
(2008) 09 AHC CK 0245
In the Allahabad High Court

Deepak Kumar Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 AHC CK 0245

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. This writ petition has been filed for issuance of a writ, order or direction in the nature of mandamus commanding respondent No. 2 to release the salary of the petitioner of 16 months i.e. from 2.9.2002 to 20.12.2003 with interest at the rate of 12% per annum till actual payment is made to the petitioner.

3. The case of the petitioner is that he was initially appointed on the post of Junior Clerk under the Dying in Harness Rules on 1.5.2002 at Gandhi Vidyalaya Mauranipur, District Jhansi but he was not permitted to joint the said post. Thereafter he filed Civil Misc. Writ Petition No. 35447 of 2002 which was disposed of vide order dated 28.6.2002 directing the petitioner to approach respondent No. 2 for redressal of his grievance.

4. It is stated that pursuant to order of this Court dated 26.8.2002 respondent No. 2 attached the petitioner in his office and he continued to work there from 2.9.2002 to 20.12.2003. Thereafter he was adjusted at Bipin Bihari College, Jhansi. The petitioner is getting his salary regularly after joining at Bipin Bihari College, Jhansi but he has not been paid salary from 2.9.2002 to 20.12.2003.

5. In this regard he has made several representation to the authority concerned but to no avail, hence the instant writ petition.

6. Learned Standing Counsel at the out set states that the petitioner being Junior Clerk comes within the definition of workman as defined under the provisions of U.P. Industrial Disputes Act, 1947, hence he has an alternate and efficacious remedy against his grievance before the Labour Court under the labour laws or the payment of wages Act, 1936. Whether the petitioner is entitled to the salary for the period 2.9.2002 to 20.12.2003 or not, is a disputed questions of fact which can only be decided on the basis of oral and documentary evidence to be adduced by the parties before the Labour Court as it is not feasible for this Court to go into the disputed questions of fact under Article 226 of the Constitution. The petitioner may raise all the points before the Labour Court which have been raised in this writ petition.

7. This objection is not denied by the Counsel for the petitioner.

8. Accordingly, the writ petition is dismissed on the ground of availability of alternative remedy.