

Dharam Veer Singh And 2 Others vs State Of U.P. And 4 Others on 28 February, 2025

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Bench: Saurabh Shyam Shamshery

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28614

Court No. - 10

Case :- WRIT - A No. - 910 of 2020

Petitioner :- Dharam Veer Singh And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Bansh Raj, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

This is second round of litigation. Petitioners have approached this Court earlier by way of filing a writ petition bearing No.1662 of 2017, which was disposed of by an order dated 12.12.2018. For reference the order is reproduced hereinafter :-

"Petitioners had earlier approached this Court by filing Writ Petition No.3744 of 2014, which came to be disposed of on 21.1.2014, vide following orders:-

"Heard Shri Amit Saxena, learned counsel for the petitioner and the learned standing counsel for the State respondents.

This writ petition has been filed by the petitioner seeking arrears of salary at par with the salary which is being paid to the Teachers of Government Inter Colleges who have merged in the L.T. Grade. The petitioners are stated to be Assistant Teachers but they are getting lesser salary than of the teachers of Model School Inter College. The petitioners are relying upon the judgment of this Court passed in W.P. No. 3112 (S/S) of 2011 Krishna Pal Singh and others Vs. State of U.P. and others as well as the judgment dated 30.3.2002 passed in the W.P. No. 10665 of 2006 Dharampal Singh Rajpoot and others Vs. State of U.P. and others.

Without expressing any opinion on the merits of the case and with the consent of learned counsel for the parties this writ petition is disposed of with a direction that in case the petitioners are similarly situated as the Teachers of Government Inter College and they are governed by the judgment of this court, referred to above, they will also be entitled to the benefit of the said judgments. The decision in this regard shall be taken by the Director of Education (Secondary), 18 Park Road, Lucknow-respondent no.4 considering the case of the petitioners particularly with reference to the decision in the case of Krishna Pal Singh (supra) and Dharampal Singh Rajpoot (supra) within a period of two months from the date a certified copy of this order is received in his office."

It is pursuant to the aforesaid order that Director of Education (Secondary) has considered the petitioner's grievance and the same has been rejected vide order dated 17.12.2014, in view of the fact that a similar prayer has been rejected in Special Appeal Defective No.816 of 2013, vide order dated 21.11.2013.

The order of the Director is challenged on the ground that there is no adjudication by this Court in Special Appeal Defective No.816 of 2013, and that the issue is yet to be decided on merits in the writ petition. Submission is that claim of petitioners was liable to have been considered, in accordance with law, by passing a reasoned order and the mere fact that Special Appeal Defective No.816 of 2013 has been allowed would not be a relevant consideration.

In order to appreciate the respective submissions urged, it would be appropriate to notice the order passed by Division Bench on 21.11.2013 in Special Appeal Defective No.816 of 2013, which stands reproduced:-

"The appeal arises from a judgment of the learned Single Judge dated 27.05.2010. By the impugned judgment, the learned Single Judge has relied upon a judgment of this Court at Allahabad dated 30.03.2009 in Writ Petition No.10665 of 2006, directing that the petitioners there must be paid the same pay scale as is being paid to the teachers of the Schools. Accordingly, the petition filed by the respondents was allowed in terms of the judgment dated 30.03.2009, inter alia passed in Writ Petition No.10665 of 2006.

Learned counsel appearing on behalf of the appellants submits that the judgment in Writ Petition No.10665 of 2006 (Dharampal Singh Rajpoot and others Vs. State of U.P. & Others) is clearly distinguishable since it relates to the disparity in pay scale admissible to the teachers in Government run Schools and the Government Model Schools. In the present case, it has been submitted that the respondents are not employees of Government run Schools, but of private aided Colleges to whom the benefit of the aforesaid judgment was not extended.

Our attention has been drawn to a judgment delivered by one of us (Justice Ritu Raj Awasthi) in Service Single No.5942 of 2012 (Kalika Prasad Mishra and others Vs. State of U.P. & Others), where the aforesaid judgment dated 30.03.2009 was distinguished, as follows:-

"The judgment and order dated 30.3.2009 passed in Writ Petition No.10665 of 2006 relates to the disparity in the pay scale admissible to the teachers working in government run schools and the Government Model Schools. The Court while allowing the writ petition has issued direction that petitioners who are the employees of different Government Intermediate Colleges shall be paid the same pay scale as is being paid to the teachers of Model Schools. The first paragraph of the judgment itself indicates that petitioners are assistant teachers in different Intermediate Colleges in district Bijnor and J.P. Nagar.

