
(2000) 11 AHC CK 0092
In the Allahabad High Court
Case No : Second Appeal No. 2702 of 1980

Dharam Vir Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-11-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 10(2)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(2)

Citation : (2001) 1 AWC 254 : (2001) 1 UPLBEC 146

Hon'ble Judges : M. C. Jain, J

Bench : Single Bench

Advocate : Arun Tandon, D. K. Singh, K. C. Srivastava, B. S. Verma and B. Malik, for the Appellant; S. C. (Retainer), for the Respondent

Final Decision : Dismissed

Judgement

M. C. Jain, J.—This is a plaintiff's second appeal preferred against the judgment and decree dated 11.4.1977 passed by Sri R. P. Misra, the then Civil Judge, Muzaffarnagar in Civil Appeal No. 93 of 1976 arising out of Original Suit No. 498 of 1972, Dharam Vir Singh v. State of U. P. and another, of the Court of the then Munsif, Kairana, district Muzaffarnagar. Respondent Nos. 1 to 3 are the State of U. P., Director of Education, U. P. at Allahabad and District Inspector of Schools, Muzaffarnagar respectively whereas respondent No. 4 is the Manager, Ram Dai Inter College, Sikka (Silwar). Muzaffarnagar.

2. The case giving rise to the second appeal may be stated briefly for proper appreciation. The plaintiff/appellant Dharam Vir Singh brought the suit in the lower court for recovery of Rs. 4,153.12 as arrears of his salary for the period 8.7.1971 to 7.7.1972 together with interim relief. His case was that in consequence of advertisement for the post of a lecturer in Biology subject in Ram Dai Inter College, Sikka (Silwar), district Muzaffarnagar, he had applied for the said post and was selected by the Selection Committee of the college after

interview. He joined his post on 7.7.1971 for the academic session 1971-72 on basic pay of Rs. 215 + Rs. 111 as D.A. + Rs. 8 as interim relief total Rs. 334 per month. He served the institution for the full session and was thus entitled to get salary at the above rate including the interim relief granted by the State Government with effect from 1.3.1972. His salary totalling Rs. 4,153.12 was not paid. After 31st March, 1971, the lecturers of recognised institutions were paid their salary through cheques issued by the State Government, but no cheque had been issued to him. After serving a notice u/s 80. C.P.C., he brought the suit.

3. The State of U. P. resisted the suit with the defence that the appointment of the plaintiff was without approval of the District Inspector of Schools, Muzaffarnagar. No letter of appointment had been issued to him by the Committee of Management of the institution. His appointment being not legal and in accordance with Regulations of the Board, he was not entitled to get any salary from the State Government. He could seek his remedy only against the defendant No.2-Manager of the college. With this defence, the State of U. P. denied its liability to pay any amount to the plaintiff towards his alleged salary.

4. The defendant No. 2, respondent No. 4 in this appeal filed a separate written statement admitting that the plaintiff worked in the college as lecturer with effect from 7.7.1971 and served for the entire session 1971-72, having been appointed on temporary basis. His appointment was made subject to the approval by the District Inspector of Schools, Muzaffarnagar and he was told that the terms of his appointment would be in accordance with the approval to be granted by the District Inspector of Schools. The papers relating his appointment were sent to the District Inspector of Schools for approval but no approval was received and as such no salary could be paid to him. The defendant No. 2 (Manager) of the institution (Chandra Rani) denied her liability to pay any salary to the plaintiff. According to her defence, the liability to make the payment of the salary of plaintiff was that of the State Government. The trial court held the plaintiff to be entitled to the relief claimed and decreed his suit against the State of U. P. Aggrieved, the State of U. P. preferred appeal and the first appellate court, by the impugned judgment dated 11.4.1977 allowed the appeal and reversed the judgment and decree passed by the trial court with the result that the suit of the plaintiff stood dismissed with costs throughout. It is now the plaintiff who has come up in second appeal before this Court.

5. This Court, while admitting the appeal, formulated the following two questions of law for decision in this appeal as per order dated 23.7.1981 which is reproduced below :

"Admit.Issue Notice.

The following questions of law are formulated for decision in this second appeal :

(1) Because the approval of the District Inspector of Schools having been sought by the management and no orders having been passed on the said request, the appellant shall be deemed to have been appointed as a Lecturer in the college by

virtue of Section 16F of the U. P. Intermediate Education Act.

(2) Because the management of the institution effectively represented through its Manager and the suit could not have been dismissed for non-joinder of necessary parties."

Therefore, this Court has to decide the above two questions of law formulated in the appeal.

6. I have heard Sri Arun Tandon, learned counsel for the appellant and learned standing counsel on behalf of respondent Nos. 1 to 3. Service has been deemed to be sufficient on the respondent No. 4-Manager of the institution by order dated 27.7.2000. None turned up from his side at the hearing of the appeal. I take up the two questions of law which have to be decided, one by one.

7. Question No. 1: The argument of the learned counsel for the appellant is that the approval concerning appointment of the plaintiff/appellant having not been accorded by the District Inspector of Schools within two weeks, the same was to be deemed as having been accorded as per Section 16F of the U. P. Intermediate Education Act, 1921 and the plaintiff/appellant could not be deprived of his salary on the premise of approval having not been granted by the District Inspector of Schools. On the other hand, the submission of learned standing counsel is that as a matter of fact no appointment letter had been issued in favour of the plaintiff/appellant. Nor was there any resolution concerning his selection. Therefore, there could be no question of his deemed approval by the District Inspector of Schools.

