamik Vidyalaya, Kidwai Nagar, Kanpur Nagar; and (iv) Uchchar Madhyamik Vidyalaya, Juhi, Kanpur, were the institutions granted recognition without financial assistance subsequent to 14.10.1986. So far as remaining 7 institutions are concerned, their recognition dates are prior to 14.10.1986. In these 7 institutions, number of sections were opened with permission of District Inspector of Schools for meeting the increased students strength prior to 14.10.1986. For these additional sections, no grant is released by the State Government.

11. Petitioners were appointed for meeting such additional requirement of teaching work on account of recognition and they were paid salary on consolidated basis having requisite qualification and being appointed after inviting application by means of public advertisement.

12. Petitioners in Writ Petition No.32670 of 2007 were appointed between 1991 to 2001. Similarly, petitioners in Writ Petition No.32315 of 2008 were appointed in the year 2000 and petitioner in Writ Petition No.7244 of 2008 was appointed in the year 1997. While these petitioners

were discharging their teaching duties, a letter dated 24.07.2001 was issued by Secretary, Lok Ayukt U.P. to the Mukhya Nagar Adhikari, of the Nigam requiring the appointments to be made on the recommendation of Selection Committee as there were number of complaints received in such appointments. Acting on the letter, an advertisement was published on 25.10.2001 in daily newspaper 'Dainik Jagran' and services of petitioners were not extended beyond academic session 2001-02.

13. Petitioner No.1 Smt. Poonam Shukla filed Writ Petition No.3694 of 2001 challenging the advertisement. Subsequently other writ petitions were filed being Writ Petition No.36971 of 2001, 37202 of 2001, 37203 of 2001 etc. Interim order was initially granted by the writ Court, pursuant to which services of petitioners were extended till 2006. All the writ petitions were decided by a common judgment dated 15.11.2006 requiring the U.P. Secondary Education Service Selection Board to make regular appointments. It was further observed that till regular candidates were selected and sent by the Board, petitioners were permitted to work and paid salary accordingly.

14. A review application was filed by the teachers on the ground that U.P. Secondary Service Selection Board Act, 1982 is not applicable and appointments in the institution have been made who were granted recognition under Section 7AA on a fixed salary by the management of the institution. Such teachers are not entitled for payment under U.P. Act No.24 of 1971. The order dated 15.11.2006 was modified on 11.5.2007 and following order was passed, relevant portion whereof reads as under :

“The Nagar Nigam, Kanpur shall examine as to whether these teachers have been appointed in the institutions recognized under Section 7-AA after following due procedure applicable or not. In case it is found that the appointments have been made in accordance with law, suitable order for continuance of these teachers may be passed.

It is specifically clarified that none of these teachers shall be permitted to work in the Institutions, which are receiving grant-in-aid from the State Government and no order for their transfer or absorption in aided institutions shall be made by the Nagar Nigam or any of its officer. Such teachers shall be permitted to work in the institutions which have been granted recognition under Section 7-AA only and shall not be entitled to the salary from the public exchequer in any manner.

All the applications have been disposed of.”

15. It was pursuant to the said order that respondent No.3 Nagar Ayukt on 20.06.2007 proceeded to hold that appointments of teachers was not in accordance with the Government Order and advertisement was not made in two daily newspapers as such their appointments as part-time teachers be cancelled.

16. It has been contended on behalf of petitioners that entire selection process was done by the Nigam through its Selection Committee so constituted after advertisement was made in the newspapers ranging from the year 1991 till 2000-01. The basis for not renewing their appointments as part-time teacher was the letter of Secretary of Lok Ayukt pursuant to which advertisement was published in 2001 which was challenged by the petitioners before this Court and it was held by the Court on 11.05.2007 that Nagar Nigam was to proceed under Section 7AA.

17. According to learned counsel, the letter dated 24.07.2001 lost its significance once advertisement was published on 25.10.2001 which was subjected to various writ petitions and the matter having been finally decided by the Court, no occasion arose for respondent no. 3 to have rejected the claim relying upon letter dated 24.07.2001 ignoring the fact that petitioners have been constantly working from 1991 onwards.

