
(2007) 07 AHC CK 0270
In the Allahabad High Court
Case No : C.M.W.P. No. 31109 of 1994

Gauri Shankar Gaur

APPELLANT

Vs

Dy. Director of Education and Others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Citation : (2007) 7 AWC 7026

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, Kishan Ji Khare, V.B. Khare, Vinod Kumar Singh, Saumitra Singh, Mukesh Kumar and A.K.Shukla, for the Appellant; S.N. Tewari, A.K. Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—This writ petition arises out of impugned order dated 28.6.1994, appended as Annexure-22 to the writ petition, passed by the District Inspector of Schools, Aligarh (for short "D.I.O.S.") insofar as it deprives the Petitioner from payment of salary w.e.f. May, 1992, till the date of joining Janta Adarsh Inter College, Ruheri, District Aligarh (for short "College"). The Petitioner has prayed for quashing of the aforesaid order dated 28.6.1994 and for a writ of mandamus commanding the Respondents not to interfere in the functioning of the Petitioner as Assistant Teacher in L.T. grade and to pay him regular and monthly salary month by month including the arrears of salary since April, 1992, till the date of institution of the writ petition. The Petitioner has further prayed that a writ of mandamus be issued to the Respondents to pay his revised pay scale, selection grade, promotional pay scale and retiral benefits with interest.

2. The factual scenario of the matter is that the college is aided by the State Government and is governed by the provisions of U. P. Intermediate Education Act, 1921, (hereinafter referred to as "the Act").

3. The Petitioner was appointed as Assistant Teacher in C.T. grade and was

continuously working since 1.7.1973. By virtue of declaration of C.T. grade as dying cadre in 1989 and the Petitioner having completed 10 years continuous service in C.T. Grade claims to have become entitled for appointment in L.T. Grade w.e.f. 1.1.1986. The grievance of the Petitioner is that he was not paid any salary w.e.f. 1.5.1988 to 3.6.1989 and from 1.12.1989 to 31.3.1991. The Petitioner also being aggrieved by the seniority list instituted Civil Misc. Writ No. 6838 of 1992, which is said to be still pending before this Court in paragraph 30 of the counter-affidavit. Though no rejoinder-affidavit has been filed in the aforesaid writ petition it has been averred in paragraph 6 of the writ petition that the Petitioner was paid L.T. grade only for the month of March, 1992 and no salary was paid to him in that grade thereafter w.e.f. 1.1.1986 to February, 1992. The Petitioner further alleges that since March, 1992 till the date of institution of the writ petition, he was not paid any salary either in L.T. or in C.T. grade.

4. It has also been averred by the Petitioner in paragraph 8 of the writ petition that he had proceeded on medical leave from 29.3.1992 to 1.5.1992 but when he reported for duty on 4.5.1992, he was restrained from signing the attendance register and thereafter w.e.f. 29.7.1992 he was further restrained from working in the College. Though order of termination had not been passed, the Principal of the college passed his order dated 29.7.1992, appended as Annexure-6 to the writ petition.

5. Aggrieved, the Petitioner submitted a representation to the Principal of the College who vide his letter dated 31.3.1994 appended as Annexure-7 to the writ petition, directed the Petitioner to join his duties on any working day at 8 a.m., with the original medical certificate(s), original fitness certificate, explanation for remaining absent and original educational documents. The Petitioner replied to the aforesaid letter vide his letter dated 18.4.1994, copy of which is appended as Annexure-8 to the writ petition.

6. A perusal of Annexure-8 reveals that the Petitioner did not submit the requisite documents on the ground that they had already been perused by the Principal of the College on earlier occasion.

7. The Petitioner, in the circumstances, was not allowed to join his duties for not submitting the aforesaid documents as desired by the Principal. Aggrieved, the Petitioner filed Civil Misc. Writ Petition No. Nil of 1992, which was disposed of in terms of judgment and order passed in Civil Misc. Writ No. 28041 of 1991, Smt. Dropad Mittal v. Mandaliya Balika Vidyalaya, decided on 20.10.1992: 1992 AWC 568. In Smt. Dropad Mittal's case, the Petitioner was directed to file a representation before the District Inspector of Schools, who was required to decide the same within three months from the date of representation.

