

# **Brij Bhushan Rai vs State Of U.P. And 5 Others on 1 May, 2025**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69284

Court No. - 38

Case :- WRIT - A No. - 5717 of 2018

Petitioner :- Brij Bhushan Rai

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Naveen Kumar Srivastava, Nikhil Pandey, Niranjana Lal Srivastava,

Counsel for Respondent :- C.S.C.

Hon'ble Donadi Ramesh, J.

1. Heard learned counsel for the parties.

2. The present writ petition has been filed against the order dated 14.11.2017 passed by the respondent no.3- Joint Director of Education, Varanasi Region, Varanasi whereby name of the petitioner for regularisation in service as Assistant Teacher has been rejected on the ground that he has not received salary from March, 1999 to 2000 and October, 2004 to January, 2016.

3. Submission is that the petitioner was appointed as Assistant Teacher (LT grade) in Gramodya Inter College, Gaura, Badshahpur, District- Jaunpur on short-term vacancy vide appointment letter dated 04.09.1997. In pursuance of the appointment letter, he joined on 06.09.1997. The appointment letter of the petitioner as Assistant Teacher (LT Grade) was also approved by the District Inspector of Schools on 12.09.1997.

4. On 22.03.2016, the State Government issued a gazette notification known as Uttar Pradesh Secondary Education Selection Board (Amendment) Act, 2016. As per newly added Section 33-G, it

was indicated that if any person is appointed as Assistant Teacher (LT Grade) on short-term vacancy on or after 07.08.1993 but not later than 25.01.1999 against the short-term vacancy in consonance with Paragraph-2 of the Uttar Pradesh Secondary Education Selection Board (Removal of Difficulties) (Second) Order, 1981, such vacancy would be converted into substantial vacancy. Consequent thereto, name of the teacher would be recommended qua appointment on substantive vacancy as per the seniority provided that the teacher is found eligible under sub-section (1) of Section 33-G of the Amended Act, 2016.

5. Subsequent to the appointment of petitioner as Assistant Teacher (LT Grade) on short-term vacancy, neither any person was appointed on the substantive vacancy nor any such process for selection of such vacancy initiated. Hence, the Principal of the institution recommended the name of the petitioner to the District Inspector of Schools, Jaunpur on 03.10.2016 stating therein that keeping in view Section 33-G of the Amended Act, 2016, services of the petitioner as Assistant Teacher (LT Grade) may be regularised. The records pertaining to the petitioner along with recommendation was also sent to the District Inspector of Schools for consideration.

6. Upon receipt of the recommendation letter dated 03.10.2016 sent along with records by the Principal of the Institution, District Inspector of Schools, Jaunpur sent the same to the third respondent- Joint Director of Education, Varanasi Region, Varanasi. When, respondent no.3 did not pass any order on the recommendation made by the Principal of the Institution, the petitioner approached this Court by way of filing the Civil Misc. Writ Petition No.57753 of 2016 which was disposed of on 07.12.2016 directing the third respondent to pass appropriate order on the representation made by the petitioner. The petitioner again moved an application along with the copy of order of this Court dated 07.12.2016 requesting therein that as per the Gazette Notification dated 22.03.2016, his services as Assistant Teacher may be regularised.

7. Notwithstanding the fact that the government has earlier issued notification dated 22.03.2016 and also the order passed by this Court dated 07.12.2016 for consideration of the petitioner's claim, the third respondent rejected the claim of the petitioner for regularisation of his service as Assistant Teacher solely on the ground that he did not receive salary from March, 1999 to 2000 and from October, 2004 to January, 2016. The impugned order passed by the first respondent is apparently contrary to the Gazette Notification dated 22.03.2016 as issued by the State Government for regularisation of the Assistant Teachers who were appointed on or after 07.08.1993 but not later than 25.01.1999 against the short-term vacancy in accordance with paragraph no.2 of the Uttar Pradesh Secondary Education Selection Board (Removal of Difficulties) (Second) Order, 1981,

8. Thereafter, the petitioner came up before this Court by filing Special Appeal No. 1640 of 2008 which upon consideration of the matter was allowed on 20.01.2016, granting all consequential benefits together with the continuance of service from the date of his initial appointment i.e. 12.09.1997. When the respondent did not pay salary in compliance of the order dated 20.01.2016 passed in Special Appeal No. 1640 of 2008, the petitioner filed contempt petition no. 5826 of 2016. Upon receipt of the notice, the Director of Education, UP, Lucknow released the salary to the petitioner from March, 1999 to 2000 but salary of the petitioner from October, 2004 to January, 2016 was withheld by the respondent merely on the ground of 'no work no pay' vide its letter dated

01.01.2018.

9. Further, on perusal of letter dated 01.01.2018, it transpires that the respondents have treated the petitioner in continuous service from the date of appointment till the date of superannuation in view of the order dated 20.01.2016 passed by this Court passed in the aforesaid special appeal. Since the petitioner was treated to be continued in service as Assistant Teacher from his initial appointment 12.09.1997 till the date of retirement, therefore, the DIOS, Jaunpur wrote a letter to the third respondent requesting therein that services of the petitioner should be regularised as Assistant Teacher keeping in view the Section 33-G of UP Secondary Education Act, 1982 inasmuch as the DIOS as well as Director of Education, UP, Lucknow treated the petitioner had continued in service from 12.09.1997 till the date of order dated 20.01.2016 passed in aforesaid special appeal.

10. Considering the submissions and also on perusal of the order passed in Special Appeal No.1640 of 2008 as also provisions of Section 33-G of UP Secondary Education Act, 1982, it is crystal clear that the petitioner has rendered his services as Assistant Teacher in the institution and he has been paid salary upon filing of the contempt petition before this Court and his services were treated to be regularised in view of the order dated 20.01.2016 passed in aforesaid special appeal, therefore, the impugned order is contrary to the provisions as contained in Section 33-G of UP Secondary Education Act, 1982. Hence, it is liable to be quashed.

11. Accordingly, the writ petition is allowed quashing the impugned order dated 14.11.2017 passed by the respondent no.3- Joint Director of Education, Varanasi Region, Varanasi with the direction upon the respondents more specifically respondent no.3 to regularise the service of the petitioner as Assistant Teacher in Gramodya Inter College, Gaura, Badshahpur, District- Jaunpur according to the recommendation dated 07.10.2016 made by the District Inspector of Schools, Jaunpur.

Order Date :- 1.5.2025 Rama Kant (Donadi Ramesh,J.)