

(1997) 10 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 70 (S/B) of 1996

Dr. Sujan Singh and Another	Vs	APPELLANT
Jagat Narain Vishwakarma and Others		RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 10 AHC CK 0014

Hon'ble Judges : S.H.A. Raza, J;S. Dikshit, J

Bench : Division Bench

Advocate : K.D. Nag, for the Appellant; H.G.S. Parihar, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza and S. Dikshit, JJ.—This special appeal has been preferred against the judgment and order dated 20.3.96 coupled with the order dated 20.2.96 and 3.11.95 passed by an Hon'ble single Judge of this Court in writ petition bearing No. 4330 (S/S) of 1995 In re : Jagat Narain Vishwakarma v. State of U.P. and Ors.

2. The case of the Respondent Sri Jagat Narain Vishwakarma in the writ petition was that he was appointed as English Lecturer and had been continuing to perform his duties as a teacher in Khalsa Intermediate College, Lucknow, since 1989, but was not paid salary. The Principal Sri Sujan Singh after taking over as the Principal in connivance with the Inspector of Schools has even stopped Sri Jagat Narain Vishwakarma from working as English Lecturer. Sri Jagat Narain Vishwakarma filed a regular suit, before filing this writ petition, for payment of salary before the civil court, and the civil court directed the payment thereof during the period he was working in the Institution. It has been brought to the notice of this Court, that objection against the application for injunction, which is in the nature of mandatory injunction, was preferred before the civil court, but despite the lapse of considerable time, matter still hangs on before the Court. In view of the fact that neither the salary was paid to the Petitioner, nor he was

allowed to function as lecturer after Sri Sujan Singh has taken over as Principal, the Petitioner filed the present writ petition praying for issuance of a writ in the nature of mandamus commanding the Respondents, to allow the Petitioner to work on the post of Lecturer in English, in the said Institution and the Respondents may also be directed not to interfere into the function of the Petitioner, on the post of English Lecturer. The Petitioner also staked his claim for payment of salary with effect from 20.7.89, and prayed that the Respondents be directed to make payment of salary to the Petitioner, for the post of Lecturer in English, in the said Institution regularly.

3. From the side of the Respondents who are the Appellants in Special Appeal No. 70 (S/B) of 1996, it was contended, that the relief which has been sought in the writ petition, is similar to what has been sought in the suit itself, and only for that reason the civil court, passed an ex parte order for payment of salary on 12.5.93. Thus, the main question which has arisen in this special appeal is as to whether despite the pendency of the civil suit bearing No. 233 of 1993, involving the basic question as to whether the Petitioner was validly appointed or not the same question can be agitated in the writ petition bearing No. 4330 (S/S) of 1995?

4. The pendency of the civil suit and the order of the civil court for payment of salary to the Petitioner itself was noticed by Hon''ble the single Judge, in his order dated 20.3.96 but it seems that while passing the impugned order dated 20.3.96 the attention of Hon''ble the single Judge was not drawn towards the fact that on account of the pendency of the civil suit for more or less on the same ground, the writ petition would not be maintainable. The Hon''ble single Judge has also mentioned in his order, dated 20.3.96, that when the writ petition was filed, this Court instead of issuing directions, to make the payment directed the Director of Education, to decide the Petitioner's representation, as to whether the Petitioner was working as stated by him since 1989, as English Lecturer, in the institution in question. The Director of Education in pursuance of the order dated 3.11.95 decided the representation on 26.2.96. Hon''ble the single Judge has indicated in the order that the Director of Education did not consider the case of the Petitioner to that extent, that he had been working as English Lecturer since 1983 (1989) and has not been paid salary as per the directions of the learned Munsif dated 12.5.93. Hon''ble single Judge also observed in the order that the Director of Education has only examined as to whether the Petitioner's appointment was valid or not but as the suit was still pending in the civil court, Director was directed to reconsider the matter, and pass appropriate order, on the representation of the Petitioner; as to whether the Petitioner has been working in the College since 1989, and he had not been paid salary since then. The question as to whether the appointment was validly made or not was left open to be considered in the appropriate forum, e.g., civil court, but a direction was issued, that the order dated 12.5.93 passed by the civil court must be complied with, by the authorities concerned, and they would allow the Petitioner to work and continue to pay him salary until final orders would be passed by the

civil court.

5. We are of the view that generally nobody should be permitted to invoke the powers of this Court, under Article 226 of the Constitution of India, to get an order of the civil court executed by this Court. The CPC provides adequate provisions for execution of the orders passed by the civil court, and if the orders passed by the civil court are not executed, it could be either executed through the process of the Court or the contempt proceedings can be initiated. Although this Court even in exercise of its powers can issue directions in extraordinary situations under its supervisory jurisdiction under Article 227 of the Constitution of India, but this Court would not relegate itself to the level of an executing court of a civil jurisdiction.

