



2026:ANC:141581

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - A No. - 6103 of 2021**

Smt. Dharmwati Devi

.....Petitioner(s)

Versus

State of U.P. and 5 others

.....Respondent(s)

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|---------------------------|---------------------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Bajrang Bahadur Singh, Satya<br>Prakash Singh, Sr. Advocate                   |
| Counsel for Respondent(s) | : Ajay Kumar Sharma, Arun Kumar,<br>C.S.C., Sanjay Yadav, Shashi<br>Prakash Rai |

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**Court No. - 52**

**HON'BLE MRS. MANJU RANI CHAUHAN, J.**

1. Heard learned counsel for the petitioner, Mr. Shailendra Singh, learned Standing Counsel for the State and perused the record.

2. The writ petition has been filed to quash the impugned orders dated 23.02.2021 and 08.03.2021 passed by respondent no.2, whereby the claim for payment of salary to the petitioner on a Class-IV post has been rejected.

3. Learned counsel for the petitioner submits that the petitioner's husband was working as an Assistant Teacher in Kisan Vaidik Junior High School, Latifpur, District- Gautam Buddh Nagar, died

petitioner was duly approved by the Basic Shiksha Adhikari, Gautam Buddha Nagar, vide letter dated 06.09.2006.

4. The institution in question was brought within the purview of the U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978. However, an objection was raised by the Assistant Director of Education (Basic), Meerut/Saharanpur Division, vide his letter dated 16.03.2007, with regard to the appointment of Teachers and Ministerial staff and the specific objection was raised against the petitioner's appointment on the ground that although her appointment was approved as a Class-IV employee but the same was made without following the procedure prescribed under law.

5. On the basis of the aforesaid communication issued by the Assistant Director of Education (Basic), an opinion was sought from the Director of Education regarding the petitioner's appointment. However, no opinion or decision has been communicated by the Director of Education (Basic). Nevertheless, solely on the basis of the aforesaid objection, the salary of the petitioner has been withheld. Thereafter, the petitioner filed Civil Misc. Writ Petition No.58845 of 2008 before this Court, which was dismissed by order dated 22.04.2011. The said order was passed by a learned Single Judge and was challenged by means of Special Appeal No. 898 of 2011 and the Division Bench of this Court, by order dated 18.01.2020, observed that there was no material on record to show that at the time of appointment of the petitioner in the institution in question no vacant Class-IV post was available. It

matter and pass appropriate orders after examining the entire material on record.

6. The impugned order rejecting the petitioner's representation for payment of salary proceeds on three principal grounds.

(a) Firstly, it records a categorical finding that the appointment of the petitioner, Smt. Dharmavati Devi, to the Class-IV post in the institution was not made in accordance with the statutory provisions governing such appointments. Consequently, payment of salary to the petitioner from the State Exchequer could not be sanctioned in accordance with law.

(b) Secondly, it holds that the provisions of the Government Order dated 31.01.1997 governing engagement on an honorarium basis ceased to have any application with effect from 02.12.2006, the date on which the institution was brought on the grant-in-aid list.

(c) Thirdly, it records that no sanctioned Class-IV post was available in the institution after its inclusion in the grant-in-aid list and, therefore, the petitioner's appointment could not confer any legal right to claim salary from the State Exchequer.

7. Learned counsel for the petitioner submits that the impugned order passed by respondent no.2 is founded upon a report and certain statements submitted by respondent nos. 3 and 4 subsequent to the date on which the matter was heard, without affording any

**8.** It is further submitted that the impugned order has been passed in gross violation of the principles of natural justice, as no opportunity of hearing was afforded to the petitioner by respondent no. 2 before passing the said order. It is also urged that the order suffers from complete non-application of mind.

**9.** Learned counsel further contends that respondent no.2 has erroneously recorded that the provisions of the Government Orders dated 01.01.1991 and 31.01.1997 governing appointments on compassionate grounds were not complied with while considering the petitioner's claim. According to the petitioner, all requisite papers relating to the appointment were duly forwarded by the Committee of Management, and thereafter it was incumbent upon the concerned authorities to process the proposal and pass appropriate orders in accordance with the prescribed procedure. Consequently, the petitioner cannot be made to suffer for any lapse or omission attributable to the respondent authorities.

**10.** It is further submitted that respondent no. 4 had already granted approval to the proposal for the petitioner's appointment, and, therefore, no further obligation remained to be discharged either by the petitioner or by the institution. This material aspect has been completely overlooked while passing the impugned order.

**11.** Lastly, learned counsel submits that it is an admitted position that the proposal for appointment was forwarded by the competent authority well within the prescribed period of five years. Merely because the respondents delayed the process of granting approval beyond the said period, the petitioner's claim cannot be defeated.

