
(1997) 01 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 8965 of 1992

Dr. Vijay Narain Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Citation : (1999) 3 LLJ 1088

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, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed for quashing the orders dated February 22, 1992 and October 9, 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 July 1, 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 July 1, 1931. The age of retirement being 60 years, he claims to have reached the age of superannuation on July 1, 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. June 30, 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 up to June 30, 1992 as he reached the age of superannuation on July 1, 1992 i.e. mid- academic session as

the session starts from July 1 each year and respondent No. 2 Vice Chancellor of the said University permitted the petitioner to continue on the said post after July 1, 1991 giving him re-employment under the Government Order/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 July 1, 1931 he certainly reached the age of superannuation on June 30, 1991 and not on 1st July 1, 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. Petitioner reached the age of superannuation on June 30, 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.* 1991 All WC 561 and *Writ Petition No. 14784 of 1996 Ram Lakhan Pandey v. Agra University* decided on April 24, 1996 (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 Order even to those teachers whose date of birth fall on July 1. 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 re-employment 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 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 Verma v. State of Haryana* 1995 AIR SCW 1780 and *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, . 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.