6. The question of validity or invalidity of the appointment of the Petitioner is the subject-matter of a suit which is pending in the civil court. The issue of payment of salary in the suit is inter-linked with the validity of the appointment of the Petitioner. Similarly the right of the Petitioner, if any, to work as English teacher in the Institution is also derived from the nature of his appointment. If the court would ultimately find that the appointment was not validly made, the civil court may dismiss the suit of the Petitioner, but if the court would come to the conclusion that the appointment of the Petitioner was perfectly valid the suit would be decreed.

7. We fail to understand how a writ petition of a similar dispute could have been filed by the Petitioner and was entertained by this Court. We also fail to understand, as to how by means of such an interim order passed in the writ petition, the entire relief which the Petitioner has sought would be granted to him. We would not have interfered, if the order passed would have been in the nature of Inter-locutory order, but after perusing the tenor of the entire impugned orders, we are of the view that the writ petition itself has been decided inasmuch as, the entire relief has been granted to the Petitioner. It is well settled that while passing any order, which is in the nature of Interlocutory order, final reliefs should not be granted. We find that both the reliefs which have been sought in the writ petition, i.e., to allow the Petitioner to work on the post of Lecturer in the College in question and payment of arrears of salary, as well as payment of salary in future, have been granted in full, under the colour of an interim order. We are of the view that the impugned orders might not have been passed, if the case of the Appellant would have been rightly placed before the Hon"ble single Judge.

8. It was argued by Sri Parihar, learned Counsel for the Respondent in this appeal, that the relief sought in the suit was confined to payment of salary only, while in the present writ petition a prayer has also been made to allow the Petitioner to work as English teacher. He said that the other relief regarding payment of salary in the writ petition, although is identical and similar to what has been prayed in the suit, but the court may ignore it as the Petitioner has filed a writ petition, on a fresh cause of action which had arisen, due to the action of

Sri Sujan Singh, Principal of the College in question, who refused to allow the Petitioner to function as English teacher in the College in question. The argument is totally misconceived. As we have pointed out earlier, one of the reliefs sought in the writ petition as well as in the suit regarding payment of salary are identical, the Court below as well as the Hon''ble single Judge of this Court ordered for payment of the salary. As far as the second relief regarding continuance of the Petitioner as English teacher is concerned, can be attributed to his right to continue as a teacher. Both the reliefs are inter-linked or intermixed, with the question, as to whether the Petitioner Respondent of this appeal was validly appointed or not, in such a situation there would be a possibility of two different findings before the two courts, one a subordinate court and the other High Court, which is vested with supervisory jurisdiction over it. Against an order of Munsif, an appeal lies. The Petitioner skipping over the appellate court, filed a writ petition and obtained an order which cannot be permitted.

9. Though, the powers of the High Court under Article 226 of the Constitution, are discretionary and no limit can be placed upon that discretion, it must be exercised along with the recognised lines, subject to self-imposed discipline and limitations.

10. In exercise of this discretionary jurisdiction, this Court, cannot act as court of appeal or revision to correct mere errors of law or fact, because the jurisdiction of this Court while exercising the power under Article 226 or 227 of the Constitution, is supervisory in nature. Resort to the Jurisdiction under Article 226 of the Constitution, is not intended as an alternative remedy for relief, which may be obtained by a suit or other mode prescribed by Statute.

11. Where an aggrieved person has availed a remedy by filing a suit in a competent Court of civil jurisdiction the High Court, will not generally entertain a writ petition for obtaining redress, which could be provided by the civil court. The High Court, in such a situation cannot entertain a petition under Article 226 of the Constitution, because it will amount to permitting the civil court to be by-passed.

12. Our observations made in the foregoing paragraph are fortified by a decision of Hon''ble Supreme Court in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, , where it has been observed by Hon''ble Kuldeep Singh, J., speaking for the Bench:

Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary Jurisdiction to be converted into a civil court under the ordinary law. When a suit is pending between the two parties the interim and miscellaneous orders passed by the trial court-against which the remedy of appeal or revision is available-cannot be challenged by way

of a writ petition under Article 226. Where the civil court has the Jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional court and interfere with the interim/miscellaneous orders of the civil court. The writ Jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.

13. We are of the view that if it is assumed that the other relief regarding functioning of the Petitioner as English teacher was not at all a matter of issue before the civil court, even then the Petitioner could have got his suit amended by adding that relief, and applied for grant of interim injunction, but instead of doing so, he has directly approached this Court, by filing a writ petition, and obtained interim orders, which could not be granted finally even in the writ petition. We have desisted ourselves from giving a final verdict on the question as to whether the writ petition was barred by the principles of res Judicata. This question can be looked into and adjudicated by an Hon"ble single Judge or the Bench which will finally hear the writ petition.

14. In view of what we have indicated hereinabove, this special appeal is allowed. The order dated 20.3.96 coupled with the orders dated 20.2.96 and 3.11.95 are set aside. It is directed that writ petition be placed before the Hon"ble senior Judge to nominate another Hon"ble single Judge, to hear the writ petition, as the Hon"ble the single Judge who had passed the Impugned order has been sitting at Allahabad.