
(2013) 02 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29320 of 1990

Jahaj Pal

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2013) 4 ADJ 127 : (2013) 4 AWC 3808

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Ashok Khare, P.K. Jain, Vivek Kumar and V.M. Zaidi, for the Appellant; Suman Sirohi, A.K. Goel and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Ashok Khare, learned Senior Advocate, appearing on behalf of the petitioner and Ms. Suman Sirohi, learned Standing Counsel, appearing on behalf of the respondents. Brief facts, giving rise to the present petition, are that there is an institution, named as Janta Inter College, situated at Lisarh, District Muzaffarnagar (hereinafter referred to as the institution), which is imparting education upto Class XII. The said institution is Government aided and is a recognised institution, which is being governed by the provisions of the U.P. Intermediate Education Act, 1921 and the provisions of U.P. High School and Intermediate College (Payment of Salary to Teachers and other Employees) Act, 1971 are applicable. One Sri Krishna Pal Singh, a permanent C.T. Grade teacher, who was working in the institution, proceeded on long leave on 22.11.1997 giving rise to a short term vacancy in C.T. Grade. The Committee of Management invited application for filling up the short term vacancy for which the petitioner also applied. The Selection Committee took interview as a result of which recommended the name of the petitioner for appointment on the short term vacancy so caused. The recommendation of the Selection committee has been accepted by the Committee of Management and by a resolution of the Committee

of Management, the petitioner has been appointed as a C.T. Grade teacher. The papers were forwarded to the District Inspector of Schools for according approval to the appointment of the petitioner on 7.7.1988. Consequently, the Committee of Management issued an appointment letter dated 7.7.1988 to the petitioner, who joined the institution on 8.7.1988 as a C.T. Grade teacher. The District Inspector of Schools, vide order dated 12.7.1988, accorded approval to the appointment of the petitioner till 20.12.1988. It appears that Sri Krishna Pal Singh again sought extension of his leave upto 30.6.1989, which was accepted. The College vide letter dated 15.12.1989 sought fresh approval from the District Inspector of Schools. The District Inspector of Schools vide order dated 30.12.1988 again approved appointment of the petitioner upto 30.4.1989. The petitioner continued to teach classes upto 30.4.1989. Thereafter, the College was closed for summer vacation and re-opened in July, 1989. It appears that Sri Krishna Pal Singh tendered his resignation on 25.5.1989 giving rise to a substantive vacancy. When the petitioner intended to join his duty in July, 1989, he was told that as the District Inspector of Schools had accorded approval to his appointment only till 30.4.1989, he could not be paid salary under the Payment of Salary Act till District Inspector of Schools accords approval afresh. He was further told that he may continue to take classes till fresh approval is accorded for which he would be paid salary from the College fund. On the assurance of the College administration, the petitioner continued to work at the salary of Rs. 750/- per month only which was being paid by the College. When the salary has not been paid, the petitioner filed a representation dated 28.8.1989 before the District Inspector of Schools. When the approval of appointment for further period has not been accorded by the District Inspector of Schools and he was not being paid salary, he filed present petition seeking a mandamus to the respondents not to interfere in the working of the petitioner as ad hoc C.T. Grade Teacher till a candidate duly recommended by the Commission/Board joins the post or till the services of the petitioner are dispensed with in accordance with law and to pay the arrears of salary as C.T. Grade teacher under the Payment of Salaries Act with effect from May, 1989 onwards. The writ petition was entertained and the respondents were directed to file the counter-affidavit. An interim order was also passed to the extent that the respondents were restrained from interfering with the functioning of the petitioner as a C.T. Grade teacher and they were also directed to pay the entire amount of salary due to him within one month and also go on paying the current salary as and when fell due.

2. Learned counsel for the petitioner submitted that in view of the interim order, the petitioner is working and is getting salary, therefore, his services should be regularised u/s 33-B(1)(a)(i) of Act No. 5 of 1982 (U.P. Secondary Education (Services Selection Board) Act, 1982). He submitted that in those cases where the short term vacancy has been converted into the substantive vacancy, even before insertion of Section 33-B, which was inserted by U.P. Act No. 1 of 1993, with effect from 7.8.1993, if the cases of such teacher will not be considered for regularisation, the very purposes of enactment of this Section will frustrate and

the Section will become redundant and will be unworkable.

3. Learned Standing Counsel submitted that Section 33-B has been inserted with effect from 7.8.1993 with prospective effect. Thus, only those cases where the short term vacancy is being converted into a substantive vacancy after 7.8.1993 are covered u/s 33-B(1)(a)(i). It has been further submitted that Section 33(1) (c) provides that only those teachers who are continuously working in the institution from the date of such appointment upto the date of commencement of the Act will be eligible for regularisation. In the present case, the petitioner's appointment has been approved only upto 30.4.1989, thereafter, he is working in the institution on the strength of the interim order granted by this Court. The interim order does not confer any right to the petitioner. Since the appointment of the petitioner has not been accorded approval by the District Inspector of Schools after 30.4.1989, therefore, he has no legal right to continue on the post. She, further submitted that the petitioner's appointment was made against the short term vacancy, which has arisen on account of long leave taken by Sri Krishna Pal Singh. When he resigned on 25.5.1989, the short term vacancy ceased to exist and the vacancy became substantive vacancy, therefore, the petitioner had no right to continue thereafter in view of Full Bench's decision of this Court in the case of Smt. Pramila Misra v. Deputy Director of Education, Jhansi and others, (1997) 2 UPLBEC 1320. In the circumstances, his continuance as a C.T. Grade teacher in the institution was without the authority of law and it cannot be treated that the petitioner was legally serving in the institution as a teacher on the date of commencement of the Act.