18. Sri Abhinav Krishna Srivastava, counsel appearing for Nagar Nigam submitted that after the scrutiny was done, it was found that the advertisement was not made in two daily newspapers, thus, the appointments of petitioners were not renewed in terms of Section 7AA.

19. I have heard the respective counsel for the parties and perused the material on record.

20. It is a case where the part-time teachers in a recognised unaided Institution run by the Nigam were appointed under Section 7AA of the Act of 1921. Their appointments ranges from the year 1991 till 2001. The Government Order relating to appointment of part-time teacher clearly stipulates the condition for their appointment. Necessary advertisement has to be made in newspaper and the appointment has to be made through a validly constituted Selection Committee. The counter affidavit filed by the Nigam does not deny the fact that the Selection Committee was constituted. It further does not disclose as to the advertisement made in

the newspaper for making part-time appointments. The order impugned dated 20.06.2007 also does not reveal any fact as to when there was failure on the part of officials of the Nigam in complying the Government Order by not making advertisement.

21. From perusal of the order impugned, it appears that relying upon letter dated 24.07.2001 written by Secretary of Lok Ayukt, the Nigam has proceeded to reject the representations/candidature of the petitioners overlooking the directions of the writ Court dated 11.5.2007.

22. Most of the petitioners have completed part-time service in the institution run by the Nigam for almost 15 to 16 years. Their appointments were renewed from time to time by the Nigam. Number of advertisements have been brought on record by some of the petitioners to demonstrate the fact that due procedure was followed while they were appointed as a part-time teacher. It was upon the respondent Nigam to demonstrate that there was a procedural lapse by the officers concerned at that relevant point of time that necessary steps were not taken for complying the conditions laid down in the Government Order for appointment of part-time teachers.

23. Petitioners cannot be held responsible for any procedural lapse on the part of officials of Nigam after 15 or 16 years of making appointment once this Court had found that the appointment of petitioners was made keeping in view of Section 7AA of Act of 1921. The only requirement was to consider that they had requisite qualification and were selection by a validly constituted Selection Committee and not to go into minor procedural irregularity such as making advertisement in daily newspaper.

24. The Nigam has not denied in its counter affidavit specifically in paragraphs 15 and 16 that no advertisement was made when the petitioners were appointed. It is for the first time when the order dated 11.5.2007 was passed by the writ Court that representations of the petitioners has not been accepted solely on the ground that advertisement was not made in two daily newspaper.

25. This Court finds that it was the duty of the officials of the Nigam to have made the advertisement. Once the candidates had requisite qualification and were selected by the duly constituted Selection Committee, whether advertisement was made in one newspaper or not,

the petitioners cannot be made to suffer for the default, if any, committed by the officials of the Nigam.

26. Denying the claim belatedly after sixteen years on any procedural lapse, if any, committed by the officials of the Nigam, the petitioners cannot be penalized. Reliance has been placed upon decision of Apex Court rendered in case of **Smita Shrivastava vs. State of Madhya Pradesh and others 2024 SCC Online SC 764**, relevant paras 9, 10 and 11 whereof are extracted hereasunder :-

“9. *Learned counsel for the appellant has drawn our attention to the judgment of this Court in the case of Manoj Kumar v. Union of India. The relevant extracts of which are quoted hereinbelow for the sake of ready reference:—*

“19. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions, rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction. It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions. Wade on Administrative Law states that the purpose of quashing is not the final determination of private rights, for a private party must separately contest his own rights before the administrative authority. Such private party is also not entitled to compensation merely because the administrative action is illegal. A further case of tort, misfeasance, negligence, or breach of statutory duty must be established for such person to receive compensation.