High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 (hereinafter referred as 'Rule of 1984') are inapplicable to appointments made on compassionate grounds, as such appointments are exclusively governed by the Government Order dated 31.01.1997.

**13.** It is contended that respondent no. 2 has erroneously held that the Government Order dated 31.01.1997 is inapplicable to unaided recognised institutions. According to the learned counsel, the said finding is contrary to the settled position of law, inasmuch as this Court, in a catena of decisions, has consistently held that the aforesaid Government Order is equally applicable to unaided recognised institutions. It is, therefore, submitted that the impugned order proceeds on a fundamentally erroneous interpretation of the applicable legal provisions and is liable to be set aside. Consequently, the petitioner is entitled to the reliefs claimed in the present writ petition.

**14.** Per contra, learned Standing Counsel submits that the impugned order suffers from no illegality and has been passed strictly in accordance with law. It is contended that the petitioner was never appointed to the Class-IV post in the institution in accordance with the statutory provisions governing such appointments. Consequently, no salary can legally be sanctioned from the State Exchequer in respect of such an appointment.

**15.** It is further submitted that the Government Order dated 31.01.1997, governing compassionate appointments on the death of

**16.** Learned Standing Counsel further submits that the mandatory selection procedure prescribed under the Rules of 1984 was admittedly not followed while appointing the petitioner. Consequently, the approval purportedly granted by the then District Basic Education Officer, Gautam Buddh Nagar, vide letter dated 06.09.2006, did not confer any legal validity upon an otherwise illegal appointment. It is submitted that, after examining the entire matter, the Director of Basic Education, Uttar Pradesh, rightly rejected the petitioner's representation dated 10.06.2020 by order dated 08.03.2021, holding the claim to be devoid of merit.

**17.** It is further submitted that the institution in question is a recognised Junior High School governed by the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 as well as Rules of 1984. The institution was included in the grant-in-aid list by Government Order dated 02.12.2006. Thereafter, the Divisional Recognition Committee convened its meeting on 21.02.2007 for considering approval of appointments and release of salary to duly selected teaching and non-teaching staff in accordance with the applicable statutory provisions. In the said meeting, the petitioner's appointment to the Class-IV post was not approved, as the appointment had been made under the compassionate appointment quota without following the prescribed statutory procedure applicable to Class-IV appointments. Consequently, no pay sanction could be issued in favour of the petitioner.

preferred Special Appeal No.898 of 2011, which was finally disposed of by the Division Bench vide judgment dated 18.01.2020.

**19.** Elaborating the factual background, learned Standing Counsel submits that late Shri Vijay Pal Singh was working as an Assistant Teacher in the institution and died in harness on 03.06.2001. On the date of his death, the institution was an unaided recognised Junior High School. Thereafter, the Manager of the institution issued an appointment letter dated 18.08.2001 appointing the petitioner, Smt. Dharmavati Devi, to a Class-IV post on compassionate grounds as the dependent of the deceased employee. However, the petitioner did not assume charge pursuant to the said appointment.

**20.** It is further submitted that, shortly before the institution was brought on the grant-in-aid list, the Manager, by letter dated 15.06.2006, directed the petitioner to join her duties. In pursuance thereof, the petitioner joined the institution on 01.08.2006, nearly five years after the issuance of the original appointment letter dated 18.08.2001. Thereafter, on the basis of the Manager's recommendation and with reference to the appointment letter dated 18.08.2001, the then District Basic Education Officer, Gautam Buddh Nagar, issued a communication dated 06.09.2006 purporting to accord approval to the petitioner's appointment on the Class-IV post under the compassionate appointment quota.

**21.** Learned Standing Counsel further submits that the scheme governing compassionate appointments in recognized non-government aided Junior High Schools was introduced by Government Order dated 27.09.1991, made effective from

Clause 7 of the Government Order dated 31.01.1997 also regulates appointments on compassionate grounds.

**22.** According to the respondents, on the date when the petitioner was purportedly appointed, i.e., 18.08.2001, the institution in question was an unaided recognised Junior High School. Consequently, the Government Orders dated 27.09.1991 and 31.01.1997 were not applicable to the institution at the relevant point of time. Despite the aforesaid legal position, the Committee of Management forwarded a proposal for the petitioner's appointment to the Class-IV post before the District Basic Education Officer and, during the pendency of the matter, proceeded to issue the appointment letters dated 18.08.2001 and 15.06.2006. It is, therefore, contended that the said appointments were made in clear contravention of the applicable Government Orders and are wholly without legal sanction.

**23.** Learned Standing Counsel further submits that the mandatory selection procedure prescribed under the Rules of 1984 was also not followed while making the petitioner's appointment on compassionate grounds. Since the petitioner was not appointed to the Class-IV post in accordance with the statutory provisions, no salary can legally be released from the State Exchequer in her favour.