8. On consideration, I find that the argument of "deemed approval" put forth from the side of the plaintiff/appellant is not so simple as has been sought to be projected. Reference to the testimony of Harpal Singh D.W.1 and relevant provisions of law would make the things clear. Harpal Singh D.W.1 was examined in the lower court and he was the member of the Committee of Management of the college in question at the relevant time. According to him, he was the President of the Selection Committee in which the plaintiff had been selected for the appointment as lecturer for the academic session 1971-72. According to him, the Selection Committee recommended the appointment of the plaintiff to the District Inspector of Schools, but no approval was received. It is also his statement that the plaintiff had been appointed subject to approval of the District Inspector of Schools and he had clearly been told that if the approval for his appointment was accorded by the District Inspector of Schools for the lecturer's grade, then he would be treated as lecturer and in case he was approved for untrained grade, then he would be treated accordingly. The witness has further stated that as approval was not received from the District Inspector of Schools within 14 days, the approval was deemed as accorded. The District Inspector of Schools, however, refused to sign the cheque for the salary of the plaintiff. He also stated that the plaintiff was entitled to his salary, but the liability was that of the State Government. However, It is crystal clear from his cross-examination

that no letter of appointment was ever issued to the plaintiff. There also does not appear to be any resolution of the Committee of Management concerning the appointment of the plaintiff. There is also no document on record showing the recommendation of the Selection Committee for the appointment of the plaintiff as teacher. It appears as if all the acts, proceedings were merely by word of mouth without any proper recording of documents as required by the law and rules.

9. Section 16E of the Intermediate Education Act, 1921, relates to the appointment of teachers of different subjects. Its sub-clause (2) says that there shall be constituted in every recognised institution a Selection Committee for the purpose of selecting candidates for appointment as teachers in the institution. Sub-clause (2) of Section 16F of the said Act reads as under :

"(2) The names of the selected candidate shall be forwarded for approval, in the case of a teacher, by the Principal or Headmaster to the Inspector, and, in the case of Principal or Headmaster, by the Chairman of the selection committee to the Regional Deputy Director, Education. A statement showing the names, qualifications and other particulars, as may be prescribed of all candidates who may have applied for selection shall also be sent along with the name of the selected candidate. The Inspector or Regional Deputy Director, Education, as the case may be, shall give his decision within two weeks of the receipt of the relevant papers, failing which approval shall be deemed to have been accorded."

10. There is nothing to show that the compliance of the above provision of law was made. In other words, it is not established that the documents as required by the above provision, had been sent to the District Inspector of Schools. In the absence of the same, there could be no question of invoking the provision of "deemed approval" in respect of the plaintiff/appellant.

11. I also find that the lower appellate court has rightly relied upon the relevant provision of Chapter II of the Regulations under Intermediate Education Act, 1921, in paragraph-9 of its judgment. The gist thereof is that there has to be the constitution of Selection Committee for appointment of teachers and there is also the requirement for the issuance of appointment letter within two weeks of the receipt of approval of selected candidate for appointment as teacher. It is provided that the Manager shall, on authorisation under a resolution of the Committee of Management, has to issue an order of appointment to the candidate mentioning therein, among other particulars, the salary, scale of pay and period of probation with instruction to join duty within a fortnight of the receipt of appointment letter. A copy of the order of appointment has also to be sent to the authority prescribed in Section 16F (2) read with Section 16C (5) for information and record. The compliance of these provisions was not made at all. Without compliance of these legal requirements, the plaintiff was allegedly permitted to work for the entire academic session. The liability of paying his salary could not be thrust upon the State Government on the simple premise that under the U. P. High School and Intermediate Colleges (Payment of Salary of

Teachers and Other Employees) Act. 1971, it was the liability of State Government to pay the salary of the plaintiff.

12. Learned counsel for the appellant has argued that as per Section 10 (2) of the said Act, the State Government could recover the amount of salary from the institution as arrears of land revenue. I do not think that this provision could saddle the State Government with the liability of making payment of any salary to the plaintiff. The clear reason is that the basic requirement of his appointment having been legally made as per the provisions of law is missing in the present case.

13. In the result, the first question is answered this way that the approval of District Inspector of Schools in respect of the alleged appointment of the plaintiff/appellant could not be deemed by virtue of Section 16F of the U. P. Intermediate Education Act.

14. Question No. 2 : It is a fact that the plaintiff/appellant did not implead the Committee of Management of the institution as a party to the suit. He only impleaded the Manager and that too, without his name. It goes without saying that the legal person was the Committee of Management of the College, and not the Manager. The Manager was simply the functionary of the institution, but not a legal person who, as said above, was not impleaded by name in his personal capacity. The learned counsel for the plaintiff/appellant has argued that as admitted in the written statement of defendant No. 2/respondent No. 4 (Manager of the Institution), the plaintiff had worked as teacher for the entire academic session 1971-72 and that he was entitled to his salary. I do not think that it brings about any betterment for the plaintiff/appellant. The Committee of Management of the institution having not been impleaded as a party to the suit, no liability could be fastened on the college management. Had the Committee of Management been impleaded as a party to the suit, then it could be said that as the plaintiff/appellant had admittedly worked as teacher for the entire academic session 1971-72, he should be paid his salary by the Committee of Management of the institution out of its own funds. But it is sad and bad that the plaintiff/appellant did not care to implead the Committee of Management of the institution as a party to the suit and as such, it is not possible to grant any relief in his favour against the institution. Non-impleadment of the Committee of Management goes to the root of the matter and it is not a proper answer to overcome this basic defect that the Manager effectively represented the Management of the Institution. This Court is of the considered view that the lower appellate court was perfectly justified in finding that the suit was bad for non-joinder of necessary parties. Question No. 2 is answered accordingly.

15. It follows from the above discussion on the questions of law formulated in the second appeal that the appeal completely lacks merit and it is destined to be dismissed.

16. This second appeal is hereby dismissed. However, under the circumstances of

the case, it is directed that the parties shall bear their own costs.