**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition No. 20552 of 1988

Decided On: 29.04.2011

Appellants: **Raj Kishore Pandey**
**Vs.**
Respondent: **State of U.P. and Ors.**

**Hon'ble Judges/Coram:**
Sunil Ambwani and Jayashree Tiwari, JJ.

**JUDGMENT**

1. Heard Shri Ashok Khare, Sr. Advocate assisted by Shri P. Upadhyay for the Petitioner. Learned Standing Counsel appears for Respondent Nos. 1 to 3. Shri Anil Tiwari appears for Respondent No. 4.

2. In this writ petition filed in October, 1988, the Petitioner has prayed for releasing payment of entire arrears of salary to which he is entitled and further to continue to pay his salary and other allowance as and when same becomes due.

3. The Petitioner was appointed as Principal of Shri Paramhans Sanskrit Pathshala, C.K. 34/51, Saraswati Phatak, Lahauri Tola, Varanasi, imparting education to students to secure Shastri degree awarded by Sampurnand Sanskrit Vishwavidyalaya, Varanasi. The institution is permanently affiliated to the University vide Letter No. G-2465/1409/61-76 dated 4.2.1976 issued by the University.

4. The Petitioner holds a degree of Vyakaranacharya from Sampurnand Sanskrit Vishwavidyalaya, Varanasi. He is also Vidya Varidh from the same University and claims that the degree is equivalent to Ph.D. degree awarded by other Universities. He was fully qualified and was appointed as Principal after selection by duly constituted Selection Committee on 30.9.1977 to which approval was granted by the Inspector, Sanskrit Pathshala by letter dated 25.1.1978. He was appointed on a clear vacancy on the termination of services of Shri Brahmanand Pandey. It is alleged that appointment was initially on probation for a period of one year. He was later on confirmed.

5. It is stated that on account of certain differences with the Manager, the Petitioner was coerced to submit his resignation. The Petitioner moved an application to the Asstt. Inspector, Sanskrit Pathshala, Varanasi Region, Varanasi on 19.2.1979 on which a warning was issued to the Committee of Management on 13.3.1979 that without his prior approval the services of the Principal could not be dispensed with. It is stated that the Petitioner was discharging duties attached to the post of Principal and that his salary was to be paid by the State Government through the grant-in-aid released ever year Vide Item No. 41 of the Government Order dated 20.5.1982, the grant was released for payment of salaries include the school in question of which the Petitioner is Principal and an amount of Rs. 11689.85 represents the amount sanctioned for payment of salary and other allowance to the Petitioner and the other teachers.

6. It is submitted that on account of prolonged dispute between rival groups to manage the school, the Manager's return was not sent resulting into withholding of Petitioner's salary. The Petitioner made several representations beginning from 22.9.1983 to 2.5.1988 for payment of salary. The Vice Chancellor of the Sampurnanad Sanskrit Vishwavidyalaya passed an order on 22.4.1988, referring to the letter of the management dated 31.8.1986, stating that the post of Principal is vacant since July, 1979. By a letter dated 22.4.1987 the management requested for a subject-specialist for appointment of the Principal. The management was restrained by the Vice Chancellor to make appointment on the post of Principal, with a warning that if the management proceeded to make the selections, the University will not to give further approval to the school.

7. The Petitioner has relied upon the Government Order dated 10.2.1987 by which grant in aid for providing salaries to the teachers of Sanskrit Pathshala were provided to be released with the condition, that the amount will be paid as grant for payment of salaries for full time regular teachers appointed against the sanctioned posts on which their appointments are approved. The Government Order allowed payment of salary to those schools, which were brought in grant in aid upto 13th July, 1983. The account of each school was to be opened and operated by the District Inspector of Schools and the management of the school jointly. In the same bank the account of the teachers and employees of the school were also required to be opened. The Government Order provided for the preparation of salary bills, by 25th of every month and the payment of salary by the District Inspector of Schools by 20th of the succeeding month by bank transfer slips.

