
(2011) 02 AHC CK 0329

In the Allahabad High Court

Case No : Special Appeal Defective No. 841 of 2009

C/M, Madarsa Arbiya-Madhinatul Uloom

APPELLANT

Vs

Mohinuddin and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0329

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—The delay in filing the Special Appeal has been sufficiently explained in the affidavit accompanying the delay condonation application. The application is allowed.

2. Heard Shri Mansoor Ahmad, learned Counsel for the Appellant. Shri V.C. Mishra, Senior Advocate assisted by Shri Vivek Mishra, appears for the Petitioner-Respondent.

3. This Special Appeal has been filed by the Committee of Management, Madarsa Arbiya-Madhinatul Uloom, Chulah firan Saurai, buzurg, Kaushambi through its Manager Rais Ahmad, against the judgment dated 28.5.2009 in Writ Petition No. 44059 of 2002, by which the Writ Petition was dismissed making it open to the management of the institution to hold disciplinary inquiry against the Petitioner-Respondent and to pass appropriate order within a month from the date of communication of this order with regard to the payment of arrears of salary, admissible to his post. Learned Single Judge also gave directions that the management will permit the Petitioner-Respondent to join within ten days from the date of production of certified copy of the order before the management of the institution.

4. It is stated by Shri Mansoor Ahmad appearing for the Appellant, that he was not aware of the listing and thereafter adjournment of the case to be taken up on

next date as unlisted. He did not argue the matter nor could file the supplementary counter affidavit, which was prepared, to be submitted Shri Mansoor Ahmad had filed a recall application on the same ground, which was rejected by learned Single Judge.

5. From the facts stated in the judgment, we find that the PetitionerRespondent was appointed as Assistant Teacher in the institution on 1st June, 1997, and was confirmed after one year. His services were terminated by Dr. Mustaq Ahmad, the alleged Manager of the institution on 23.8.2002 w.e.f. 22.8.2002. Learned Judge has found that Dr. Mustaq Ahmad was not manager of the institution on the date when he terminated Petitioner's services. He had resigned from the post of Manager on 1.3.2001, and in his place Shri Rais Ahmad was elected (appointed) as Manager. The fact of resignation of Dr. Mustaq Ahmad, and appointment of Shri Rais Ahmad as Manager was not converted by filing any supplementary counter affidavit to the supplementary affidavit filed in the year 2007. In the circumstances, the order, by which the services of Petitioner-Respondent were terminated, was set aside.

6. Shri Mansoor Ahmad, learned Counsel for Appellant has filed a copy of the supplementary counter affidavit, which was stated to be ready but could not be filed as he was not aware of the listing of the case and had not appeared in the Court on the day when the matter was heard.

7. In order to appreciate the submissions of learned Counsel for Appellant, we have examined the supplementary counter affidavit and the audit/inspection note of Chit Auditor in the office of Assistant Registrar, Firms, Societies and Chits, Allahabad dated 14.12.2007. In paragraph-1 it is mentioned that on 23.3.2001 Shri Rais Ahmad had filed an affidavit stating that he has been elected as Manager after resignation of Dr. Mustaq Ahmad. In order to verify the letter, the Assistant Registrar required Dr. Mustaq Ahmad to file no objection certificate vide office letter No. 4997 dated 30.3.2001, in pursuance to which Dr. Mustaq Ahmad gave his no objection certificate under his signatures on 6.8.2001. It is stated in the report, that the Committee of Management with Shri Rais Ahmad was registered on 14.8.2001.

Thereafter it appears that Shri Rais Ahmad gave an application that he has been falsely shown as Manager and he does not know the Madarsa or institution of which he has been elected as Manager, giving rise to dispute, which continued further and was decided by the Assistant Registrar.

8. The supplementary counter affidavit annexed to this special appeal also does not establish that Dr. Mustaq Ahmad was the manager of the institution on the day when the Petitioner-Respondent services were terminated.

9. The conclusion drawn in the judgment of learned Single Judge as such do not suffer from any error of law.

10. The Special Appeal is dismissed with observations, that if the directions of

learned Single Judge have not been carried out, the same shall be carried out. Shri Mohinuddin shall be reinstated within one month from the date a certified copy of the order is produced before the Manager of the institution and the entire arrears of salary and allowances shall be paid to him within three months.

Order Date:

11.8.2010 RKP

11. The order dated 11.8.2010 wrongly transcribed in Special Appeal No. 841 of 2009 (Nanhey Lal Gangwar v. State of U.P. and others) shall be deleted from the server, and scored out from the record of this Special Appeal (Defective).