
(2005) 03 AHC CK 0285
In the Allahabad High Court

Case No : C.M.W.P. No's. 27517 of 1994, 1154 of 1995 and 8661 of 2003

Anisun Nisha Azmi

APPELLANT

Vs

D.I.O.S. and Others

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Citation : (2005) 5 AWC 5010

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : M.A. Qadeer and R.U. Ansari, for the Appellant; Swaraj Prakash, S.C., for the Respondent

Judgement

Vineet Saran, J.—By and order dated 15.9.2003, passed by Hon"ble the then Chief Justice, all these three petitions have been assigned to this Bench for hearing. Counter and rejoinder-affidavits have been exchanged and with the consent of the learned Counsel for the parties, these petitions are being disposed of at the stage of admission itself. Since the three petitions are co-related and involve the same controversy, they all have been heard together and are being disposed of by a common judgment.

2. The Respondent-institution, namely, Jawwad Ali Shah imam Bara Girls Post Graduate College, Gorakhpur, is a recognized institution. It was brought under the grant-in-aid list of the State Government with effect from 1.10.1990. The dispute in these writ petitions relates to the appointment of Head Clerk in the institution. Km. Shahnaz Fatma (Petitioner in Writ Petition No. 8661 of 2003) was initially appointed on 1.9.1981 as the first Clerk of the institution. On 20.7.1988, an advertisement was issued for appointment of a regular clerk. In response to that Km. Shahnaz Fatma applied and after facing the selection committee, she was selected and was regularized on the post of Clerk. The said Km. Shahnaz Fatma claims that she had been promoted on the post of Head Clerk/Accountant with effect from 26.10.1988 on a vacancy which occurred because of the termination of the services of one Smt. Anisun Nisha Azmi (Petitioner in Writ

Petition No. 27517 of 1994).

3. The said Anisun Nisha Azmi claims to have been appointed as Head Clerk of the institution vide order dated 12.6.1984, passed by the Manager of the Committee of Management of the institution. As such, it is her case that after joining on 1.7.1984, she continued to work on the post of Head Clerk in the Respondent-institution. The said Smt. Anisun Nisha Azmi claims that her appointment had been made after she had faced the regular selection process, which is however disputed in the counter-affidavits filed by Km. Shahnaz Fatma and the educational authorities. Thereafter, the services of Smt. Anisun Nisha Azmi had been terminated by an order dated 26.10.1988, passed by the Secretary/ Manager of the Institution on the ground that on the date of the meeting of the selection committee, which was held on 13.10.1988, although she was called for interview, but as per the rules, since she was found to be overage and lacking the requisite qualifications, hence she was found unfit for selection on the post of Head Clerk. The said order was challenged by Smt. Anisun Nisha Azmi in Writ Petition No. 25027 of 1988. On 21.12.1988, this Court stayed the operation of the order dated 26.10.1988. In the meantime the Respondent-institution came under the grant-in-aid list of the State Government with effect from 1.10.1990.

4. On 23.1.1991, approval was granted by the Zonal Higher Education Officer for inclusion of the name of Smt. Anisun Nisha Azmi as Head Clerk for payment of salary but, however, the same was made subject to orders passed in Writ Petition No. 25027 of 1988. The order dated 23.1.1991, was challenged in Writ Petition No. Nil of 1991 Tazammul Hussain and Ors. v. State of U.P. and Ors. The said writ petition was disposed of by this Court vide judgment and order dated 5.3.1991 in which it was directed that the impugned order dated 23.1.1991, although not cancelled, but would remain suspended till an enquiry was conducted in the matter. It is not disputed that thereafter, neither the enquiry as contemplated above has been completed nor any order has been passed by the educational authorities with regard to appointment and approval on class III post in the institution in question.

5. However, while the interim order in Writ Petition No. 25027 of 1988 staying the operation of the order dated 26.10.1988, passed by the Committee of Management was continuing, the Committee of Management reviewed its order and by a fresh order dated 17.2.1993, cancelled the earlier order of termination dated 26.10.1988. No reason for cancelling the earlier order had been assigned in its order dated 17.2.1993 except that it was merely stated that the Committee of Management thoroughly re-examined the case of Smt. Anisun Nisha Azmi and therefore, the earlier order was being recalled. In response thereto, on an application filed by the Committee of Management (Respondent therein), in view of the fact that the order impugned in the said Writ Petition No. 25027 of 1988 had itself been withdrawn, the writ petition was dismissed as infructuous vide order dated 2.11.1993 and it was held that in view of the withdrawal of the

impugned order, the Petitioner (Smt. Anisun Nisha Azmi) would be entitled to all such benefits which were available to her in accordance with law.