8. A counter affidavit of Shri Narendra Kumar Yadav, Sr. Clerk in the office of the Inspector, Sanskrit Pathshala, U.P. sworn on 11.4.1990 discloses that Manager of Pathshala was responsible for making payment of the salary to the teachers. The grant-in-aid was given and salary was to be paid to only those teachers, who were appointed in Sanskrit Pathshala on the post sanctioned by the Government. The Manager was required to submit income and expenditure account to the Inspector of Sanskrit Pathshala and thereafter the grant in aid was released. The Manager did not submit the accounts of income and expenditure after the year 1981-82. The Manager was asked several times to submit the accounts so that grant in aid could be released. He did not submit the accounts, on which a nominal grant in aid of Rs. 1 was given to the institution so that institution may not go out of the list of grant in aid. Despite this the Manager did not submit the accounts. The responsibility of making payment of salary to the Principal and other teachers of the Sanskrit Pathshala was on the Manager. In para 8 of the counter affidavit it is stated that till the year 1986-87 the responsibility of making payment of salary to the teachers was entirely upon the Manager. By a Government Order dated 10.2.1987, directions were issued to the Deputy Director Education to ensure payment of salary to the Principal and other teachers of Sanskrit Pathshala on receiving certified monthly salary bills from the Principal and Manager. In case of payment of salary of the Principal the salary bills certified by the Manager was to be submitted to the District Inspector of Schools. The Manager of the institutions did not submit the salary bill of the Principal after the aforesaid G.O. dated 10.2.1987. The release of grant in aid in payment of salary was provided under the Government Order dated 10.2.1987. The Manager inspite of reminders did not sent bills. The liability for payment of salary to the Petitioner for the period prior to 7.3.1987 is of the management.

9. In para 10 of the counter affidavit it is stated that since the Manager of the institution in accordance with the Government Order dated 10.2.1987 did not send the salary bills of the Petitioner, the payment of salary could not be made. The Court may direct the Manager to submit the salary bills for making payment.

10. The writ petition was dismissed for non-prosecution on 5.8.2003. The restoration application was dismissed on 31.8.2007. The Petitioner filed Special Leave to Appeal (C) No. 5332-5334/2008, which was converted into Civil Appeal No. 450-452/2009. The Supreme Court by judgment and order dated January 27th, 2009 held that it is true that applicant has to take necessary steps to prosecute the petition by follow up action, he had engaged two learned Counsels. Unfortunately one was elevated to the Bench and other was suffering with physical ailment. All this information was made available by the applicant in the restoration application. The High Court was required to appreciate the facts. The Supreme Court set aside the order and restored the writ petition with request to the High Court to consider the writ petition on merits as expeditiously as possible and at any rate within the outer limit of six months.

11. In the order dated 20.8.2009 the Division Bench hearing the matter observed that the matter has been received after remand to be decided within six months, the Counsel for the Petitioner did not bother to inform the Court, when the case was called out. In view of the facts that the Apex Court has directed the matter to be decided on merits, the case was directed to be listed on the next date. On 29.10.2009 notices were issued to the Respondent No. 4 both by registered post and by personal service. The matter was thereafter taken up on 7.1.2010 and was finally heard. On 25.3.2010 following order was passed:

Shri P.S. Baghel, Senior Advocate assisted by Shri Purushottam Upadhyay appears for the Petitioner. Learned standing Counsel appears for the State-Respondents.

The matter relates to payment of salary of the Principal of Sri Paramhans Sanskrit Pathshala Saraswati Phatak, Lauhari Tola, Varanasi. The writ petition was dismissed in default. The restoration application was also rejected. The Supreme Court has allowed the Special Leave to Appeal and has remanded the matter for decision on merit vide order dated 27.01.2009.

Apart from the fact that the Petitioner's services were terminated by the Management and the validity of the order of the termination, we find from the representation of the Petitioner dated 19.02.1979 that the Petitioner has not been paid salary since 19771978. In paragraph 5 of the representation, he states that on 18.07.1979 Shri Upadhyay and Shri Jagat Narain Singh came to the college and closed the same for an indefinite period. There is no pleading or any material to show that the college still exists and that teachers and students are in the college.

It is stated that the Vice Chancellor has passed the order that the Petitioner's termination is illegal, does not demonstrate that the said college still exists and is functioning.

It appears that some Authorized Controller was appointed in the college to settle the dispute between rival groups of the Management.

We, therefore, direct the Director of Education (Sanskrit) U.P. to conduct an inquiry and submit a report as to whether the college has functioned since 1979 or not, with all relevant details in relation to the functioning of the Petitioner as well.

Learned standing Counsel will ensure that the report is filed within a month.

List on 26th April, 2010.

A certified copy of this order may be provided to the learned Chief Standing Counsel, on payment of usual charges.

12. On 24.11.2010 we were informed that there is post of the Deputy Director of Education (Sanskrit). He was allowed to file the report.

