
(2010) 07 AHC CK 0149
In the Allahabad High Court

Dan Bahadur Pathak

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0149

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Judgement

S.S. Chauhan, J.—The present petition has been filed with the prayer that the order dated 26.4.1989 may be quashed and a mandamus be issued to the opposite parties to make payment of salary to the petitioner in pursuance to the disapproval granted by the D.I.O.S. on 28.6.1961.

2. The petitioner was initially appointed as a temporary Assistant Master in Payagpur Higher Secondary School on 22.7.1952. The petitioner at the time of his appointment was untrained intermediate and was not eligible for permanent appointment. The petitioner continued as temporary Teacher in the institution and subsequently he obtained the degrees of B.A., M.A. and B.Ed in 1955 and he was required to take intermediate classes and his work was found to be satisfactory. On 19.5.1957 the petitioner was placed under suspension and on 13.11.1959 he was served with a charge sheet. Supplementary charge sheet was also given to the petitioner on 1.12.1959. The petitioner submitted his reply to the aforesaid charge sheet and he was afforded with an opportunity of personal hearing. The committee of management found the charges to be proved against the petitioner and hence it decided to dismiss the petitioner from service after obtaining prior approval from the D.I.O.S. Hence, a notice of suspension was served on the petitioner on 7.12.1959 and his case was referred to the D.I.O.S. for obtaining his approval for dismissing the petitioner from service. The D.I.O.S. did not grant approval to the termination order and rejected the same vide order dated 28.6.1961, but in spite of the disapproval on 28.6.1961 the petitioner's services were terminated on 29.6.1961. The said termination order was subjected

to challenge in appeal before the Deputy Director of Education and the Deputy Director of Education vide order dated 20.12.1961 proceeded to allow the appeal of the petitioner. The said order has attained finality and has not been challenged anywhere.

3. Submission of learned Counsel for the petitioner is that there was no adjudication in regard to the validity of the termination order and neither the Court at earlier point of time ever adjudicated in regard to the approval and disapproval of the petitioner's termination. The disapproval was never put in question and neither the same was adjudicated, but in fact it is submitted that the Court proceeded on the premise that no power was vested with the Government to issue any such direction for payment of salary and finding that the order issued by the Government was without jurisdiction, the same was quashed by the Hon'ble Single Judge and the same was upheld in the special appeal, but at no point of time it was ever brought to the notice of the Court that the appeal preferred by the petitioner has been allowed vide order dated 20.12.1961.

4. Counsel for the opposite parties could not dispute the aforesaid legal position and they also could not deny that the order dated 20.12.1961 passed by the Deputy Director of Education has been subjected to challenge before any forum. They have simply taken the shelter of the judgment passed by the Hon'ble Single Judge dated 9.1.1975 and the judgment passed by the Division Bench in Special Appeal No. 19 of 1975 dated 21.1.1976 and on the basis of the aforesaid judgments they tried to defend the termination order and more particularly on the point that the controversy has been adjudicated upon by this Court and, therefore, no interference is required by this Court at this stage.

5. I have heard learned Counsel for the parties and gone through the record.

6. From the pleadings of the parties, it is evident that the issue in regard to validity of the termination order was not in question when the judgment was rendered by Hon'ble the Single Judge on 9.1.1975. The said judgment was subjected to challenge in special appeal and in the special appeal the mandamus issued by Hon'ble the Single Judge was set aside, but before both the forums none of the parties ever brought to the notice of the Court nor it adjudicated the termination order on merit. The Division Bench while disposing of the appeal specifically recorded a finding in regard to the fact that the appellant would be entitled to salary or not can be answered only after adjudication of right of parties in this respect. This itself goes to indicate that the rights of the parties were to be determined in the proper proceedings. The present petition has been filed for adjudicating the rights of the parties. The petitioner's services were terminated on 29.6.1961 in spite of the fact that disapproval was granted by the D.I.O.S. in regard to termination of services of the petitioner on 28.6.1961. The appeal filed by the petitioner before the Deputy Director of Education was allowed vide order dated 20.12.1961 and the said appellate order has not been subjected to challenge anywhere and has attained finality. Hence, the inevitable

conclusion would be that the petitioner's termination order has to be held to be illegal. As a consequence of the termination order being illegal, the question arises as to what salary is to be paid to the petitioner in spite of the fact that the petitioner has not taught in the institution, which fact is also admitted by the petitioner's counsel. The petitioner has been put at bay by the opposite parties and has not been permitted to work although he was eager and desirous to work all throughout and in this regard he has taken various steps time and again to work and has also tried for payment of salary, but he could not succeed on account of ensuing litigation between the parties.

7. Since the petitioner has not worked, therefore, the Court feels proper that 50% wages to the petitioner will suffice the ends of the justice as it is evident from the record that the petitioner cannot be put at fault totally on account of his nonworking when his appeal stood allowed on 20.12.1961.

8. Subject to the above noted terms, the writ petition is disposed of finally.