

(1997) 07 AHC CK 0222
In the Allahabad High Court
Case No : C.M.W.P. No. 8965 of 1992

Dr. Vijai Narain Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Citation : (1997) 07 AHC CK 0222

Hon'ble Judges : R. Dayal, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; M.C. Dwivedi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been tiled for quashing the orders dated 22.2.1992 and 9/10.3.1992 contained in Annexures 2 and 3 to this writ petition, by which the Petitioner has been relieved from service and further he has been asked to repay the salary paid to him from 1st July, 1991 onwards.

2. The factual gamut of this case reveals that the Petitioner who was serving as a Reader in the Hindi Department of Kashi Vidyapith, Varanasi, was born on 1.7.1931. The age of retirement being 60 years, he claims to have reached the age of superannuation on 1st July, 1991. Petitioner further claims that he was given benefit of some Government Order under which a Teacher who reaches the age of superannuation in mid-academic session would be entitled to continue in service till the end of the academic session, i.e., 30th June following, and he would be treated to have been re-employed from the date immediately following the age of his superannuation.

3. The grievance of the Petitioner is that the impugned orders are illegal. Petitioner asserted that he was entitled to work upto 30th June, 1992 as he reached the age of superannuation on 1st July, 1992, i.e., mid-academic session as the session starts from 1st July each year and Respondent No. 2 Vice

Chancellor of the said University permitted the Petitioner to continue on the said post after 1st July, 1991 giving him re-employment under the Government Orders/Statute.

4. We find no force in the submission made by the learned counsel for the Petitioner as the date of birth of the Petitioner being 1.7.1931 he certainly reached the age of superannuation on 30.6.1991 and not on 1st July, 1991. The purpose of giving re-employment to the teachers attaining the age of retirement in mid-academic session is for the benefit of the students as they may not get a teacher in time and they would face hardship and may not be able to prepare for their examinations. Such Statute/Ordinance or Government Order is not meant to give the benefit of re-employment to teachers. It does not create any vested right in favour of teachers. It does not create any vested right in favour of teachers. Petitioner reached the age of superannuation on 30th June, 1991 and thus he is not entitled to claim the benefit of re-employment as he did not retire in mid-academic session. This Court has consistently held that the date on which an employee is born has to be included for calculation of determining the exact date of superannuation and it cannot be excluded vide *Km. Siddheswari Devi Srivastava v. State of U.P. and Ors.* 1991 AWC 561 and Writ Petition No. 14784 of 1996 *Ram Lakhan Pandey v. Agra University*, decided on 24.4.96 (DB). Thus, the re-employment of the Petitioner, if there was any, was in violation of law and averments made by the Petitioner have no force.

5. Before parting with the case we would like to mention that the petition has been filed in such a cavalier fashion that the Statute/Ordinance/Government Order, the anchor sheet of submissions of Petitioner which made him entitled for re-employment, has not been produced for our perusal. Its contents have not been quoted nor its reference has been given. Further, it has been averred in the petition that there is a specific Ordinance issued by the Governor of Uttar Pradesh giving benefit of earlier Government-orders even to those teachers whose date of birth fall on 1st July. Mere bald assertions have been made without filing any document to substantiate them. Shri A. P. Sahi, learned counsel for the Petitioner asserts that the averments made by the Petitioner have not been rebutted by the Respondents by filing counter-affidavits and this Court treat the same to be true. His submissions are preposterous and have no legs to stand as the Petitioner has to make out his own case and cannot take shelter of inaction of the other side.

6. It has further been submitted by Shri Sahi that as the Petitioner got reemployment without any misrepresentation or fraud, the Respondents cannot recover the amount paid to him during the course of his re-employment. No doubt, this is a settled proposition of law that if a person has been paid an amount of which he is not entitled under the law and there is no misrepresentation or fraud on his part, the said amount should not be recovered from him as he could not be held responsible for the extra-payments made to him vide *Sahib Ram Vs. State of Haryana and Others*, and *Shyam Babu Verma*

and Ors. v. Union of India and Ors. 1994 (2) SCC 521. Whatever may be the position of law, there is no order of re-employment of the Petitioner on record and we are unable to examine the terms and conditions of his re-employment. There is no factual foundation to substantiate the averments made by the learned counsel for the Petitioner. The pleadings fall short to make out any case in favour of the Petitioner.

7. Thus, the petition being devoid of any merit is dismissed. However, there shall be no order as to costs.