
(2010) 11 AHC CK 0038
In the Allahabad High Court
Case No : Special Appeal No. 807 of 2010

Basic Shiksha Adhikari	Vs	APPELLANT
Smt. Mandari Chaudhary and Others		RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2011) 1 UPLBEC 136

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Pradeep Kant and Ritu Raj Awasthi, JJ.—Though this special appeal has been filed with some delay, but since Sri R.K. Chaudhary appearing for the Respondents has no objection, we condone the delay.

2. The special appeal has been filed against an interim order dated 23.12.2009 passed by the learned Single Judge, directing the payment of salary to the Respondents, who are Head Mistress and Assistant Teachers in the institution in question.

3. The interim order is based on an order passed by the Court in Writ Petition No. 8048 (SS) of 2009, wherein a similar direction was issued on 4.12.2009 and against which order, Special Appeal No. 374 of 2010 filed by the Basic Shiksha Adhikari, Ambedkar Nagar has been disposed of, on 20.5.2010.

4. Consent of Sri R.P. Verma, Advocate, who appeared for Basic Shiksha Adhikari before the learned Single Judge is also mentioned in the said order.

5. Sri Jyotinjay Verma appearing for the Appellant though does not dispute that the case of the Respondents is akin and similar to the case of the Respondents of Special Appeal No. 374 of 2010, but says that the payment of salary could not have been ordered by means of an interim order, particularly when it was a case of the Appellant that the approval was illegally given by the then Basic Shiksha

Adhikari.

6. In support of his submission that an illegal appointment cannot be legalized by taking recourse to regularisation, Sri Jyotinjay Verma relies upon the case of State of Karnataka and Others Vs. KGSD Canteen Employees Welfare Association and Others,

7. On the plea of order being consented, where the consent was given by Sri R.P. Verma, Advocate, learned Counsel says that the concession or consent given by the Counsel would not be binding, for which he relies upon the judgment of the Apex Court in the case of U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and Another, which says that "there cannot be two opinions that a concession of law cannot be binding upon a party".

8. For the same proposition, he also relies upon the judgment of the apex Court in the case of Union of India (UOI) and Another Vs. S.C. Parashar, where the concession of the learned Counsel appearing for the Appellant before the High Court was found to be apparently erroneous. The Court observed that wrong concession made by a Counsel before the Court cannot bind the parties when statutory provisions clearly provide otherwise.

9. Sri Jyotinjay Verma also places reliance upon the judgment in the case of Committee of Management v. State of U.P. and Ors. 2009 (2) ALJ 528, in support of his submission that even if approval has been granted but if it is found that it was illegally given, then action can be initiated against the authority concerned also.

10. We find from the record and it is not disputed that the approval was granted to the appointment of the Respondents as far back as in the year 1988 and they were appointed in the year 1984.

11. The plea is that the approval could not have been granted and that it was a wholly illegal act of the then Basic Shiksha Adhikari. May be, that such an approval requires cancellation, but what we find is that despite the fact that the institution in question was taken on grant in aid list in the year 2007, no steps have been taken for recall or cancellation of the approval order and, therefore, when the salary was not being paid in the given pay scale, the Respondents have approached the High Court.

12. Exactly in a similar matter, which became the subject-matter of challenge in Writ Petition No. 8048 (SS) of 2009 and against which, Special Appeal No. 374 of 2010 was filed, this Court took into consideration the aforesaid pleas and made an observation that it is the Basic Shiksha Adhikari, who has approved the appointment and thereafter the services of the Respondents have been regularised, therefore, the incumbent who is the successor-in-officer (Basic Shiksha Adhikari), cannot challenge the same, though they can take steps for recall or review of the order of approval. This order was passed on 20.5.2010. But it appears that instead of taking any action for cancellation of approval, the

special appeal has been filed challenging the order passed by the learned Single Judge.

13. So far the argument of the learned Counsel for the Appellant regarding the invalidity of the concession made on a point of law, by the Counsel is concerned, there cannot be any quarrel that there cannot be any concession which is against the law.

14. The Appellant's argument is that the approval could not have been granted or was illegally granted and, therefore, the acceptance/consent/ concession given by the Counsel before the learned Single Judge for passing the same order, which has been passed in the earlier writ petition, cannot be taken as binding upon the Appellant.

15. The Counsel who appeared before the learned Single Judge, in fact did not give any concession, but in view of the order passed in the earlier writ petition, which apparently was upheld in the special appeal with slight modification, appears to have only accepted the said factual position.

16. It is also no gain saying that in case the approval is found to have been granted illegally, the appointment would stand set aside, but the fact that the Respondents are working in the institution for such a long time, has not been disputed. That being so, they are entitled for salary in terms of the order passed in the Special Appeal No. 374 of 2010.

17. We, therefore, dispose of the special appeal in the same terms with the following direction/observation:

In view of the fact that the appointment of the Respondents not only stands approved but also regularized by the Basic Shiksha Adhikari, we direct the Appellant to pay the current monthly salary to the Respondents, as per the interim order passed by the learned Single Judge but the arrears of salary shall not be paid, which will abide the final decision in the writ petition.

18. Learned Counsel for the Appellant rightly says that since the question of payment of salary is involved in the matter, which causes financial burden upon the State, the writ petition be directed to be listed at an early date.

19. Since the affidavits have been exchanged between the parties, we direct that the writ petition be listed before the learned Single Judge having jurisdiction for peremptorily hearing on 30.11.2010.

20. The special appeal is disposed of accordingly.