13. On 12.1.2011 a compliance affidavit of Dr. Mukesh Agarwal, Deputy Director of Education (Sanskrit), Education Directorate, U.P. Allahabad was filed enclosing the enquiry report. Dr. Mukesh Agrawal in his enquiry report dated 4.1.2011 has observed that he called a meeting of the District Inspector of Schools, Varanasi; the Officiating Principal and Manager on 8.7.2010 in his office. The District Inspector of Schools, Varanasi appeared but that the Officiating Principal or the Manager did not appear. He directed the District Inspector of Schools, Varanasi to prepare and submit a report on 8 points. An incomplete report was made available on 31.7.2010 and thus fresh report was called after searching out the relevant records.

14. It is reported that the Inspector, Sanskrit Schools, U.P. Allahabad had by his letter dated 17.8.2010 enclosed the letter of the University dated 23.1.1991, informed that Shri Raj Kishore Pandey (the Petitioner) was appointed as Principal on the recommendation of the management and on approval of the Inspector, Sanskrit Schools on probation for one year. He worked on the post upto 1982 and was receiving salary. The Registrar of the Sampurnanad Sanskrit University, Varanasi by letter dated 12.9.2010 informed that Shri Paramhans Sanskrit Pathshala, Lahauri Tola, Varanasi was running from 1979 to 1982. In the year 1979 there were 17 students; in 1980, 18; in 1981, 26; and in 1982, 26. The school received permanent recognition for Purva Madhyama in 1961; Uttar Madhyama on 12.8.1963 and Shastri on 4.2.1976. The first grant was received by the school in 1963. Shri Raj Kishore Pandey (the Petitioner) was appointed as Principal in accordance with the provisions of the Varanasi Sanskrit University Act, 1956 on temporary basis on probation for a period of one year on 1.10.1977. During the period of probation the Manager issued show cause notice to him on 19.9.1978 for indiscipline and mismanagement in teaching work. The enquiry was entrusted to the Senior Member of the Committee of Management. The enquiry report was submitted and considered in the meeting oft he Committee of Management on 10.6.1979. The Committee of Management accepted the report and decided to terminated his services. At that time under the statutory provisions of the University the proposal to terminate services did not need any approval to be given by the University. The report of the Inspector of the school further shows that the school was not functioning from 1979 to 1982 and that from the report of an observer it was found that the school was not running at the place, where it was approved but was being operated from the residence of Shri Heera Lal Agrawal at Govindpura Varanasi. During the period of Managership of Shri Vindhyachal Upadhyay elected on 5.11.1978 the Petitioner was receiving salary without the permission of the department, through Shri Heera Lal Agrawal. Shri Vindhyachal Upadhyay made a representation to the City Magistrate on which the Committee of Management of Shri Vindhyachal Upadhya received recognition on 14.7.1982 and thus the payment made by Shri Heera Lal Agrawla to Shri Pandey, the Petitioner was illegal.

15. The Deputy Director of Education (Sanskrit) has further reported that the Petitioner was not present in the institution from 17.12.1978 onwards, nor has he worked as Principal. The Deputy Director of Education by his letter dated 3.4.1992 approved the payment of salary of Shri Shiv Shankar Pandey, Shri Rajendra Prasad Tripathi and Shri Rajesh Kumar Sharma w.e.f. 2.2.1992 and accordingly the salary was being paid to them. In this list the name of Shri Raj Kishore Pandey, the Petitioner, is not mentioned. By letter of the Deputy Director of Education, Varanasi dated 31.3.1983 the institution was kept alive with a token grant of Rs. 1. In this period nobody was paid salary.

16. The Deputy Director has reported that the Petitioner was not present and did not attend the school w.e.f. 17.12.1978. The report of the District Inspector of Schools dated 17.4.1993 discloses that the Petitioner was present in the institution only for the period between 1.10.1977 to 16.12.1978. Thereafter his presence and signatures are not available nor there is any proof of his attendance. In the report of the District Inspector of Schools, Varanasi dated 15.11.2008 also the name of the Petitioner is not recorded. At present Shri Shiv Shankar Pandey, the Officiating Principal, Shri Rajendra Prasat Tripathi and Shri Rajesh Kumar Sharma are working as teachers. They are being paid salary by single operation of account. The State Government suspended the payment of the grant w.e.f. 27.9.2010 and that salaries have not been paid since May, 2010.

17. The Deputy Director has also informed that out of 55 Sanskrit Schools in Distt. Varanasi, inspected in pursuance to the orders of the Court, Shri Paramhans Sanskrit Uchchtar Madhyamik Pathshala, C.K. 34/51, Saraswati Phatak, Varanasi (the subject school) was found to be running in some private house, which clearly shows that the school does not have its own land or building. In the attendance register the total number of students were found to be only 30%. At the time of inspection not a single student was found available, whereas payment of salary was being made to 3 teachers and employees. In the circumstances, the grant has been suspended until the students are available in accordance with the standards of a prescribed limit, and the land and building is made available to the school.

