
(1997) 05 AHC CK 0088
In the Allahabad High Court
Case No : Contempt Petition No. 1438 of 1993

Deep Chandra

APPELLANT

Vs

Sri Bhairav Singh Yadav & Ors.

RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Citation : (1997) 05 AHC CK 0088

Hon'ble Judges : K.D.Shahi, J

Final Decision : Dismissed

Judgement

K.D. Shahi, J.—Shri Deep Chandra alleging himself as the Head Master of Swami Shivanand Uchchattar Madhyamik Vidyalaya, Kachaura, district Aligarh filed this petition for drawing contempt proceedings against the respondents for disobedience of the order of this Court dated 7121991 passed in Writ Petition No. 36034 of 1991.

2. Shri Deep Chandra filed Writ Petition No. 36034 of 1991 for quashing the advertisement inviting applications from eligible candidates for appointment to the post of Head Master in the aforesaid institution and also for issue of a mandamus directing the respondents not to interfere with the petitioner functioning as Head Master of the institution and to continue to pay salary and allowances of the petitioner. On 7121991, this Court passed the following order:

"Notice on behalf of the respondent Nos. 2 and 3 has been accepted by the Standing Counsel. Notice of the petition may be served personally by the petitioner upon respondent No. 1 for which necessary papers shall be made available to him.

Till further orders, the committee shall not make any appointment in the institution except with the prior approval of Basic Shiksha Adhikari and the services of the petitioner shall not be disturbed in any manner except by lawful order in writing."

3. It is stated that the order dated 7121991 was served on respondent Nos. 1 and 2. Despite service of the order, respondents 1 and 2 did not allow the petitioner to sign the attendance register and also did not pay salary and allowances. He made several representations which are Annexures 4,5 and 6 to the petition. It is further stated that from letter dated 18th March, 1993, the petitioner could know that the respondents were recognising Shri Ram Babu Saraswat as the Head Master of the institution. Since the respondents are not permitting the petitioner to sign the attendance register nor paying his salary and allowance for the post of Head Master and instead recognising Shri Ram Babu Saraswat as the Head Master of the institution, they have wilfully disobeyed the order of this Court dated 7121991.

4. Respondent No. 3, Shri Ram Prakash, Basic Shiksha Adhikari filed counter affidavit and alleged therein that the perusal of the record shows that the petitioner was never appointed as the Head Master of the institution nor any approval in this respect was accorded by the Basic Shiksha Adhikari. It is further alleged that the Committee of Management had conducted the selection proceedings for the post of Head Master and the selection committee finalised the candidature of Shri Ram Babu Saraswat on 10111991.

5. Respondent No. 4, Shri Sanjay Sinha, District Inspector of Schools, Aligarh, also filed counter affidavit and alleged therein that he had got no concern whatsoever with the advertisement, appointment etc. of the petitioner or any body else in the institution concerned.

6. Respondent No. 2, Shri Swami Shivanand, President of the institution also filed counter affidavit alleging therein that Shri Deep Chandra was never appointed or selected by the Education Department or by the Selection Committee as Head Master of the Institution. It is further alleged that Shri Deep Chandra had shown his qualification as B.Ed, which is also fake. He had produced certificate from Rashtriya Sanskrit Sansthan claiming himself to be trained. It is also alleged that the Board of High School and Intermediate Education as well as Directorate of Education had already declared the said degree to be no longer a valid degree. On 2111991, an order was issued from the office of the District Basic Education Officer, Aligarh for the head of the institution. Thereafter, the post was advertised and Shri Ram Babu Saraswat was selected by the selection committee for the post of Head Master of the institution on 10121991 and approval was accorded on 11121991. In paragraph 10 of the counter affidavit, it is alleged that the management had taken work from the petitioner on temporary basis for which remunerations were paid to him. Since the petitioner did not possess B.Ed, degree, hence his candidature was not considered by the selection committee for the post of Head Master of the institution.

7. My attention was drawn to the allegation in Paragrpah 10 of the counter affidavit of respondent No. 2, Shri Swami Shivanand, President of the Institution. It was contended by the learned counsel for the petitioner that the President of the institution himself admitted that the petitioner worked in the institution on

temporary basis for which remuneration were paid to him.

8. The above admission made by the President of the institution cannot be construed as admission of true fact that the petitioner was appointed as Head Master of the institution. It is true that the respondents have not specifically mentioned on what post the petitioner worked and for which post remunerations were made to him, but it is also true that it is the petitioner who has to prove his case.

9. According to the respondents, the petitioner was never appointed as Head Master. No paper whatsoever has been produced by the petitioner to show that he ever worked as Head Master in the institution concerned. If the petitioner was not working, there is no question of disturbing his services in any manner.

10. The question whether the petitioner worked as Head Master or not is a question of fact to be decided in the writ petition. If his writ petition is allowed, he will get the relief, but in this contempt petition no finding can be given that the petitioner worked as Head Master.

11. Even otherwise, the respondents cannot be held guilty for disobedience of the order of this Court, dated 7121991. The selection of Shri Ram Babu Saraswat had already been made before this date i.e. 10.11.1991 after proper advertisement. There is nothing on the record to show that the petitioner was ever appointed as Head Master and if he was working on the said post on temporary basis, there is nothing on the record to show that the petitioner was an eligible candidate for the post of Head Master but the selection committee declined to consider his candidature.

12. At this stage, I do not find any wilful disobedience of the order of this Court. It is advisable to the petitioner to seek his remedy in the writ petition itself. However, any expression of opinion in this petition should not be deemed to be a finding of fact to be read in the writ petition. It is open to the petitioner to argue his case on merits and get relief in his writ petition itself.

13. The petition is dismissed. Notices issued to the respondents are hereby discharged and the proceedings are dropped.