In the present case, petitioners being assistant teachers in Government Aided College are not similarly placed, hence, I am of the opinion that controversy decided in Writ Petition No.10665 of 2006 does not relate to the petitioners."

The aforesaid petition was hence dismissed.

In our opinion, the learned Single Judge has not really considered the applicability of the judgment in Dharampal Singh Rajpoot (supra) in the facts of the present case. The distinguishing features, if any, have not been duly taken into account. Hence, without expressing any final opinion on the merits of the case and since the issue has not been considered in its entirety, we allow this appeal and set aside the judgment and order dated 27.05.2010. In consequence, we restore the Writ Petition No.3226 (S/S) of 2010 to the file of the learned Single Judge for disposal afresh. We clarify that all the rights and contentions of the parties before the learned Single Judge are specifically kept open.

The appeal is, accordingly, allowed. There shall be no order as to costs."

Perusal of the order passed in special appeal would go to show that judgment of the learned Single Judge in Writ Petition No.3226 (S/S) of 2010 has been set aside and the matter has been directed to be heard afresh by the learned Single Judge. In such circumstances, there is no final adjudication of dispute by this Court and the Director would not be justified in rejecting petitioners' claim on account of the orders passed in Special Appeal Defective No.816 of 2013. Since the order of the

Director of Education fails to advert to the submissions of the petitioners for securing parity in pay has not been adjudicated by a reasoned order, the order impugned dated 17th December, 2014 cannot be sustained and is, accordingly, quashed.

The matter stands remitted to the Director for a fresh consideration of cause, in accordance with law, within a period of three months from the date of presentation of certified copy of this order. The Government Order dated 24.1.1974 or any subsequent Government Order, which may have been issued in that regard, shall be specifically taken note of. The authorities shall also take note of the judgment dated 17.12.2012 passed in Special Appeal Defective No.865 of 2012.

Writ petition, accordingly, stands disposed of. "

In pursuance of above order, the impugned order dated 25.04.2019 was passed, whereby the claim of petitioner was rejected and, therefore, petitioners have impugned the said order.

Sri Rajesh Kumar Singh, learned counsel for petitioner refers the observation of this Court when matter was remitted for consideration that they were not considered in its letter and spirit as well as that since there is a reference in impugned order about a writ petition pending before the Lucknow Bench of this Court on same issue, therefore, respondent ought to have waited till outcome of it.

The Court staff has checked the outcome of said writ petition and it is informed that a bunch of writ petitions were decided on 24.08.2021 and for reference the said order is reproduced hereinafter :-

"1. Heard Sri Som Kartik, Dr. Manoj Dubey, Sri Rang Nath Mishra, Sri Nagendra Bahadur Singh, Sri Ajay Pratap Singh, Sri Santosh Kumar Tripathi, Sri Gaurav Mehrotra, learned counsel for the petitioners, and Sri Raghvendra Singh, learned Advocate General, assisted by Sri Sanjeev Singh, learned counsel for the respondents.

2. Since this bunch of writ petitions involves common question of law and facts as such it is being decided by a common order. However, the facts of Writ Petition No.5221 (SS) of 2013 are taken into consideration for deciding the writ petitions.

3. By means of the instant writ petition, the petitioner has prayed for a mandamus commanding the respondents to pay the same salary along with arrears in the same pay scale, without any discrimination and distinction, in accordance with the judgment and order dated 30.05.2011 passed in Writ Petition No.3112 (SS) of 2011 in re: Krishna Pal Singh and others vs. State of U.P. and others, a copy of which has been filed as Annexure-22 to the writ petition, and in accordance with the judgment and order dated 30.03.2009 passed in Civil Misc. Writ Petition No.10665 (SS) of 2006, a copy of which has been filed as Annexure-8 to the writ petition.

4. Learned counsel for the petitioners argues that all the petitioners in this bunch of writ petitions are working in private aided institutions and they claim parity with the teachers who are working in Government schools regarding pay scale.

