

(2012) 03 AHC CK 0245

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7594 of 2003

Abu Bakar

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 170, 419, 420

Citation : (2012) 5 ADJ 653 : (2012) 4 AWC 3320

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ajit Kumar, A.K. Shukla, Anil Kumar, Arun Kumar, C. Prasad, Mohd. Arif and V.B. Khare, for the Appellant; Anil Tiwari, Pradeep Narain Pandey, Ramanand Pandey, Z.A. Siddiqui and C.S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Hon'ble Arun Tandon, J.—Petitioner before this Court seeks quashing of the orders dated 27.1.2003, 31.1.2003 and the orders of the Trial Court dated 18.5.1989 and the order of the Appellate Court dated 28.2.2000. A further prayer has been made for consequential reliefs being also granted. Facts in short leading to the present writ petition are as follows:

Muslim Higher Secondary School, Mahadeiya, Naugarh, Siddharth Nagar is stated to be a minority intermediate college dully aided and recognised under the provisions of Intermediate Education Act. The original respondent No. 4, namely Hirday Narain Dubey, is stated to have been appointed in the said institution on 8.11.1974 as Assistant Teacher in L.T. grade. His services were put to an end under a resolution of the Committee of Management dated 29th March, 1978, after the Committee was informed that the said respondent No. 4 was convicted in an offence under Sections 419, 420 and 170 of Indian Penal Code.

2. In order to keep the record states it may be noticed that the respondent No. 4 was convicted under Sections 419, 420 and 170 of Indian Penal Code under the

order of the Trial Court dated 29.9.1973. Not being satisfied, he filed an appeal before the Sessions Judge. The said appeal was dismissed on 21.11.1975. Thereafter he approached the High Court. His criminal revision in that regard is stated to have been dismissed on 5.6.1979.

3. Even after his conviction and apparently during the period he was on bail under the order of Sessions Judge, respondent No. 4 obtained appointment in the said institution to be precise on 8.11.1974. After dismissal of the appeal he was again sent to jail. He obtained bail from the High Court and thereafter he again joined the institution on 16.1.1976.

4. The Committee of the Management of the college coming to know about the aforesaid facts proceeded to pass the order dated 29.1.1979 dismissing the respondent No. 4 from service w.e.f. 30.3.1978. The District Inspector of Schools did not approve the said punishment against the vacancy so caused the petitioner is stated to have been appointed in the institution. The respondent No. 4 after his criminal revision was dismissed and he had undergone the punishment, filed Original Suit No. 90 of 1982. The respondent No. 4 prayed for a declaration to the effect that the order of dismissal from service was null and void and that he was entitled to continue in service with full emoluments and arrears of salary. An injunction was also prayed, restraining the defendants to the suit from interfering in the working of the plaintiff. The suit was decreed under the order of the Trial Court dated 18.5.1989. The Trial Court declared that the order of dismissal dated 9.1.1979 was illegal and inoperative in the eyes of law. It was further declared that the plaintiff be treated to be in continuous service since 30.3.1978 and was entitled to salary.

5. In the suit, the Committee of Management of the institution and the District Inspector of Schools as well as the State Authorities were made defendants. Against the judgment of the Trial Court only one appeal was filed by the State of U.P. and the District Inspector of Schools being Appeal No. 146 of 1989. The Committee of Management did not challenge the order of the Trial Court. The appeal was dismissed by the 1st Additional District Judge, Basti on 28.1.2000.

6. The decree so granted in favour of the respondent No. 4 was put to execution and in order to satisfy the decree of the Civil Court, the District Inspector of Schools passed the order dated 27.1.2003, terminating the appointment of the petitioner with the direction that the respondent No. 4-plaintiff be appointed in his place. Consequential order was issued by the Manager of the college on 31.1.2003.

7. It is against these orders and the order of the Civil Court that the present writ petition has been filed.

8. During the pendency of this writ petition respondent No. 4 expired on 24.9.2006. A substitution application was filed and in place of respondent No. 4, his legal heirs have been impleaded as respondent No. 4/1 and No. 4/2 under the order of the Court. Notices were directed to be issued to newly added

respondents. As per the Office Report dated 24.7.2007, the Court held under its order dated 12.9.2007 that services upon legal heirs as 4/1 and 4/2 was sufficient. On the same date the Court also recorded the statement of Shri Rama Nand Pandey, Advocate, who was earlier representing the respondent No. 4 to the effect that he did not have any further instructions.

9. Heard learned counsel for the petitioner, Standing Counsel and learned counsel for the Committee of Management Shri Ashwani Kumar Mishra, Advocate.