**24.** It is further contended that the provisions of the Government Order dated 31.01.1997 concerning compassionate appointments became applicable to the institution only with effect from 02.12.2006, the date on which the institution was brought on the

Article 226 of the Constitution of India. Accordingly, the writ petition is liable to be dismissed.

**25.** Heard learned counsel for the parties and perused the record.

**26.** The foundational premise on which the respondents have rejected the petitioner's claim is itself legally unsustainable. It is an admitted position that the petitioner was appointed on compassionate grounds after the demise of her husband, who died in harness while serving the institution. The proposal for appointment was duly processed by the competent authorities and culminated in an order dated 06.09.2006 whereby the District Basic Education Officer granted approval to the petitioner's appointment. Significantly, the said approval has never been withdrawn, recalled or annulled by any competent authority in accordance with law. An administrative order which continues to operate in the eyes of law cannot be rendered otiose by the simple expedient of refusing its consequential benefits. So long as the approval subsists, the respondents are estopped from questioning its efficacy indirectly while simultaneously declining the salary flowing therefrom.

**27.** The Division Bench, while deciding Special Appeal No. 898 of 2011, had already noticed that there existed no material to demonstrate either the absence of a vacant Class-IV post or the cancellation of the approval accorded to the petitioner. Those findings constituted the binding framework within which the competent authority was required to reconsider the matter. Judicial discipline demanded faithful compliance with the directions issued by the appellate Court. Instead, the authority has reopened issues

no.2 relied upon reports and communications submitted by respondent nos.3 and 4 after the matter had already been heard, without furnishing copies thereof to the petitioner and without affording any opportunity to rebut the same. The impugned decision has thus been founded upon materials collected behind the back of the petitioner. Such a course of action is in the teeth of the cardinal principles of natural justice. Fairness in administrative action is not an empty formality but an indispensable facet of Article 14 of the Constitution.

**28.** The Constitution Bench of the Hon'ble Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405**, authoritatively declared that an administrative order must stand or fall on the reasons recorded therein and cannot subsequently be supplemented by fresh reasons through affidavits or otherwise. Likewise, in **Commissioner of Police Bombay v. Gordhandas Bhanji, AIR 1952 SC 16**, it was held that public orders publicly made cannot be construed in the light of subsequent explanations. The impugned orders, therefore, cannot be sustained on reasons subsequently sought to be introduced during the course of litigation.

**29.** The respondents have also proceeded on the erroneous premise that the petitioner should suffer because of alleged procedural lapses attributable either to the Committee of Management or to the educational authorities. Such reasoning overlooks a settled principle of public law that a citizen cannot be penalised for the negligence or inaction of the State or its

**30.** The Hon'ble Supreme Court in **Asha Kaul (MRS) & Anr. v. State of Jammu & Kashmir & Ors., (1993) 2 SCC 573**, observed that where delay or procedural default is attributable to the authorities, an otherwise eligible candidate cannot be deprived of the benefits flowing from law. The same equitable principle has consistently been reiterated by the Supreme Court that an individual cannot be made to suffer because of administrative inaction or official negligence.

**31.** This Court further finds that the respondents have completely failed to appreciate the true object of compassionate appointment. Such appointments are conceived not as a source of largesse but as a measure of immediate social welfare intended to rescue the bereaved family of a deceased employee from financial destitution. The beneficial object underlying the Government Orders governing compassionate appointment deserves a purposive and liberal construction rather than a hyper-technical interpretation which defeats the very object sought to be achieved.

**32.** The impugned orders further disclose complete non-application of mind to the material observations recorded by the Division Bench and proceed on assumptions unsupported by the record. The findings regarding non-applicability of the Government Orders and absence of entitlement have been recorded without considering the subsisting approval order, the factual matrix already noticed by the appellate Court and the legal consequences flowing therefrom. The decision-making process is, therefore, vitiated by arbitrariness, procedural impropriety and manifest perversity.

impugned orders neither disclose proper application of mind nor demonstrate consideration of the binding directions issued by the Division Bench. Consequently, the impugned orders fail to satisfy the constitutional requirement of reasoned decision-making.

**34.** This Court is, therefore, satisfied that the respondents have acted in complete disregard of binding judicial directions, have violated the principles of natural justice, have proceeded upon an erroneous understanding of the applicable Government Orders and have arbitrarily deprived the petitioner of salary despite a subsisting order approving her appointment. Such action is plainly violative of Articles 14 and 21 of the Constitution of India and cannot receive the imprimatur of this Court in exercise of its writ jurisdiction.

**35.** The impugned orders dated 23.02.2021 and 08.03.2021 are hereby quashed.

**36.** Accordingly, the writ petition succeeds and is **allowed**.

**(Mrs. Manju Rani Chauhan,J.)**

**July 07, 2026**

Rahul.