6. The matter was thereafter forwarded by the Committee of Management to the educational authorities of the State Government for payment of salary to Smt. Anisun Nisha Azmi from the State funds. Since the direction was to give benefit to Smt. Anisun Nisha Azmi in accordance with law, the Zonal Higher Education Officer, after considering the facts of the entire case, passed an order dated 19.5.1994 refusing to make payment of salary to Smt. Anisun Nisha Azmi on the post of Head Clerk from the State fund, on the ground that her initial appointment in 1984 was never made through any valid selection committee nor any approval had been accorded to such appointment by the educational authorities. It was further stated that the said appointment was also not made in accordance with the Statutes of Gorakhpur University. Thus, while refusing to accord sanction for payment of salary to Smt. Anisun Nisha Azmi from the State funds, the said authority directed that since the appointment had been made by the Committee of Management, thus, in accordance with law, as contemplated by the High Court's order dated 2.11.1993, passed in Writ Petition No. 25027 of 1988, the payment of salary to Smt. Anisun Nisha Azmi may be made from the funds of the Committee of Management. The order dated 19.5 1994 is under challenge in Writ Petition No. 27517 of 1994. The Petitioner therein (Smt. Anisun Nisha Azmi) has also prayed for a direction to the Respondents to pay the arrears of salary with effect from 1.10.1990, i.e. , from the date when the institution was brought under the grant-in-aid list of the State Government.

7. In the said writ petition, an interim order was passed on 10.3.1995 which is quoted below:

Let an interim mandamus be issued commanding the Respondents No. 1 and 2 to pay salary to the Petitioner and give other benefits to her under the orders of the Court dated 2.11.1993 or show cause by filing counter-affidavit within two months from the date of receipt of a certified copy of this order before the Zonal Higher Education Officer, Gorakhpur.

8. After passing of this order dated 10.3.1995, no further order has ever been passed in this writ petition. Since counter-affidavit was not filed within the aforesaid period of two months (although filed later) nor the Respondent-authorities made payment of salary to Smt. Anisun Nisha Azmi, Contempt Petition No. 1154 of 1995 was filed in which notices to the opposite parties were issued on 11.8.1995. The matter was heard by an Hon''ble Judge in the year 1997 and judgment was reserved but, however, on 20.12.1999 the matter was released by the Hon''ble Judge with the observation that all the related petitions may be heard together.

9. While the aforesaid Writ Petition No. 27517 of 1994 as well as Contempt Petition No. 1154 of 1995 were both pending, the Director of Education (Higher Education) (who was not even an opposite party in the contempt petition) vide

its order dated 27.1.2003, directed for payment of salary to Smt. Anisun Nisha Azmi with effect from 1.10.1990 on the condition that in case if Contempt Petition No. 1154 of 1995 was dismissed, then the entire salary paid to Smt. Anisun Nisha Azmi would be recovered from her at once, in lump sum. Km. Shahnaz Fatma, who claims to have been working on the post of Head Clerk with effect from 26.10.1988, thus filed Writ Petition No. 8661 of 2003 with the prayer for quashing the aforesaid order dated 27.1.2003, passed by the Director of Education (Higher Education) and also for a direction to the Respondents to promote her on the post of Head Clerk/Accountant with effect from 26.10.1988 and pay her salary as admissible under the Rules since the date of her appointment.

10. In the backdrop of the aforesaid facts, I now proceed to decide the writ petitions and the contempt petition one by one.

11. I have heard Sri R. U. Ansari for Km. Shahnaz Fatma; Sri M. A. Qadeer for Smt. Anisun Nisha Azmi; Sri Swaraj Prakash for Committee of Management Jawwad Ali Shah Imam Bara Girls Post Graduate College, and the learned standing counsel for the State- Respondents and have perused the record.

12. Smt. Anisun Nisha Azmi (Petitioner in Writ Petition No. 27517 of 1994) claims to have been appointed vide order dated 12.6.1984 with effect from 1.7.1984. In paragraph 4 of the writ petition it has been stated that her appointment had been made after following the selection process. However, no indication whatsoever has been made as to what sort of selection process or selection mode had been adopted while giving appointment to her. Neither is there any mention of there being any advertisement issued nor there is mention of any Selection Committee having been constituted for making such appointment. The assertions of Smt. Anisun Nisha Azmi having been appointed after following any selection process have been categorically denied by Km. Shahnaz Fatma in her counter-affidavit to the said writ petition, as well as by the State. In paragraph 6 of the counter-affidavit filed by the State, a categorical assertion has been made that no selection committee had been constituted nor such appointment had been made in terms of the Statutes of Gorakhpur University, and any payment made to her, was to be made from the resources of the Committee of Management which is said to have given her such appointment. With regard to the selection committee, which was duly constituted and the meeting of which was held on 13.10.1988, it is the categorical stand of the Respondent-authorities that the Petitioner (Smt. Anisun Nisha Azmi), not being within the prescribed age on the date of such selection, could not have been considered for such appointment in terms of the rules as well as the Statutes of Gorakhpur University which provide for certain minimum qualifications for appointment on such post. As such, it was contended that by the impugned order dated 19.5.1994, it was rightly held by the Zonal Higher Education Officer, Gorakhpur, that the appointment of Smt. Anisun Nisha Azmi, having been made by the Committee of Management without following any proper selection process and without her