18. The Petitioner was given opportunity and has filed his objections to the report of the Deputy Director of Education. In his affidavit dated 24th January, 2011 he has stated that the Deputy Director has only considered the reports and has given short enquiry report and has recorded his findings. He has stated that from the report of the Deputy Director it is revealed that the services of the Petitioner have been terminated, which is totally wrong and misconceived. In the counter affidavit of the District Inspector of Schools it was not denied that the Petitioner continued to hold the post of Principal. The Vice Chancellor of the University after hearing the parties also recorded finding on 22.1.1991 that the services of the Petitioner were not terminated. The Manager of the institution did not take any action nor initiate any proceedings against the Petitioner and that he also did not file an appeal against the order of the Vice Chancellor dated 22.1.1991. In para 7 the Petitioner states that he is continuously holding the post of Principal till his retirement. He was never suspended or terminated by any authority and therefore he is entitled to full salary and all retiral dues.

19. The enquiry conducted by the Deputy Director of Education (Sanskrit) in pursuance to the directions of the Court establishes that the Petitioner was appointed as Principal of the Sanskrit school temporarily on probation for a period of one year on 1.10.1977. He was given charge-sheet and show cause notice by the management for mismanagement in performing his duties. The Committee of Management decided to terminate his services on 10.6.1979 but no approval was taken. It is thereafter reported that the school was closed from 1979 to 1982 and that the Petitioner did not attend the school since after 17.12.1978 and has not discharged any duties thereafter. The Petitioner's name was not found in the letter of the D.I.O.S. dated 20.4.1992; inspection report dated 17.4.1993 and the inspection report dated 15.11.2008. It was found that the school does not have any land and building and that number of students are much lower than the standards fixed by the University. The school is running in a private house. At the time of inspection no student was found present.

20. The Petitioner has relied upon the letter of the Vice Chancellor dated 22.1.1991. The Vice Chancellor had denied the request of the institution to forward the name of the subject specialist for selection of the Principal, and restrained the school from making any appointment.

21. On the aforesaid facts and circumstances, brought on record we find that though the Committee of Management had passed a resolution recommending that the Petitioner's services be terminated, there is no proof of the fact that the Petitioner's services were actually terminated. There is no order of approval of the Inspector of Schools or Deputy Director of Education (Sanskrit) terminating his services. On account of the management dispute in the school the Petitioner was not allowed to function regularly. He, however, continued to be the regular Principal of the school. We find that on account of the dispute in the management the Petitioner was actually restrained from working as Principal of the school.

22. The Petitioner has not denied that the school was closed from 1979 to 1982. The inspection report do not give correct position with regard to office of the Principal. It is nowhere stated as to who were appointed as regular Principal, if the Petitioner's services were terminated. The school was running in private house. There were atleast 30 students reported to be taking education.

23. In this writ petition we are not concerned with the dispute of the Committee of Management or regular functioning of the school. The Petitioner has claimed his own rights to be treated as Principal of the school. We do not find that there is anything on record, which may suggest that his services were validly terminated and that he was replaced by another Principal. The Petitioner is thus entitled to payment of salary.

24. The Sanskrit is origin of Hindi language and many other regional languages in the country. The grants given by the State Government to the Sanskrit schools should be utilised in proper manner encouraging young students to learn and to preserve the heritage. The State Government should take care of providing proper facilities to the young students to learn the language. The grants should be released periodically and that efforts should be made that the schools may function properly. The school should be given same benefits, which are given by the State Government to the schools run by the Basic Shiksha Parishad. The right to primary education has now been included as fundamental right in the Constitution of India and that Right to Free and Compulsory Education Act, 2010 has been enforced to ensure primary education to all the children. We are of the opinion that the primary education to all the children also includes the education in the Sanskrit schools recognised by the State Government and thus these schools should be entitled to similar benefits.

25. The writ petition is allowed. On the findings recorded as above, we find that the Petitioner is entitled to the arrears of salary, but since he did not actually work as Principal, he will be entitled to 50% of the salary due to him. By this time the Petitioner must be 63 years old. The Respondents will treat the entire period upto the date of his retirement as period spent on duty, calculate and pay to him 50% of the salary, which was due to him. The Petitioner's retirement benefits and pension will be fixed treating him in service and calculating the salary in the pay scale applicable to the post of Principal of the school. The order in this regard will be passed within three months.