
(2010) 08 AHC CK 0233
In the Allahabad High Court

Case No : Civil Miscellaneous Recall Application No. 283892 of 2009

Brahmdeo Shukla

APPELLANT

Vs

District Basic Education Officer, Jaunpur and others

RESPONDENT

Date of Decision : 17-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0233

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. Recall application no. 283892 of 2009 has been filed for recall of the order dated 292009 alongwith delay condonation application no. 283891 of 2009. The order dated 292009 is as under:

"The petitioner is an Assistant Clerk in Sangram Balika Junior High School, Sarokhanpur, PostBadlapur, DistrictJaunpur.

It appears that the petitioner was found absent and an explanation in this regard was called. Initially, the petitioner has not submitted any explanation for being absent but later on he submitted a medical certificate in support of his claim that he was not well.

It appears that thereafter the petitioner was called for giving explanation in respect of payment of certain amount of group insurance which is alleged to have been embezzled by the petitioner. No inquiry as per argument advanced by Sri V.P. Singh, appearing for the Basic Shiksha Adhikari, has been held into the matter as appears from the counter affidavit.

Learned counsel for the management, Sri S.K. Singh is not present in Court though the case has been called out in the revised list.

On a query made by the Court, the learned counsel appearing for the parties

informed the Court that the petitioner is working on the post of Assistant Clerk in the institution.

The grievance of the petitioner is that despite he has been working in the institution, he has not been paid his salary though the petitioner was paid his salary for one month after filing of the writ petition.

In the circumstances stated above, and considering the fact that no inquiry has been held against the petitioner and he is working in the institution, it is directed that the petitioner will be paid his salary on the post of Assistant Clerk month to month along with other employees in the institution. The question whether petitioner is entitled for payment of arrears or not will be decided in the final hearing of the writ petition.

In view of the above, the writ petition is admitted. List for hearing in ordinary course."

3. In the affidavit filed in support of the recall application by the Manager of the Committee of management, it has been averred that the writ petition was filed for a writ of mandamus commanding the respondents to pay the salary of the petitioner of the post of Head clerk for the period February 2002 to January 2003 and continue to pay the salary of the petitioner month to month. It is also averred in the affidavit in support of the recall application as well as delay condonation application that as since the counsel for the committee of management was not present at the time of hearing therefore subsequent facts, which have taken place after filing of the writ petition has not been placed before the court. These facts have been detailed in para nos. 6 and 7 of the affidavit interalia that the petitioner was convicted in case crime no. 152 of 1993 under sections 304, 323, 324, 325, 504 I.P.C. police station Badlapur District Jaunpur and that vide order dated 3072009, the District Basic Education Officer, Jaunpur has also passed an order granting approval to the termination of the petitioner. Both the orders have been appended as Annexure Nos. 2 and 3 to the affidavit. It is also averred that the petitioner has embezzled a sum of approximately Rs.2.5 lacs for which a disciplinary proceeding has been initiated against him placing him under suspension.

4. On the basis of aforesaid it has been contended that since the services of the petitioner have been terminated, therefore there was no justification for continuing payment of salary and as some delay has occurred in filing recall application due to the fact that the copy of the order dated 3072009 passed by the District Basic Education Officer was misplaced, delay is liable to be condoned in the facts and circumstances of the case.

5. Counter affidavit to the aforesaid recall application has been filed in which it has been averred by the petitioner that the averment of embezzlement made in the counter affidavit filed by the manager is false and according to the reply given in the rejoinder affidavit that the suspension of the petitioner was never approved by the Basic Education Officer, Jaunpur or by the District Inspector of

Schools and infact order was never served upon the petitioner.

6. The second leg of the contention of the counsel for the petitioner is that when the writ petition was taken up on 292009 in the revised list. counsel for the respondent committee of management was not present and no explanation whatsoever has been put forward showing cause much less reasonable cause as to why the counsel for the respondent no. 3 did not appear in the court on 292009. It has been reasserted by the counsel for the petitioner that as the aforesaid facts were not in his knowledge he could not bring correct facts before the court on 292009 when the order was passed. As regards criminal case is concerned it is stated that the petitioner has filed a criminal appeal no. 4994 of 2006 against the order and judgment dated 2982006 passed by the Addl. Sessions Judge Court No.1, Jaunpur in S.T. No. 48 of 1994 State of U.P. vs. Brahmdeo and others under sections 304, 323, 324, 325, 504 I.P.C. arising out of case crime no. 152 of 1993 police station Badlapur District Jaunpur in which the petitioner has already been enlarged on bail by the High Court. It is vehemently urged that since the appeal is continuation of trial and since in the trial court and the petitioner has been enlarged on bail it cannot be said that the criminal case against the petitioner has been finally adjudicated and he has been convicted.

7. As regards passing of the termination order is concerned, it is stated that neither any enquiry was conducted nor any opportunity was given to the petitioner before passing order of termination order of said It is further contended that the service condition of the teacher are governed by the Intermediate Education Act, 1921 and the Regulations made therein, therefore the District Basic Education Officer, Jaunpur had no authority or jurisdiction to pass approval in respect of the suspension or termination of services of the petitioner.

8. It is lastly urged that there was neither any other termination of the services of the petitioner in fact, nor such termination had been approved by the competent authority hence the order dated 292009 was passed by this Court in the writ petition may not be recalled as from the facts and circumstances stated above, it is apparent that the orders of termination and its approval relied upon by the respondent is based only on manufactured document in collusion with the respondents and hence the aforesaid subsequent facts alleged embezzlement, termination etc. are not necessary and are irrelevant for the purpose of recall application.

9. A perusal of the order dated 292009 would show that the petition has been admitted with a direction to pay the salary of the petitioner during the pendency of the writ petition. This order has been passed as the learned counsel for the respondent was not present even in the revised list to which, no explanation is available on the record. Even cause of delay in filing of the affidavit is not sufficient. In the circumstances the recall application filed alongwith delay condonation application lacks reasonable and sufficient cause for recall of the

order dated 29/2/2009 as there is not even an iota of explanation by the counsel why he was not present even in the revised list when the order was passed. Hence the delay condonation application is rejected. Consequently the recall application is also rejected.

10. List before appropriate bench. It shall not be treated as tied up or part heard to this bench.