

AFR

Neutral Citation No. - 2024:AHC:40235

Judgment Reserved on 21.2.2024

Delivered on 6.3.2024.

Court No. - 36

Case :- WRIT - A No. - 2065 of 2010

Petitioner :- Smt. Bhagonia Devi

Respondent :- Distt. Basic Edu. Officer Banda And Others

Counsel for Petitioner :- Prakash Padia, Anand Tiwari

Counsel for Respondent :- C.S.C., Ashok Kumar, C.S.C.

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Shri Anand Tiwari, learned counsel for petitioner and Shri Rajesh Khare, learned counsel for respondent nos.1 and 5.

2. Case of the petitioner if accepted in its entirety would be as follows:

(a) The Petitioner was initially appointed as a part time Sewika (Peon) on 1.7.1971 at respondent Kanya Junior High School on monthly fixed salary of Rs.15/-

(b) The petitioner was appointed as a 'Full Time Peon' on monthly fixed salary of Rs.165/- by an order of Assistant Balika Inspector School dated 14.5.1981.

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(c) Despite above referred order, she was not paid aforesaid amount of Rs.165/- and paid only Rs.15/- per month only till May, 1996 and thereafter said amount was also stopped.

(d) Further case of petitioner is that she was continuously working till filing of present writ petition in the year 2010 and thereafter also.

(e) Petitioner's date of birth is 31.10.1956 and she was about 54 years when this writ petition was filed in the year 2010 and therefore has attained age of superannuation (i.e. 60 years) in the year 2016.

(f) The petitioner has earlier approached this Court by filing a Writ Petition No.889 of 1985, with a prayer to pay Rs.165/- per month. It was disposed of by order dated 5.7.2007 with a direction to examine her case.

(g) In pursuance of above order, claim of the petitioner was examined, but it was rejected on ground that order dated 14.5.1981, whereby she was appointed as a 'Full Time Peon' was later on withdrawn on 6.4.1985, as it was not duly approved and further that it remained unchallenged.

3. This Court has passed following order on 22.1.2010:-

" Heard learned counsel for the petitioner and learned Standing Counsel for respondent nos.1,2,3 and 4.

The petitioner was appointed on a fixed pay scale of Rs.165/- as class IV employee in Kanya Junior High School on 14.05.1981 and she is working continuously ever since then. However, when salary was not paid to her, she had filed a writ petition no. 889 of 1985 which remain pending and ultimately was disposed off on 05.07.2007 with the directions to the District Basic Education Officer, Banda to examine the matter as to whether the appointment of the

petitioner was made in accordance with law against the sanctioned post, and then take appropriate decision for the payment of salary to the petitioner. In the meantime on the various representations of the petitioner, directions were issued by the State Government and an enquiry was setup, wherein all reports and recommendations were made in favour of the petitioner. However, ignoring the said reports and recommendation, the impugned order has been passed by the District Basic Shiksha Adhikari on 23.09.2009 denying salary to the petitioner and rejecting her representation in pursuance to the direction of this Court dated 05.07.2007.

The submissions of Shri Prakash Padia is that the impugned order is perverse and has been passed ignoring the report of the enquiry and recommendations made in favour of the petitioner.

Learned Standing Counsel prays for and is allowed a month's time to file counter affidavit. One week thereafter is allowed for filing rejoinder affidavit.

Issue notice to the respondent no.4.

List immediately after six weeks."

4. Learned counsel for petitioner has reiterated above referred submissions that when the petitioner was adjusted on a full time post on a fixed pay of Rs.165/- per month, by order dated 14.5.1981 there was no reason for concerned respondent not to grant her salary. Instead of pointing out an error in aforesaid order, it ought to have been send to B.S.A. for approval.

5. Learned counsel has placed reliance on judgments passed by Supreme Court in **Sabha Shanker Dube Vs. Divisional Forest Officer & Ors (2019) 12 SCC 297, Chief Executive Officer, Zila Parishad, Solapur Vs. Ashok Dhondiba Meher & Ors , 2022 SCC OnLine SC 1354, State of Punjab Ors Vs.Jagjit Singh & Ors, (2017) 1 SCC 148** as well as of this Court in Writ-A No.2174 of 2019, Smt.

Parwati Devi & Ors. Vs. State of U.P. & Ors, that petitioner was entitled for minimum regular pay scale.

6. Per contra, learned counsel for respondents has referred following reasons given in the impugned order:

"1. श्रीमती भगौनिया देवी अंशकालिक सेविका द्वारा 01.07.1971 को तथाकथित नियुक्ति आदेश की प्रति/छायाप्रति उपलब्ध नहीं कराया गया एवं उक्त पत्र माननीय उच्च न्यायालय में योजित याचिका में भी संलग्न नहीं किया गया है।

2. वित्त एवं लेखाधिकारी के पत्र 206/17.07.09 द्वारा स्पष्ट किया गया है कि अंशकालिक सेविका की नियुक्ति वर्ष 1971 से अनवरत रूप से किसी भी प्रकार के मानदेय का भुगतान श्रीमती भगौनिया देवी को नहीं किया गया है।

3. कन्या जूनियर हाई स्कूल कमासिन परिषदीय नियंत्रण का विद्यालय है. जिस पर वेतन वितरण अधिनियम 1978 प्रभावी नहीं है। क्योंकि यह अधिनियम अशासकीय मान्यता प्राप्त विद्यालय में लागू होता है।

