
(2010) 07 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 38570 of 2010

Chandra Nath Tripathi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21A, 226

Citation : (2010) 6 AWC 6500

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : H.N. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Education is the backbone of every democracy. There is another saying that values are lived not talked about.

2. A teacher of an Intermediate institution unless he leads with example, cannot be expected to impart education to minor students so that they may nurture the values of life. The purpose of education is two folds:

(a) to become self-dependent.

(b) to become a good human being which in turn will make him a good citizen of the country.

The second part of the education is equally important as is the first part.

3. It is needless to emphasize the importance of education, this Court may only refer to Article 21A of the Constitution of India. A time has come when the institutions imparting education to minor students are permitted to be named by teachers with values only. Persons who adopt illegal means for being either appointed in the institution or for gaining higher position in such institution must be shown the door. It is in this background that the Court will examine the case of the Petitioner.

4. Petitioner before this Court claims to have been appointed as L.T. Grade teacher in Indira Gandhi Uchchattar Madhyamic Vidyalaya Jaswal Bazar, Rajabari, District Gorakhpur which is an aided and recognized Intermediate College in the year 1976. It is stated that the Petitioner was granted L.T. Grade under a judgment and order of the writ court dated 30.4.2007.

5. An advertisement was published by the U.P. Secondary Education Services Selection Board for appointment on the post of Headmaster/Principal of Intermediate institutions including Bharti Uchhatar Madhyamik Vidyalaya, District Gorakhpur.

6. The Petitioner made an application in response to the advertisement. After selection he was empanelled for the post of Headmaster/Principal of Bharti Uchhatar Madhyamik Vidyalaya, District Gorakhpur under the select panel notified for the purpose. The panel was recommended to the Authorized Controller for appointment.

7. The Authorized Controller issued an appointment letter in favor of the Petitioner on 2.12.2002. The Petitioner in pursuance thereof joined as Principal in the year 2002 and continued to function as such. He ultimately tendered resignation on 10.5.2005, Between 2002 to 2005 the Petitioner had admittedly drawn salary of the post of Headmaster/Principal.

8. The cause for his resignation from the post of Headmaster/Principal has been noticed by the writ court in its judgment and order dated 10.12.2009 passed in Civil Misc. Writ Petition No. 49462 of 2005 filed by the present Petitioner earlier. The Court found that the Secretary of the U.P. Secondary Education Services Selection Board on 4.4.2005 recorded a categorical finding that the Petitioner had filed forged Degrees/Mark sheets of B.A. and M.A. Examination for the purposes of establishing that he is qualified for the post of Headmaster/Principal. The Secretary of the Selection Board therefore, cancelled his empanelment which had been made for the post of Headmaster. The validity of the order dated 4.4.2005 was not challenged by the Petitioner. It was further categorically recorded that the Petitioner has acquiesced to the order of the Secretary. The Petitioner on the strength of his alleged resignation claimed before the writ court that since his lien as L.T. Grade had not-been lost, the authorities may at least be directed to consider his claim for being restored back as L.T. Grade teacher after he has resigned from the post of Headmaster/Principal. The writ court permitted the District Inspector of Schools to examine the grievance of the Petitioner in accordance with law.

9. The District Inspector of Schools under the order dated 5.1.2010 has recorded that the Petitioner had applied for leave for a period of six months after being selected for the post of Headmaster/Principal and thereafter no leave application was submitted by him. It has been held that he has lost his lien as teacher of the earlier institution. Therefore, the Petitioner cannot be restored back as L.T. Grade teacher in the earlier institution.

The order so passed by the District Inspector of Schools is under challenge in this petition.

10. Various legal and factual pleas have been raised on behalf of the Petitioner qua his lien as L.T. Grade teacher. Counsel for the Petitioner vehemently contended that he was permitted to join as Assistant Teacher as per his joining application which was accepted on 11.1.2008. However the Principal was illegally not submitting his salary bill.

11. Counsel for the Petitioner submitted that he made an application for leave without pay which was approved on 10.1.2005, i.e., for a period of two years and one month. It is further stated that no disciplinary action has been taken against the Petitioner till date and, therefore, he continues to hold the lien on the post of Assistant Teacher in the institution. Lastly it is pointed out that the District Inspector of Schools has passed the impugned order only because he wanted to protect the continuance of ad hoc teacher appointed in the vacancy caused after the Petitioner had left the institution namely Vishnu Shankar Singh.