8. Accordingly, the Petitioner moved representation dated 12.11.1992 before the District Inspector of Schools, Aligarh, followed by reminder letters dated 10.12.1992, 5.1.1993, 6.2.1993 and 3.3.1993 but to no avail, which compelled

the Petitioner to file Contempt Petition No. 536 of 1993, in which notice was issued to the District Inspector of Schools, Aligarh, vide order dated 2.3.1994 passed by this Court.

9. In the counter-affidavit filed in the aforesaid contempt petition, the District Inspector of Schools, Aligarh stated that the representation of the Petitioner had already been decided vide order 28.4.1993 holding that from 29.3.1992 to 1.5.1993, the Petitioner was treated to be on medical leave and was entitled for payment of salary. The college was also directed to permit the Petitioner to join and to pay his regular monthly salary from May, 1992 till date. Thereafter, the Deputy Director of Education, Agra Region, Agra Respondent No. 1, directed the D.I.O.S., Aligarh vide order dated 21.4.1994 to do the needful in accordance with law.

10. Pursuant to that order, the D.I.O.S., Aligarh, recalled his earlier order dated 28.4.1993 vide order dated 28.6.94 and directed the Manager to permit the Petitioner to join and pay his salary from the date of his joining. Thereupon the Petitioner claims that he joined his duties w.e.f. 28.10.1994 but his salary is not being paid to him.

11. At the time of admission, the following ad interim order was passed by this Court on 7.10.1994 :

Hon. Sudhir Narain, J.

The District Inspector of Schools by his order dated 28th June, 1994, permitted the Petitioner to join Janta Adarsh Inter College, Ruheri, District Aligarh but as regards the past salary he did not accept the claim of the Petitioner.

Sri A. K. Gupta, learned Counsel appearing for Respondent No. 4 submits that the Petitioner himself is not joining the institution. It is a question of fact as to whether the Petitioner presented himself in the institution for joining or not. The Petitioner will be permitted to join the institution by Respondents 4 and 5. In case there is any dispute as to whether the Petitioner is joining the institution or has presented himself for joining, the Petitioner shall make a representation before the District Inspector of Schools, Aligarh, Respondent No. 2 who shall appoint an Observer to find out the truth whether the Petitioner is being deprived of his right to join the institution. The Petitioner shall be permitted to join the institution within two weeks from today. In case the Petitioner joins the institution, he will be paid the current salary every month.

List for admission in the third week of January, 1995.

Dt. 7.10.1994

Sd. Sudhir Narain, J.

12. In compliance of the aforesaid interim order, the Petitioner continued to function and discharge his duties in the college from 1994 to 30.6.2002, when he retired after attaining the age of superannuation. The exact date of birth of the

Petitioner is 4.7.1941 and he ought to have retired w.e.f. 3.7.2001 but as it was middle of the session, he was permitted to continue till 30.6.2002.

13. The contention of counsel for the Petitioner is that the Deputy Director of Education has no jurisdiction to direct the D.I.O.S. to review his earlier order and that the D.I.O.S. has no power of review. Impugned order dated 21.4.1994 was passed on the direction of the Deputy Director of Education without any notice and opportunity to the Petitioner.

14. Per contra, Sri S.N. Tiwari counsel for the Committee of Management contended that the Petitioner was appointed in three language formula scheme in pursuance of publication dated 12.7.1979 and approval to his appointment was also granted on 29.8.1979 by the D.I.O.S. It is stated that while rejecting the representation of the Petitioner vide his order dated 28.4.93 the D.I.O.S. has categorically held that though the Petitioner was guilty but on humanitarian grounds, he was entitled to get his salary.