having the prescribed qualification, was not valid and thus any payment which was to be made to her, was the responsibility of the Committee of Management and not that of the State Government. I see no good ground for interference with the said order, as Smt. Anisun Nisha Azmi has been unable to show that she was within the age limit i.e. below 40 years, as on the date when the selection committee had met, which was 13.10.1988. The date of birth of Smt. Anisun Nisha Azmi being 15.5.1946, she was well above the prescribed maximum age of 40 years as on the date of the selection. In view of the fact that the Petitioner (Smt. Anisun Nisha Azmi) has not been able to show that she was ever validly appointed on 12.6.1984, the submission of the Petitioner that since she was within the age limit (i.e. below 40 years) as on the date of her initial appointment on 12.6.1984, is not worthy of acceptance. Accordingly, I find that the order dated 19.5.1994 is perfectly valid and thus there is no question of directing the State-Respondents to make payment of her salary with effect from 1.10.1990 onwards. The Writ Petition No. 27517 of 1994, accordingly, fails and is dismissed.

13. As regards the Contempt Petition No. 1154 of 1994, since Writ Petition No. 27517 of 1994 (in which interim mandamus had been granted for alleged non-compliance of which contempt had been filed) has itself been dismissed and keeping in view the fact that cause for not paying the salary from the State funds had already been shown by way of filing a counter-affidavit in Writ Petition No. 27517 of 1994, although with some delay, the contempt petition also fails and is, accordingly, dismissed.

14. Writ Petition No. 8661 of 2003 has been filed primarily with the prayer for quashing the order dated 27.1.2003, passed by the Director of Education (Higher Education). The said order has purportedly been passed on the basis of an interim mandamus issued on 10.3.1995. The Respondents had, in response to the interim mandamus, already shown cause on 10.10.1995, by filing a counter-affidavit in Writ Petition No. 27517 of 1994. Further, a contempt petition was also pending for alleged non-compliance of the interim order dated 10.3.1995. It is not understood as to under which provision and at whose instance and for what reason such an order had been passed by the Director of Higher Education directing payment of salary to Smt. Anisun Nisha Azmi w.e.f. 1.10.1990, i.e., for more than 12 years, specially when the contempt petition was pending and the matter was already under consideration of the High Court in Writ Petition No. 27517 of 1994. The said order was wholly unwarranted and unjustified in view of the pendency of the writ petition as well as the contempt petition in which no such directions had been issued. Accordingly, the order dated 27.1.2003 which was passed without any authority of law and after nearly a decade of the filing of Writ Petition No. 27517 of 1994 in which counter-affidavit had also been filed, deserves to be set aside and is hereby quashed.

15. However, keeping in view the fact that in pursuance of the aforesaid order dated 27.1.2003, certain payments have been made to Smt. Anisun Nisha Azmi

as salary for the last several years, it is directed that the Secretary, Education Department (Higher Education), U.P. Lucknow, shall enquire into the matter relating to the passing of such an order without there being any occasion to pass the same, specially as direction for payment of arrears of salary for more than 12 years had been made therein, when a petition with the same prayer was already pending before this Court. However, the recovery of the amount on the dismissal of the contempt petition has already been directed by 27.1.2003. In case if the said amount is not recovered from Smt. Anisun Nisha Azmi within a reasonable time, say three months, the Secretary, Education Department (Higher Education) U.P., Lucknow shall draw proceedings, in accordance with law, for recovering the balance amount from the officer who had passed the order, which was wholly unwarranted and without any authority of law.

16. As regards the other prayer made in Writ Petition No. 8661 of 2003 for a direction to the Respondents to promote the Petitioner (Km. Shahnaz Fatma) on the post of Head Clerk/Accountant with effect from 26.10.1988 and pay her salary on such post, it is directed that the Director of Higher Education, U.P., Allahabad, shall consider the case of the Petitioner Km. Shahnaz Fatma for grant of such promotion (in case if she is found entitled to and qualified), in accordance with law, after giving opportunity of hearing to the Petitioner Km. Shahnaz Fatma as well as Committee of Management of the institution and other concerned parties, if there be any. The said decision may be taken by the Director of Higher Education, Respondent No. 2, as expeditiously as possible, preferably within a period of four months from the date of filing of a certified copy of this order before the said Respondent.

17. In the end, Writ Petition No. 27517 of 1994 as well as Contempt Petition No. 1154 of 1995 stand dismissed. Writ Petition No. 8661 of 2003 is partly allowed and stands disposed of in terms of the observations made hereinabove. No order as to cost.