10. On behalf of the petitioner, it is stated that from the facts as recorded above two situations can arise.

A. On the date the order of dismissal was passed and the law as it stood then approval of the District Inspector of Schools in the matter of termination was required even in respect of the minority institution. In that circumstances an appeal u/s 16 G (5) would be maintainable and, therefore, the suit as filed by Shri Hirday Narain Dubey would be barred in view of the fact that the Intermediate Education Act is a complete code in itself and the teacher concerned should have avail the statutory remedy u/s 16 G (5) reference Prabandh Samiti Lady Parson Kaur Inter College, Basidila, Sardarnagar, Gorakhpur and others v. Saudagar Prasad Yadav, 1981 UPLBEC 377; Madhu Sudan Singh v. State of U.P. and others, 2007 (3) ESC 1878 (AII); Shyam Lal Yadav v. Kusumlata, 1979 SCC AIR 1247.

B. In view of the law now declared by the Hon"ble Supreme Court of India in the case of C/M. St. John Inter College Vs. Girdhari Singh and Others, , no approval from the District Inspector of Schools is required in the matter of termination of services of a teacher of a minority institution.

11. He submits that if the contingency A is accepted by this Court then the suit itself being not maintainable, the declaration granted would be inoperative in the eyes of law and, therefore, no action could have been taken against the petitioner. If contingency B is said to be applicable then the order of the Appellate Authority which proceeds only on the ground that no approval from the District Inspector of Schools has been obtained before inflicting the punishment of dismissal from service has to be set-aside inasmuch as the Apex Court has explained that in the matter of teachers of minority institution, no approval qua the punishment inflicted is required.

12. He explain that in both the contingencies the order of the Civil Court could not have been the basis for putting an end of employment of the petitioner. It is therefore submitted that the orders impugned are liable to be set-aside and the petitioner be restored back in service.

13. The learned Standing Counsel as well as the learned counsel for the Committee of Management in reply submit that the judgment and decree of the Civil Court to which the Committee of Management, District Inspector of Schools and State were party is binding upon them and, therefore, they had no other

option but to ensure that respondent No. 4 is put back in service. Since the appointment of the petitioner was made against the vacancy caused in the institution due to dismissal order passed against the respondent No. 4, the petitioner had to be removed so as to make place for respondent No. 4. They submit that this Court may not enter into the correctness or otherwise of judgment of the Civil Court inasmuch as the petitioner was neither a necessary nor a proper party to the said suit proceedings and his appointment was contingent to the outcome of the suit proceedings.

14. I have heard the learned counsel for the parties and have examined the records in the present writ petition.

15. As already noticed above, the issue qua maintainability of a suit for declaration by a teacher of a recognised intermediate college has been examined before this Court as well as by the Apex Court in the case of Prabandh Samiti Lady Parson Kaur Inter College (Supra), Madhu Sudan Singh (Supra) as well as by the Apex Court in the case of Shyam Lal Yadav (Supra). In view of the law declared by the Apex Court as well as by the High Court, it has to be held that the suit as filed by the respondent Ho. 4 was legally not maintain-able and he should have availed the statutory remedy which has been provided for under the provision of the Intermediate Education Act, which is a complete code in itself. Therefore, no declaration by the Civil Court could have been granted in the matter of dismissal from service of the teacher.

16. An issue may arise that if no approval from the District Inspector of Schools is required in respect of the minority institution then no appeal u/s 16 G (3) would be maintainable. Consequently, there shall be no other remedy available to the teacher concerned against an arbitrary action of the Management of a minority institution dismissing him from service except the remedy of suit.

17. It is not necessary for this Court to dilate any further on the said issue inasmuch as if it is held that no approval from the District Inspector of Schools is required in the matter of punishment inflicted on a teacher of minority institution, the order of the Appellate Court whereby the first appeal had been dismissed only on the ground that no approval from the District Inspector of Schools has been obtained before dismissing the respondent No. 4 from service would fell automatically. As there can be no such statutory requirement in view of the law laid down by the Hon"ble Supreme Court in the case of St. John Inter College, Agra (Supra).

18. In view of the above, this Court finds force in the contentions raised on behalf of the petitioner that in both the circumstances the declaration granted by the Civil Court in favour of the respondent No. 4 is legally not sustainable and consequently the action taken in pursuance thereof against the petitioner would also be rendered illegally and, therefore, action taken in pursuance there of would be illegal. This Court holds that the order dated 27.1.2003 passed by the District Inspector of Schools terminating the services of the petitioner is

unsustainable in the eyes of law and is hereby quashed. What should be the consequential relief in favour of the petitioner is the next question. Admittedly the petitioner has not worked since 2003 onwards and during this period the State has been forced to make payment of salary to respondent No. 4 because of the decree of the Civil Court. There cannot be a direction to State Government to pay salary to the two persons against one and the same post in the facts of the case.

19. In the opinion of the Court interest of substantial justice would be served in the facts of the case by providing that the petitioner shall be reinstated forthwith as Assistant Teacher and shall be paid his salary from the date, he resumes his duties. He shall not be entitled to back-wages for the period he has not worked but for all other purpose the period between 27.1.2003 till the date of reinstatement shall be counted as spent on duty. With the aforesaid directions, the writ petition is partly allowed.