

# **Girish Chandra Sahu vs State Of U.P. And Others on 1 May, 2025**

**Author: Saurabh Shyam Shamshery**

**Bench: Saurabh Shyam Shamshery**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69001

Court No. - 6

Case :- WRIT - A No. - 67714 of 2010

Petitioner :- Girish Chandra Sahu

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Ashok Khare, Siddharth Khare

Counsel for Respondent :- K.S. Kushwaha

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Siddharth Khare, learned counsel for petitioner and learned Standing Counsel.
2. Petitioner was appointed on 31.07.1984 as Assistant Teacher in an institution viz. Subhash Industrial Junior High School, Jhansi. Appointment was approved after about 8 years i.e. on 16.11.1992 by B.S.A., Jhansi.
3. It is further case of petitioner that said institution was accorded Grant-in-Aid w.e.f. 01.12.2006 and petitioner was paid salary till April 2010 from State Exchequer.
4. Learned counsel for petitioner submits that a dispute arose in regard to Brijendra Pal Singh, an Assistant Teacher whose appointment was also approved along with petitioner by above referred

order 16.11.1992. Since salary of said Brijendra Pal Singh was stopped, he approached this Court by way of filing Writ A No. 2100/2010 which was disposed of vide order dated 28.01.2010 to consider claim of said employee.

5. In aforesaid circumstances, concerned respondent (Director of Education (Basic)) has passed an order dated 14.05.2010 whereby his salary was stopped that huge delay in granting approval was explained and case of petitioner Girish Chandra Sahu was also considered and on a ground that approval of his appointment was also granted along with said Brijendra Pal Singh, therefore, similar direction was passed against petitioner also to stop payment of his salary from State Exchequer.

6. Aforesaid order dated 14.05.2010 is impugned in this writ petition.

7. Learned counsel submits that aforesaid order was passed at the back of petitioner. No opportunity was granted to place his stand though he has not disputed that his case is similar to Brijendra Pal Singh that approval was granted to both persons by a common order as well as he has no instructions whether said Brijendra Pal Singh has challenged the impugned order or not.

8. Learned counsel further submits that petitioner was not allowed to work at concerned institution after impugned order even on basis of salary to be paid by Committee of Management.

9. Learned counsel further submits that since principles of natural justice were completely violated and an adverse order was passed without hearing petitioner, therefore, impugned order so far as it relates to petitioner is liable to quashed.

10. Learned counsel further submits that by impugned order, neither appointment of petitioner nor his approval was set aside.

11. On specific query of this Court about present age of petitioner, learned counsel submits that his age probably would be around 67 years as well as that whether he has ever tried to impart duties as Assistant Teacher in the institution concerned as well as that whether his advocate has tried to get matter listed for hearing or not. Learned counsel on basis of instructions submits that there is no material to state that petitioner has tried to impart duties as Assistant Teacher in institution though according to record, 23 listing applications were filed.

13. According to order sheet, this matter was listed as many as 7-8 times, however, it was not finally decided. Since it was adjourned either on request of learned counsel for petitioner or respondents.

14. Learned counsel further submits that if impugned order is set aside, petitioner is also entitled for consequential relief.

15. Learned Standing Counsel refers that subsequent to impugned order, grievance of petitioner was considered by Director of Education (Basic), however, it was again rejected by an order dated 20.10.2010. He further refers paragraph 18 and 23 of counter affidavit and same is quoted below :-

?18. That the contents of paras 5 & 6 of the writ petition are not admitted as stated and are denied. A perusal of alleged approval order dated 16.11.1992 clearly indicates that the said approval is of appointment of the petitioner which was made on 1.8.1984. A perusal of alleged approval order further indicates that it is a formal approval. It is necessary to submit here that there is no provision under U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 for approval of appointment (formal or non-formal). Under Rule-10 of said Rules, 1978 a provision has been made for approval of candidates selected by the selection committee. Rule-11 provides for appointment after obtaining the approval of selection by the District Basic Education Officer. In the present case, there is not approval of selection recommended by the selection committee. Since there is no provisions for approval of appointment, therefore, the appointment of the petitioner is apparently on face of record is in violation of Rules, 1978. Since the appointment itself is in violation of Rules, 1978, therefore, the petitioner is not entitled for payment of salary from state exchequer.