15. Aggrieved by the aforesaid order of the D.I.O.S. the Committee of Management filed objection before the Regional Deputy Director of Education, Agra Region, Agra, Respondent No. 1 who vide his order dated 21.4.2004, directed the D.I.O.S. to reconsider the matter in accordance with law and evidence on record.

16. The D.I.O.S. thereafter appears to have sent notice to the Petitioner vide his letter dated 5.5.1994 and thereafter passed order dated 28.6.94.

17. The counsel for the Respondents submits that in the order dated 28.6.1994, the D.I.O.S. has only modified the words "humanitarian grounds" in the earlier order dated 28.4.1993 as the Petitioner himself was found to be absent from duty unauthorizedly from 1992 till joining his services.

18. He has urged that since the order dated 21.4.1994, passed by the Deputy Director of Education, Agra Region, Agra, has not been challenged by the Petitioner, therefore, it has become final as the D.I.O.S. has not recalled his order dated 28.4.1993 but the said order was passed in compliance of direction of Respondent No. 1.

19. Standing counsel contended that the Petitioner himself did not join his duties from 20.3.1992 till 1994 but on humanitarian ground, the D.I.O.S. permitted him to withdraw salary treating the said period as on medical leave. According to him, the Respondent No. 1 had not passed any final order vide his order dated 21.4.1994. He only directed the D.I.O.S. to decide the controversy with regard to the complaint made by the Principal of the College. He urged that the Petitioner, in compliance of interim order of this Court, was permitted to join in 1994 and he worked till 2002 with full wages. If salary for certain period was not paid to him, it was due to absence of the Petitioner.

20. Reliance has been placed by the standing counsel on the decision of Hon''ble Apex Court rendered in Basic Shiksha Parishad and Anr. v. Smt. Sugna Devi and

Ors. 2004 (1) AWC 526, wherein it has been held that the competent authority having appointed a person as teacher and thereafter prevented him from joining as teacher after leave, his service has to be treated as continuing in service and salary was accruing every month.

21. In the instant case, after attaining the age of superannuation, the Petitioner has retired from service in the year 2002. Sri S.N. Tiwari, counsel for the Principal and Committee of Management of the College-Respondent Nos. 4 and 5 has informed the Court that relevant papers with regard to pension of the Petitioner has been submitted on 17.10.2002. Since then about 5 year's period has elapsed.

22. Admittedly, the Petitioner was appointed in 1973 and worked till 2002. The dispute of payment of salary etc., is with regard to certain period, as stated above.

23. In view of the facts that the Petitioner was on medical leave from 29.3.1992 to 1.5.1992 and was restrained from signing the attendance register w.e.f. 4.5.1992 and thereafter from 29.7.1992 was restrained from working in the College without there being any order of termination of his services, he is entitled to his salary for the period for which he had not been paid. The Petitioner had submitted copies of his educational documents and medical certificates etc., the college could have verified them even if the Petitioner had not submitted the originals, particularly in view of the fact that the D.I.O.S., Aligarh, vide his order dated 28.6.1994 had directed the Manager of the College to permit the Petitioner to join and pay his salary from the date of his joining. In the counter-affidavit of the D.I.O.S., Aligarh, the D.I.O.S. has categorically stated that the representation of the Petitioner dated 12.11.1992 was decided by his order dated 28.4.1993 holding that the Petitioner was treated on medical leave w.e.f. 29.3.1992 to 1.5.1993 and was entitled for payment of salary. This Court had also granted interim relief in favour of the Petitioner on 7.10.1994. In this view of the matter, it is in the interest of justice that the disputed period be treated as leave and the entire benefits be released in favour of the Petitioner. Following the ratio laid down in Basic Shiksha Parishad and Anr.'s case (supra), this Court is of the view that the Petitioner is entitled to salary for the period of his absence on medical ground.

24. For the reasons stated above, the writ petition is allowed. The Respondents are directed to forthwith release entire arrears of salary, if due, to the Petitioner and ensure payment of his retiral dues within a period of three months from the date of production of a certified copy of this judgment and order. No order as to costs.