
(2010) 02 AHC CK 0286
In the Allahabad High Court
Case No : Writ A. No. 23491 of 2007

Indrawati Chaudhary @ Indrawati Devi	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 26-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0286

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma,J.

Heard learned counsel for the petitioner and learned standing counsel for the respondents.

The facts of the case, in brief, are that the petitioner was appointed on the post of Assistant Teacher on 9.10.2007 and in pursuance of the order dated 9.10.2007, the petitioner joined on the said post in Primary School on 17.10.2007. Subsequently, the respondent No.2 promoted the petitioner on the post of Assistant Teacher Junior High School, Chhapiya Block, Rudauli, District Basti on 17.11.2004. Thereafter, the petitioner was again promoted vide order dated 13.12.2005, but the said order has not been served upon the petitioner. Being aggrieved, he filed Writ Petition No. 68223/06 which was disposed of with a direction to the opposite party No.2 to decide the matter within four weeks from 14.12.2006. Thereafter, on 16.4.2007, the matter was decided by the respondent No.2 in favour of the petitioner, but instead of paying the salary from the date of promotion, i.e. 18.11.2004 or 13.12.2005, it has been paid from 18.8.2006. Feeling aggrieved, the instant writ petition has been filed.

Notices were issued. In response to the notice, counteraffidavit has been filed by the opposite parties. In para 6, it has been mentioned that the matter relating to the promotion of Parishadiya Teachers done by the then B.S.A. Basti Sri V. K. Verma was properly enquired into by an Enquiry Committee constituted by the

then District Magistrate, Basti Sri Ramendra Tripathi under the chairmanship of Chief Revenue Officer, Basti and was concluded as defective promotions and guidelines were formulated. In compliance of the guidelines, the promotional order dated 17.11.2004 has been cancelled by the order dated 5.4.2005. Further, it has been mentioned that the petitioner has not worked anywhere during the period 5.4.2005 to 18.8.2006 and as such, in view of the Hon''ble Apex Court's verdicts on the principle of "no pay and no work" she is not entitled to get any salary from the State Exchequer for the said period and her services for the said period will be treated as break in service.

The joining on which has been accepted by the competent authority and order of promotion has also been passed by the competent authority and as such cancellation of promotion order is in violation of principles of natural justice.

Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

Besides, natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

The Hon''ble Supreme Court in umpteen cases has reiterated that a person who is put to any harm, he shall first be afforded adequate opportunity of showing cause. In D.K. Yadav Vs. J.M.A. Industries; (1993) 3 SCC 259 the Supreme Court while laying emphasis on affording opportunity by the authority which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. The Hon''ble Apex Court concluded as under:

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive."

In National Building Construction Corporation v. S. Raghunathan; (1998) 7 SCC 66, it was observed by the Apex Court that a person is entitled to judicial review, if he is able to show that the decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he is informed the reasons for withdrawal and the opportunity to comment on such reasons.

In view of above, it can safely be inferred that prior to passing the order dated

3.4.2005, opportunity of hearing was not afforded to the petitioner. Even thereafter, on 13.12.2005, the petitioner was again promoted. A copy of the order/list dated 13.12.2005 is enclosed as Annexure No.5 to the writ petition. It is admitted position that the above order has not been served upon the petitioner till date.

Accordingly, the writ petition is allowed. The impugned order of cancellation is quashed.