23. That the contents of paras 19, 20, 21 & 22 of the writ petition are not admitted as stated and are denied. It is necessary to submit here that a writ petition bearing writ petition no. 2100 of 2010 was filed by one Brijendra Pal Singh which was disposed of by this Hon'ble Court by order dated 28.1.2010 with a direction to the authority concerned for deciding the claim of the said writ petitioner. In pursuance thereof, a representation dated 15.2.2010 was made by Mr. Brijendra Pal Singh and in the said representation an objection was raised by the said writ petitioner that appointment of said petitioner (Brijendra Pal Singh and the present writ petitioner Girish Chand Sahu) were made on the same date i.e. 1.8.1984 and approval was also accorded by the same authority by the same order. In spite of the fact that both were appointed on the same day, payment of salary to Mr. Girish Chand Sahu (petitioner) was made available from state exchequer by Assistant Director of Education (Basic) Jhansi and the said writ petitioner (Brijendra Pal Singh) was not permitted to draw salary from state exchequer. Since in the representation Mr Brijendra Pal claimed his salary on the ground of parity, therefore, the deponent also tested the validity of appointment of present petitioner while passing the order dated 14.5.2010. Since the present petitioner is also relying upon the same approval order dated 16.11.1992, therefore, non providing opportunity of hearing to the petitioner will not cause any prejudice.?

16. Learned counsel for petitioner by referring rejoinder affidavit submits that averment made in writ petition were reiterated and reply was given. The aforesaid order was not challenged.

17. Heard learned counsel for parties and perused the records.

18. Petitioner has suffered the impugned order since in pursuance of an order passed by this Court, case of Brijendra Pal Singh (an other Assistant Teacher) was considered and since said Assistant Teacher Brijendra Pal Singh and present petitioner were granted approval on same day i.e. 16.11.1992 i.e. after about 8 years of their appointment, a direction was passed against said Brijendra

Pal Singh to stop payment of his salary from State Exchequer and similar order was passed in regard to petitioner since case of both persons were arising out of same facts.

19. I have considered submissions that by impugned order, both orders i.e. order of appointment and order of approval were not interfered though by impugned order, a direction was passed in regard to other two Assistant Teachers viz. Vinod Kumar and Yogendra Kumar to consider their case independently but no such liberty was granted so far as case of petitioner was concerned.

20. In aforesaid circumstances, there is merit in argument of learned counsel for petitioner that even if it is considered that there is a delay of 8 years in approval of appointment of petitioner, only said finding cannot be a ground to stop salary despite till date, order of appointment and order of approval are still in existence as well as principles of natural justice were violated since no prior notice was issued to petitioner and without hearing him, an adverse order was passed.

21. After making aforesaid discussion, a fact which is still against petitioner is that he has not tried to impart duties at concerned school, even on the basis of payment of salary from State Exchequer as well as that he has already crossed his age of superannuation and admittedly, he has not worked since impugned order was passed.

22. In aforesaid circumstances, if the impugned order is set aside so far as petitioner is concerned, in normal circumstances, matter has to be remitted back for fresh consideration, however, since petitioner has already crossed age of superannuation, therefore, such exercise would be futile.

23. The submission of learned counsel for petitioner that if impugned order is set aside, its legal consequence would be that petitioner be considered continued in service and after age of superannuation, he will become entitle for retiral benefits also, however, for that principal of no work no pay would still come in the way being a legal impediment.

24. In view of above, considering that impugned order was passed at back of petitioner and appointment and approval of petitioner are still valid, therefore, a case of interference is made out.

25. Even in aforesaid circumstances, consequential relief either to pay salary for period when this writ petition was pending without any work or to direct to give retiral benefits cannot be granted and since petitioner has not worked for aforesaid period, therefore, in the interest of justice, by moulding the relief, this writ petition is disposed of with an observation that petitioner will be entitled for a lumpsum cost/compensation of Rs. 2,50,000/- which will be paid by State within 12 weeks.

26. Writ petition stands disposed of with above observations and directions.

Order Date :- 1.5.2025 Sinha\_N.