12. This Court may first deal with the issue of leave having been applied for as claimed by the Petitioner for two years and one month. There is absolutely no material on record which could establish that such leave was sanctioned in favor of the Petitioner by the competent authority and as to under which provision, such leave could be sanctioned.

13. So far as the issue of lien is concerned, it may be noticed that "Lien" connotes the civil right of a Government, servant to hold the post substantively "to which he is appointed." (Vide Paresh Chandra Nandi Vs. Controller of Stores, N.F. Railway, Pandu and Others, T.R. Sharma Vs. Prithvi Singh and Others, Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others, and Dr. S.K. Kacker Vs. All India Institute of Medical Sciences and Others,

14. In Triveni Shankar Saxena Vs. State of U.P. and others, dealing with the term "lien" elaborately, the Hon"ble Supreme Court has quoted its meaning from various Dictionaries as under:

The word "lien" originally means "binding" from the Latin ligamen. Its lexical meaning is "right to retain". The word "lien" is now variously described and used under different context such as "contractual lien", "equitable lien".

"specific lien", "general lien", "partners lien", etc. etc. In Halsbury's Laws of England, Fourth Edition, Volume 28 at page 221, para 502, it is stated:

In its primary or legal sense "lien" means a right at common law in one man to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims are satisfied.

In Stroud's Judicial Dictionary, 5th Edition, Volume 3 at page 1465, the following passage is found:

Lien. (1) A lien - (without effecting a transference of the property in a thing) - is

the right to retain possession of a thing until a claim be satisfied ; and it is either particular or general. So, as regards Scotland, "lien" is defined as including" the right of retention ; ...or it "shall mean and include right of retention"....

In Words and Phrases, Permanent Edition Vol. 25, the definition of word "lien" when used to explain the equitable lien is given thus:

A "lien" from a legal standpoint, embodies the idea of a deed or bond, and necessarily implies that there is something in existence to which it attaches.

15. In S. Narayana Vs. Md. Ahmedulla Khan and Others, the Hon"ble Supreme Court held that a person can be said to have acquired a lien on a post only when he has been confirmed and made permanent on the post.

16. Between the teacher and the management of private Intermediate College, there is no concept of lien under the statutory rules applicable. The lien cannot be said to subsist once the teacher has Joined another employer (another institution) and has drawn salary there from. No person can serve two masters at the same time except in the cases of deputation or leave being sanctioned by the competent authority specifically for the purpose as per the service rules applicable. In the facts of the case it has not been established that the Petitioner was on deputation or had been sanctioned leave for serving another master for limited duration.

17. This Court has no hesitation to record that the Petitioner lost his lien if any qua the post of Assistant Teacher in the institution once he had Joined the other institution as Headmaster.

18. It is not necessary for the institution to hold a departmental enquiry inasmuch as once the Petitioner has left the institution and has proceeded to join another employer (another institution) on substantive basis, the relationship of master and servant with the first institution came to an automatic end and such a case falls within the four corners of abandonment of service. It may further be noticed that after the Petitioner had left the institution ad hoc appointment had been made on the post of L.T. Grade teacher pending regular appointment. It is not the case of the Petitioner that the vacancy has not been requisitioned to the Selection Board meaning thereby that the employer had been treating the post to be substantively vacant, and the Petitioner cannot be said to have any lien.

19. Since the Petitioner has no right to be restored back as Assistant Teacher in the institution, the plea that the District Inspector of Schools is protecting the ad hoc appointment is neither here nor there.

20. Be that as it may, the Court has already noticed above that the Petitioner who was involved in preparation of forged documents for seeking appointment as Head of another institution has rendered himself unfit to continue as teacher. Such persons must be kept out of institutions where education is imparted to young and future citizens of our country. No sympathy is to be shown in their favor otherwise the entire education will be corrupted. The stream of education

has to be kept pure and simple. The democracy of this country is dependent upon its future citizens. The Court should not interfere at the behest of such a teacher who is involved in fabrication of documents. This Court, therefore, refuses to exercise its equitable jurisdiction under Article 226 of the Constitution of India in favor of such a person.

Writ petition is dismissed.