5. Reliance has been placed on the judgment of this Court dated 30.05.2011 passed in the case of Krishna Pal Singh and others vs. State of U.P. and others in Writ Petition No.3112 (SS) of 2011, a copy of which has been filed as Annexure-22 to the writ petition, as well as the judgment of this Court dated 30.03.2009 passed in Writ Petition No.10665 (SS) of 2006 in the case of Dharampal Singh Rajpoot and others vs. State of U.P. and others, a copy of which has been filed as Annexure-8 to the writ petition.

6. Further, reliance has also been placed on the Government order dated 24.01.1974, a copy of which has been filed as Annexure-21 to the writ petition and a legible copy of the same has been filed as SCA-2 to the supplementary counter affidavit dated 25.03.2019, to contend that the Government itself has given parity to the teachers working in the private aided institutions with that of Government teachers and thus now at this stage there cannot be any occasion for the respondents to discriminate in the pay scales of the petitioners with that of Government teachers.

7. The claim of the petitioners is opposed by learned Advocate General on the basis of averments contained in the counter affidavit as well as supplementary counter affidavit dated 25.03.2019.

8. It is contended that the aforesaid judgments would not be applicable in the case of the petitioners as they are all teachers working in the private aided institutions. Placing reliance on the averments contained in paragraph 8 (c) of the supplementary counter affidavit dated 25.03.2019, it is indicated that where the appointment, promotion, transfer and punishment process for the teachers of the Government Intermediate Colleges are different from that of the petitioners who are working in the private aided institution and whose working conditions are controlled and governed by the Committee of Management consequently the same itself is sufficient for different pay scales being paid to the teachers of the private aided institutions.

9. So far as the Government Order dated 24.01.1974 is concerned, it is sought to be distinguished by learned Advocate General by arguing that it was a one time measure which was given to such teachers and the said Government order has not been reiterated subsequently and as such parity of pay scales of government teachers cannot be given to the petitioners.

10. Having heard learned counsel for the contesting parties and having perused the records, what is apparent is that the petitioners have prayed for a mandamus for payment of same pay scale as is being paid to their counterparts working in the Government institutions. Reliance has been placed on various judgments of this

Court which have been opposed by learned Advocate General on the ground that the said judgments are not applicable inasmuch as the petitioners are working in private aided institutions which fact has nowhere been considered in the said judgments and once appointment process of such teachers is completely at variance with that of teachers appointed in the Government institutions as such that would be sufficient for payment of different pay scales.

11. Be that as it may, what the Court finds is that a specific averment has been made by the respondents in paragraph 11 of the supplementary counter affidavit that the petitioners have never approached the State Government for redressal of their alleged grievance.

12. Thus, the fact of the matter remains that once the petitioners have approached this Court for a mandamus and their claim is still to be considered by the respondents at the first instance as such it would not be expedient for this Court to enter into the merits of the claim set forth by the petitioners at this stage.

13. Considering the aforesaid, this bunch of writ petitions is disposed off leaving it open to the petitioners to approach the respondents for redressal of their grievance with respect to payment of pay scale as has been paid to their counterparts in the Government institutions. In case the petitioners approach the respondents by way of individual representations mentioning therein the complete details with regard to their appointment, date of retirement, the institution in which they were appointed and other details in support of their claim within a period of four weeks from the date of receipt of a certified copy of this order then respondent no.1 shall proceed to consider the grievance of the petitioners in accordance with law and relevant rules and pass a reasoned and speaking order on the same within a further period of four months from the date of receipt of such representations along with certified copy of this order.

14. It is made clear that this Court has not entered into the merits of the claim set forth by the petitioners. "

At this stage, learned counsel for petitioner fairly submits that the outcome of above referred writ petition is now before this Court, therefore, instead of creating any ambiguity, this writ petition may be disposed of that claim of petitioner may be considered afresh in the light of above referred observations also.

In the aforesaid circumstances, the impugned order dated 25.04.2019 is set aside and matter is remitted back to decide afresh. In case, the government has already decided the grievance of petitioners of above referred writ petitions, the same may also be communicated to petitioners otherwise petitioners' case be considered along with said writ petitioners within a short period preferably within six months.

Accordingly, writ petition is disposed of with aforesaid observation.

Order Date :- 28.2.2025 P. Pandey