

Uma Rani Dhuriya vs State Of U.P. And 2 Others on 2 January, 2025

Author: Prakash Padia

Bench: Prakash Padia

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:119

Court No. - 7

Case :- WRIT - A No. - 20686 of 2024

Petitioner :- Uma Rani Dhuriya

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Noor Ahmed,Prabhakar Awasthi

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioner, learned Standing Counsel accepted notice on behalf of respondent no. 1 and Shri Kushmondeya Shahi, learned counsel appearing on behalf of respondent nos.2 & 3.

2. The petitioners have preferred the present writ petition inter-alia with the following prayer:-

"(i) Issue a writ, order or direction in the nature of Mandamus commanding the respondent nos.2 & 3 to pay salary to the petitioner by which is admissible to Headmistress alongside arrears of salary from 20.06.2019/25.06.2019 which would

be the date from which petitioner is discharging her duties as Headmistress.

3. It is argued by the counsel for the petitioners that though the petitioners are working on the post of In-charge Head Mistress but wholly illegally she was not get her salary for the post on which she is working. He also placed reliance upon the judgment and order dated 07.05.2024 passed in Writ A No. 3863 of 2018 (Smt. Raj Kishori Kushwaha vs. State of U.P. and 5 Others). The order reads as follows:-

"1. Heard Mr. C.B. Yadav, learned Senior Counsel for the petitioner and Ms. Chhaya Gupta, learned counsel for the respondents no.2 to 5 and learned Standing Counsel for the State-respondents.

2. By means of this writ petition, the petitioner has made the following prayer:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to provide the salary to the petitioner to the post of Head Mistress w.e.f. 17.02.1988 of the college in question namely Zila Pachayat Kanya Uchchatar Madhyamik Vidyalaya Mauaima Allahabad, with all consequential benefits, forthwith.

(ii)

(iii)"

3. Brief facts of the case are that the Zila Pachayat Kanya Uchchatar Madhyamik Vidyalaya situated at Mauaima, Allahabad is a recognized institution under the Provision of Uttar Pradesh Basic Education Act, 1972 (U.P. Act No.34/17) and U.P. Basic Education (Teacher) Service Rules, 1981. The petitioner was appointed as an Assistant Teacher in pursuance of the appointment letter dated 27.09.1982 issued by the competent authority. Thereafter, the petitioner joined her services on 01.10.1982 and since then, she was discharging her services without any break or complaint. Since on 25.01.1988, one Madhu Rani Srivastava, who was discharging her duties as permanent Headmistress, expired. Thereafter, the petitioner was discharging her duties as in-charge Headmaster from 15.02.1988 and since then, the petitioner was discharging her duties as Headmistress. Thereafter, the petitioner got superannuated on 31.07.2017, but the payment has not been made to the petitioner for the post of Headmistress. Hence, the present writ petition.

4. Sri C.B. Yadav, learned Senior Counsel appearing for the petitioner has submitted that since 1988 to till 2017, the petitioner discharged her duties diligently as Officiating Headmistress, which has not been denied by the respondents. He has further submitted that there is neither any complaint against the petitioner nor any material has been brought on record to show that the petitioner did not possess due qualification for being appointed as Headmistress, but all the more, salary for the post of Headmistress has not been paid to the petitioner. He next submitted that the petitioner was only paid salary for the post of Assistant Teacher instead of for the post of Headmistress. He prays for allowing the present writ petition and issuance of mandamus.

5. Per contra, learned Standing Counsel has submitted that the petitioner was not duly appointed as Headmistress, therefore, the salary for the post of Headmistress cannot be disbursed to her. He has further submitted that the petitioner was duty bound to discharge her duties as Headmistress till absence of any regular appointed Headmaster/Headmistress, therefore, the petitioner was rightly paid the salary for the post of Assistant Teacher. He prays for dismissal of this writ petition.

6. After hearing the parties, the Court has perused the records.

7. Admittedly, it is not in dispute that the petitioner was appointed on the post of Assistant Teacher and thereafter, the post of Headmaster fell vacant on 25.01.1988 on account of death of One Madhu Rani Srivastava. Thereafter, from 17.02.1988, the petitioner was discharging her duties as Headmistress without any break, compliant or interruption. In the counter affidavit, it has specifically been accepted that the petitioner was discharging her services as in-charge Headmistress. It is not the case of the respondents that the petitioner does not possess the required qualification to be appointed as Headmistress in the institution in question, therefore, the petitioner cannot be permitted to suffer from any inaction of the respondents for not appointing regular Headmaster. On the one hand, the petitioner was discharged her duties continuously as Headmistress without pay for the said post, on the other hand, she was only paid salary of the post of Assistant Teacher. It is not in dispute that the petitioner discharged her services as Headmistress in the institution in question for more than 29 years.

8. This Court in the case of Dr. Jai Prakash Narayan Singh Vs. State of U.P., (Civil Misc Writ Petition No 23627 of 2014), reported in 2014 (3) SCC 1644, the Full Bench of this Court, after considering the various judgments, has held that while discharging as Officiating Principal, the Principal would be entitled for salary of the said post. The relevant paragraph no.57-A of the said judgment is quoted as below:-

"57 ...

(i)

(ii) An officiating principal appointed under the Statutes of the University, which are pari materia to the provisions of Statute 10-B of the First Statutes would be entitled to claim the payment of salary in the regular grade of principal for the period during which he or she has worked until a regularly selected candidate has been appointed and has assumed charge of the office."

9. The Hon'ble Apex Court in the case of Smt. P. Grover Vs State of Haryana and Anr, AIR 1983 Supreme Court 1060, has held that the petitioner was discharging her duties as Basic Education Officer on an acting basis, and therefore, she is entitled for the salary of such higher post.

10. Similarly, the Hon'ble Apex Court in the case of Secy.- Cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma & Ors., AIR 1998 Supreme Court 2909 has held that if a person is promoted to the higher post or put to officiate on that post, or stop-gap arrangement is made to place him on higher

post, entitle for higher salary.

11. The Hon'ble Apex Court in the case of State of Punjab and Anr. Vs. Dharam Pal, (2017) 9 SCC 395, after considering the above referred two judgments, has held that the petitioner is entitled to the benefit of pay-scale for higher officiating post.

12. In view of the facts as stated above as well as law down by the Full Bench of this Court and various judgments passed by the Hon'ble Apex Court, the petitioner is entitled for higher salary even for ad-hoc basis on the post of Headmistress.

13. Accordingly, the writ petition is allowed.

14. A mandamus is issued in favour of the petitioner for payment of arrears of salary along with all consequential benefits with effect from 17.02.1988 till date, she discharged her duties as Headmistress in the institution in question, within a period of one month from the date of production of certified copy of this order before the concerned respondent. "

4. It is admitted by the counsel for the parties that the controversy involved in the present petition is absolutely identical, hence the present case be also disposed of in terms of aforesaid writ petition.

5. Heard counsel for the parties and perused the record.

6. In the facts and circumstances of the case, the present writ petition is disposed of finally, directing the concerned District Basic Education Officer to verify the fact regarding the working of the petitioner on the post of In-charge Head Mistress and in case it is found that the petitioner is working on the post of In-charge Head Mistress in their respective institutions, necessary orders will be passed for the payment of salary to the petitioner for the post of In-charge Head Mistress along-with arrears of salary from the date she is working on the aforesaid post, unless there is no legal impediment within a period of two months from the date of presentation of certified copy of this order.

Order Date :- 2.1.2025 saqlain