

Court No. - 81

Case :- WRIT - A No. - 10406 of 2020

Petitioner :- Shivmuni Ram And 4 Others

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Kailash Singh Yadav, Sajjan Kumar Yadav

Counsel for Respondent :- C.S.C.

Hon'ble Yashwant Varma, J.

This petition has been preferred principally seeking the following reliefs:-

(i) issue a writ, order or direction in the nature of Mandamus commanding the District Basic Shiksha Adhikari, Mau to grant arrears of salary to the petitioner no. 1 since 1st July 2015 to 8th November 2015, to the petitioner no. 2 since 1st July 2015 to 4th November 2015, to the petitioner nos. 3&4 since 1st July 2015 to 5th November 2015 and to the petitioner no. 5 since 1st July 2015 to 31st October 2015 with interest at a rate to be specified by this Hon'ble Court."

Learned Standing Counsel as well Sri A.K. Yadav, learned counsel appearing for the fourth respondent fairly concede that the issue raised in this petition stands concluded in favour of the petitioners in light of the decision rendered in **Angad Yadav And 7 Others v. State of U.P. And 4 Others [Writ-A No. 33360 of 2017 decided on 19.8.2017]**. In **Angad Yadav**, the learned Judge negatived the contention of the State respondents invoking the principles of "no work no pay" and held as follows:-

"The only question which arises in the present petition is whether the petitioners are entitled for their salaries from 01st July, 2015 until they were allowed to join their posts in November, 2015 or not.

In this regard, the State Government has formed an opinion on the basis of the advice of the Finance Department that the petitioners are not entitled for their salary for the period when admittedly they have not rendered any service on the ground of 'no work, no pay'.

...

Recently, the Supreme Court has clarified that the principle of 'no work, no pay' would not be applicable in certain circumstances, amongst others, when employee was compelled not to work in spite of his willingness to perform his duties. The Supreme Court in *Kripa*

Nand Singh (supra) has held that 'no work, no pay' is a rule and 'no work yet pay' is an exception. The Court has held that if the employee is not permitted to join the duty, then the principle of no work no pay shall not be applicable as he was not at fault.

.....

Applying these principles on the facts of the present case, I find that the petitioners in terms of the change of the academic session, when admittedly their dates of superannuation fall during the academic session i.e. 01st April, 2015 to 31st March, 2016 as their dates of birth are 01.07.1953, 01.06.1953, 01.05.1953, 03.05.1953, 01.07.1953, 01.07.1953, 01.07.1953 and 15.05.1953 respectively, they were entitled for the sessional benefit and to continue upto 31st March, 2016. There was no fault on their part as they were not allowed to work after 30th June, 2015. A specific direction was issued not to allow them to continue beyond 30th June, 2015. The said direction, as mentioned above, was manifestly erroneous and contrary to the well settled practice and the relevant Rules to give the session benefit to such teachers whose date of superannuation falls during the academic session. The State Government has issued a Government Order dated 08th October, 2015 rectifying the said mistake, hence the Government Order dated 02nd May, 2017 that the teachers who were allowed to continue after the judgment of Ramesh Chandra Tiwari (supra) and the Government Order dated 08th October, 2015, will not be paid salary from 30th June, 2015 till their rejoining is arbitrary and unreasonable. When the Government itself had issued an order dated 08th October, 2015, there was no justification to issue the impugned order dated 02nd May, 2017, which is contrary to the law laid down by this Court in Ramesh Chandra Tiwari (supra). As noted above, the Division Bench has declared the Government Order dated 15th June, 2015 illegal."

In view of the aforesaid, Sri Yadav submits that the claim of the petitioners shall be duly evaluated in accordance with law and bearing in mind the decision rendered in **Angad Yadav** and a final decision in respect thereof communicated with expedition and preferably within a period of four months from the date of presentation of a duly authenticated copy of this order.

The statement so made is recorded and accepted. The petition stands **disposed of**.

Order Date :- 9.12.2020

LA/-