20. We are of the opinion that while the primary duty of constitutional courts remains the control of power, including setting aside of administrative actions that may be illegal or arbitrary, it must be acknowledged that such measures may not singularly address repercussions of abuse of power. It is equally incumbent upon the courts, as a secondary measure, to address the injurious consequences arising from arbitrary and illegal actions. This concomitant duty to take reasonable measures to reconstitute the injured is our overarching constitutional purpose. This is how we have read our constitutional text, and this is how we have built our precedents on the basis of our preambular objective to secure justice. [The Preambular goals are to secure Justice, Liberty, Equality, and Fraternity for all citizens.]

21. In public law proceedings, when it is realised that the prayer in the writ petition is unattainable due to passage of time, constitutional courts may not dismiss the writ proceedings on the ground of their perceived futility. In the life of litigation, passage of time can stand both as an ally and adversary. Our duty is to transcend the constraints of time and perform the primary duty of a constitutional court to control and regulate the exercise of power or arbitrary action. By taking the first step, the primary purpose and object of public law proceedings will be subserved.

22. The second step relates to restitution. This operates in a different dimension. Identification and application of appropriate remedial measures

poses a significant challenge to constitutional courts, largely attributable to the dual variables of time and limited resources.

23. The temporal gap between the impugned illegal or arbitrary action and their subsequent adjudication by the courts introduces complexities in the provision of restitution. As time elapses, the status of persons, possession, and promises undergoes transformation, directly influencing the nature of relief that may be formulated and granted.”

10. The situation at hand is clearly covered by the aforesaid observations made by this Court in the case of Manoj Kumar (supra). There is no dispute that the appellant is presently of 59 years of age and can hold the post of Samvida Shala Shikshak Grade-III till the age of 62 years. The High Court took note of the fact that despite a clear-cut finding that the amended rule would not apply in the case of the appellant, the State Government has rejected her legitimate claim by relying on the amended rule. The High Court, on the one hand, thought it fit to proceed with contempt action against the erring officers of the State Government, but at the same time, denied relief to the appellant on the basis of notification dated 21st March, 2018 which makes the amended rule i.e. Rule 7-A effective retrospectively i.e., with effect from 1st January, 2008. This observation of the High Court is in sheer contravention of the findings and conclusions recorded earlier.

11. As a consequence, we are of the firm view that the appellant deserves a direction for restitutive relief along with compensation for the misery piled upon her owing to the arbitrary and high-handed action of the State Government and its officials. Accordingly, the following directions are issued:—

- (i) The appellant shall forthwith be appointed to the post of Samvida Shala Shikshak Grade-III or an equivalent post within a period of 60(sixty) days from today.*
- (ii) The appointment order will be effective from the date on which the first appointment order pursuant to the selection process dated 31st August, 2008 came to be issued.*
- (iii) The appellant shall be entitled to continuity in service. However, she shall not be entitled to back wages. However, she is granted exemplary cost quantified at Rs. 10,00,000/-(Rupees Ten Lakhs only). The above amount shall be paid to the appellant by the State of Madhya Pradesh within 60 days.*
- (iv) The State Government shall hold an enquiry and recover the said amount of Rs. 10,00,000/-(Rupees Ten Lakhs only) from the officer(s) who were responsible of taking deliberate, illegal, mala fide actions for denying relief to the appellant.*

27. Considering the facts and circumstances of the case, this Court finds that the order dated 20.06.2007 passed by Nagar Ayukta, Nagar Nigam, Kanpur, is unsustainable in the eyes of law and the same is hereby set aside. The matter is remitted back to the Nagar Ayukta, Nagar Nigam, Kanpur Nagar to pass fresh order strictly complying the order dated 11.5.2007 passed by this Court ignoring the letter dated 24.07.2001 written by Secretary, Lok Ayukt, U.P. and adhere to the provisions of

Section 7AA of Act of 1921 within a period of one month from the date of production of a certified copy of this order before him.

28. It has been informed that some of the petitioners are no more and some of them have attained the age of superannuation. The respondent authority shall proceed to grant necessary appointments to all those petitioners whose period of service till today survive and shall also be compensated for being put to unnecessary litigation.

29. In the result, the writ petitions succeed and are **partly allowed**.

Order Date :- 21.9.2024

Kushal