
(2014) 11 AHC CK 0108

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14975 of 2014

Ambrish Mishia and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Citation : (2014) 11 ADJ 446 : (2015) 1 AWC 399 : (2014) 4 UPLBEC 3299

Hon'ble Judges : Rajan Roy, J

Bench : Single Bench

Advocate : A.P. Tewari and Anirudh Upadhyay, Advocates for the Appellant;
Manish Goyal, Ashish Mishra and Satendra Pratap Singh, Advocates for the Respondent

Judgement

Rajan Roy, J.—Heard learned Counsel for the petitioners and Shri Ashish Mishra, learned Counsel for respondent No. 2. Petitioners herein, were appointed on class IV post as Chowkidar etc. in the year 2004. Certain persons who had appeared in the selection but were placed in the waiting list challenged the same by filing Writ Petition No. 29826 of 2004, Balram Singh and others v. State of U.P. and others, arraying the petitioners as respondents No. 4 and 9 therein, along with other similarly placed respondents.

2. Initially, on 4.8.2004, an interim order was granted by the Court in the aforesaid writ petition, inter alia, restraining the respondents therein from functioning. In compliance thereof, the District Judge passed an order dated 16.8.2004 restraining the said persons (including the petitioners herein), from working. The said interim order dated 4.8.2004 was vacated by the Court vide order dated 3.3.2006. As a consequence of the vacation of the said interim order, the petitioners herein, ought to have been reinstated forthwith but they were not reinstated allegedly on the ground of pendency of the writ petition. Ultimately, the writ petition was dismissed vide judgment dated 7.8.2013 and the claim of the petitioners therein, was rejected. The validity of the appointment of the petitioners herein, was upheld. A categorical finding was recorded to the effect

that "in this view of the matter, I do not find any illegality in the appointment of respondents No. 3 to 12."

3. Consequent to the dismissal of the said writ petition on 7.8.2013, the petitioners herein, submitted representations dated 23.9.2013 and 21.9.2013, seeking their reinstatement in terms of their appointment orders. It is on these representations the impugned order dated 5.2.2014 has been passed by the District Judge, rejecting the claim of the petitioners.

4. I have heard learned Counsel for the parties and perused the record.

5. The reasoning given in the impugned order is patently erroneous. The District Judge has rejected the claim of the petitioners, inter alia, on the ground that this Court while dismissing the Writ Petition No. 29826 of 2004 vide judgment dated 7.8.2013 has nowhere specifically vacated the interim order dated 4.8.2004, nor has it ordered for restoration of the status quo ante. The impugned order also states that there is no specific direction in the said judgment that the petitioners should be reinstated.

6. The interim order dated 4.8.2004 had already been vacated by the Court on 3.3.2006. The said order is quoted hereinbelow.

"The interim order is operating in favour of the petitioner and against the respondents. Against the interim order, a Special Appeal No. 1203 of 2004 has been filed, which has been finally disposed off with the request to the learned Single Judge to dispose off the writ petition itself within three months vide order dated 17.10.5.

This petition was taken up in the revised list, but none has appeared to argue the petition on merits. Consequently the interim order is vacated.

List in the next cause list."

7. In my view, the petitioners herein, were entitled to reinstatement, on vacation of the interim order itself unless there were other valid reasons for not doing so and in such case the reasons should have been communicated to them, which is not the case here.

8. Moreover, once the writ petition itself had been dismissed on 7.8.2013 with the observation that the appointment of the respondents therein was not illegal, then, the natural corollary is that whatever right vested in the petitioners herein, should be restored. No specific direction was required to be given by the Court for the reinstatement of such persons, nor any observation or direction was required to the effect that the interim order dated 4.8.2004 had ceased to operate. The legal position in this regard is very well settled that once the writ petition is dismissed the interim order, if any, stands automatically merged in the final order.

9. Reference may be made in this regard to the judgment of the Supreme Court in the case of Amarjeet Singh and Others Vs. Devi Ratan and Others, , wherein,

their Lordships of the Supreme Court have held as under:

"17. No litigant can derive any benefit from mere pendency of case in a Court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim *actus curiae neminem gravabit*, which means that the act of the Court shall prejudice no one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide *Shiv Shankar v. U.P. SRTC, GTC Industries Ltd. Union of India and Jaipur Municipal Corpn. v. C.L. Mishra*)."

In the said case the effect of the interim order was neutralized, after dismissal of the case, by restoring the rights of the affected parties to seniority.

10. Similarly, in the case of *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam Represented by Its President etc.*, , the Supreme Court observed as under:

"43-.4. Once the Court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the Court should in addition to full restitution impose appropriate costs. The Court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.

43.5. It is the bounden obligation of the Court to neutralise any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

11. The other reasoning given by the District Judge is that the order dated 16.8.2004 passed by his predecessor terminating the services of the petitioners, pursuant to the interim order dated 4.8.2004, had not been set aside by any Court, which is also not tenable.

12. The order dated 16.8.2004 is to be read and understood in the light of the interim order dated 4.8.2004 passed by this Court in the above mentioned writ petition and it will meet the same fate as the said interim order. The interim order having been vacated on 3.3.2006 and the writ petition itself having been dismissed on 7.8.2013, the order dated 16.8.2004 passed by the District Judge in compliance of the said interim order cannot survive the vacation of the same nor the dismissal of the petition. The said order dated 16.8.2004 cannot be treated as an order terminating the services of the petitioners, but one

restraining the petitioners from functioning in terms of the interim order dated 4.8.2004 granted by the Court as it was passed in compliance thereof.

13. It is nobody's case that the selection and appointment of the petitioners was, at any time, cancelled by any authority or Court.

14. Once the writ petition No. 29826 of 2004 itself has been dismissed and the appointment of the petitioners herein has been upheld, it was also not open for the District Judge to scrutinize the validity of the appointment of the petitioners, as has been done by him in the impugned order.

15. The petitioners herein, ought to have been reinstated on the same terms on which they were appointed long back in the year 2006 itself for which they were entitled under law but till date they have not been reinstated in service.

16. In view of the above discussion, the impugned order dated 5.2.2014 passed by the District Judge is not at all sustainable. The same is, accordingly, quashed. The respondents are directed to reinstate the petitioners forthwith on the same terms on which they were appointed. The petitioners shall be entitled to such consequential benefits as is permissible in law. With the aforesaid observations, the writ petition is allowed.