4. सचिव बेसिक शिक्षा परिषद इलाहाबाद द्वारा जिला बेसिक शिक्षा अधिकारी उ०प्र० को सम्बोधित पत्र बे०शि०प०/32681/एफ-2/78-79 दिनांक फरवरी 1979 में यह स्पष्ट व्यवस्था की गयी है कि जिन विद्यालयों में एक से अधिक चपरासी कार्यरत हों तो उनको समायोजित किया जाये जबकि कन्या जूनियर हाई स्कूल विद्यालय में ऐसे पद सृजित न होने के कारण समायोजित किये जाने का कोई औचित्य ही प्रतीत नहीं होता है।

उप विद्यालय निरीक्षक बांदा द्वारा निर्गत कार्यालय पत्रांक 449/दिनांक 14.05.81 के सम्बन्ध में मेरे पूर्वाधिकारी द्वारा सम्यक जांचोपरान्त कार्यालय पत्र संख्या डी०आई०-1/214-88/84-85 दिनांक 06.04.85 द्वारा नियमानुसार न होने के फलस्वरूप वित्तीय अनुमोदन/स्वीकृति नहीं दिया गया जिसका उल्लेख उक्त याचिका के संलग्नक संख्या 15 में उल्लिखित है जिसके फलस्वरूप दि० 14.05.81 के पत्र के आधार पर श्रीमती भगौनिया देवी को पूर्णकालिक सेविका के नियत वेतन का भुगतान नहीं किया जा रहा है साथ ही विशेष रूप उल्लेखनीय है कि श्रीमती भगौनिया देवी द्वारा उपरोक्त याचिका में उक्त आदेश दिनांक 06.04.85 को न ही चुनौती दी गई एवं न ही उक्त पर माननीय उच्च न्यायालय इलाहाबाद द्वारा कोई सम्यक आदेश ही पारित किया गया है फलस्वरूप आदेश दिनांक 06.04.85 नियमानुसार है एवं वर्तमान में भी प्रभावी है।"

7. As referred above, by order dated 14.5.1981, petitioner was adjusted in fixed salary of Rs.165/- per month, but it was not approved by subsequent order dated 6.4.1985 and relevant contents thereof is mentioned hereinafter:

"आपके द्वारा प्रस्तुत किये गये विदुरित पत्र पत्रांक 449 दिनांक 14.05.81 के सम्बन्ध में कार्यालय के अभिलेखों से आवश्यक जांच की गयी तत्कालीन जिला बेसिक शिक्षा अधिकारी है वित्तीय स्वीकृत/अनुमोदन प्राप्त नहीं किया गया है। अतः आपको नियुक्ति पत्र से अंकित वेतन दिया जाना संभव नहीं है।"

8. According to record aforesaid order dated 6.4.1985 was not challenged even in this writ petition according to petitioner she has worked continuously.

9. Be that as it may, from materials available on records, it could not be disputed that the petitioner has worked as a 'Peon' for a very long time. Initially, she was paid fixed salary of Rs.15/- per month and later on she was directed to pay fixed salary of Rs.165/- per month. Petitioner was never paid salary of Rs.165/- per month and her fixed salary of Rs.15/- per month was stopped after 1996. The respondents have taken a hyper technical approach which is against the concept of a Welfare State.

10. The respondents have not denied that petitioner has worked as a Peon, though this Court is of the considered opinion that judgments relied upon by counsel for petitioner are distinguishable to the extent that petitioner has failed to prove that she was appointed in accordance with due procedure. Still when the petitioner has worked, therefore, she is entitled to be paid salary for it. There is no need to challenge subsequent order dated 6.4.1985, as initial order dated 14.5.1981 is still in existence, therefore, if it is considered that petitioner has worked till she attained age of 60 years i.e. upto year 2016 as well as considering her case, that she was paid only Rs.15/- per month till 1996, and no salary was paid thereafter, therefore, her salary if calculated @

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Rs.165/- per month from 14.5.1981 it would be Rs.69300/- (for 35 years).

11. The petitioner has approached this Court twice and this writ petition is pending for the last 12 years as well as considering that petitioner is a woman and has worked as a Peon in a school, therefore, in the interest of justice, this writ petition is **disposed of** with a direction that the petitioner be paid Rs.1,00,000/- (Rs. One Lakh) towards her salary and cost of approaching this Court on two occasions with further direction that she will not raise any other demand.

12. This order is passed considering peculiar facts and circumstances of the present case.

13. Aforesaid amount shall be paid by the State being a Welfare State within four weeks from today.

14. It will be apt to quote from Kutilya's Arthshastra, where Chanakya has defined concept of Welfare State as:

“प्रजासुखे सुखं राज्ञः प्रजानां तु हिते हितम्।

नात्मप्रियं हितं राज्ञः प्रजानां तु प्रियं हितम्॥

(प्रजा के सुख में राजा का सुख निहित है, प्रजा के हित में ही उसे अपना हित दिखना चाहिये। जो स्वयं को प्रिय लगे उसमें राजा का हित नहीं है, उसका हित तो प्रजा को जो प्रिय लगे उसमें है।)”

Order Date: 6.3.2024.

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