4. I have considered rival submissions.

5. I do not find any substance in the argument of learned counsel for the petitioner.

6. In the writ petition, the petitioner has not sought any relief for regularisation of his services. The petitioner has only sought the mandamus restraining the respondents from interfering in the working of the petitioner as a C.T. Grade Teacher and to pay him salary. The said relief sought by the petitioner has no substance. The petitioner was engaged as a C.T. Grade teacher against the short term vacancy, which has been caused on account of the leave taken by Sri Krishna Pal Singh on 22.12.1987 and the District Inspector of Schools accorded approval to the appointment of the petitioner on 12.7.1988 only upto 20.12.1988, which has been further extended upto 30.4.1989. Thereafter, the approval has not been extended or granted by the District Inspector of Schools, therefore, the petitioner has no right to continue on the post without the approval granted by the District Inspector of Schools. Moreover, on 25.5.1989, Sri Krishna Pal Singh had resigned from the post and as such the short term vacancy ceased to exist and it converted into a substantive vacancy. Reliance is placed on the Full Bench's decision of this Court in the case of Smt. Pramila Misra v. Deputy Director of Education, Jhansi and others (Supra). When the short term vacancy converted into a substantive vacancy, the petitioner's right to

continue as a C.T. Grade teacher ceased. The substantive vacancy could either be filled by ad hoc appointment by adopting proper procedure under the First Removal of Difficulties order, 1981 and now by the Commission under the Act of 1982 as amended from time to time. Therefore, the continuance of the petitioner on the post was without any authority of law. It is a well-settled principle of law that the interim order does not confer any right and, therefore, on the basis of the interim order, even if the petitioner continued on the post, it cannot be said that the petitioner continued to serve the institution as a teacher on the date of commencement of the Act. My view finds support from the following decisions:

In Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, , the services of the respondent came to be terminated on 30th June, 1988, whereafter he obtained interim order and continued thereunder. Thus, he continued in service not by virtue of his own right under an order of appointment, but on account of interim order and the Court, thus, held that no benefit of such continuance can be allowed. In South Eastern Coalfields Ltd. Vs. State of M.P. and Others, , the Court recognised the principle that wrong order should not be perpetuated by keeping it alive. Recognising the maxim *auctus curiae neminem gravabit*, it was held that no one shall suffer by an act of the Court and such a rule is not confined to an erroneous act of the Court but act of the Court embraces within its purview all such acts as to which the Court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and law. It is duty of the Court to apply the restitution putting the parties in the same position as they would have been, had the order, subsequently found to be erroneous by the Court, would not have been passed. In para 28 of the judgment, it was held (para 26 of AIR).

The injury, if any, caused by the act of the Court shall be undone and the gain which the parties would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Court persuading the Court to pass interlocutory orders favourable to them by making out a *prima facie* case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced.

(emphasis added)

Considering from another angle, where an interim order is passed and the writ petition is ultimately dismissed, the effect would be as if no order was ever passed. That being so, the incumbent does not gain on the basis of mere

continuance since he has no legal or valid right to continue. An interim order passed by the Court merges with the final order and, therefore, the result brought by dismissal of the writ petition is that the interim order becomes non est.

A Division Bench of this Court in *Shyam Lal v. State of U.P.*, AIR 1968 Allahabad, while considering the effect of dismissal of writ petition on interim order passed by the Court has laid down as under:

It is well-settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non-est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order.

The same principle has been reiterated in the following cases:

(A) *Sri Ram Charan Das Vs. Pyare Lal*, .

In *Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others*, , a Bench of this Court has held that orders of stay or injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non-est in the eye of law if final order grants no relief. In this view of the matter it seems to us that the interim stay became non-est and lost all the efficacy, the Commissioner having upheld the permission which became effective from the date it was passed.

(B) *Shyam Manohar Shukla Vs. State of U.P. and Others*, .

It is settled law that in interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all *Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others*, and *Sri Ram Charan Das Vs. Pyare Lal*, .

(C) *M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other*, .

After the dismissal of the writ petitions wherein notification dated 21.4.1990 was stayed, the result brought about by the interim orders staying the notification, became non-est in the eye of law and lost all its efficacy and the notification became effective from the beginning.

In the case of *Raghavendra Rao Etc. Vs. State of Karnataka and Others Etc.*, , the Apex Court held as follows:

Para-16. It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. This Court in *Uma Devi (3) (supra)*, held as under:

Thus, it is clear that adherence to the rule of equality in public employment is a

basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of the temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas the interim direction to continue his employment would hold up the regular procedure for selection or imposed on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

Recently in *Official Liquidator Vs. Dayanand and Others*, , this Court has reiterated the same view.

7. Now let us examine the claim of the petitioner for regularisation of his appointment u/s 33-B(1)(a)(i). Section- 33(B)(a)(i) has been enacted by the U.P. Act No. 1 of 1993 with effect from 7.8.1993. It reads as follows:

33-B. Regularisation of certain other appointments.--(1) Any teacher, other than

the Principal or Headmaster, who-

(a) (i) was appointed by promotion or by direct recruitment in the Lecturer grade or Trained Graduate grade on or before May 14, 1991 or in the Certificate of Teaching grade on or before May 13, 1989 against a short term vacancy in accordance with Paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy; or

(ii) was appointed by direct recruitment on or after July 14, 1981 but not later than June 12, 1985 on ad hoc basis against substantive vacancy in the Certificate of Teaching grade through advertisement and such appointment was approved by the Inspector; or

(iii) was appointed by promotion or by direct recruitment on or after July 31, 1988 but later than May 14, 1991 on ad hoc basis against a substantive vacancy in accordance with Section 18 (as it stood before its substitution by the Uttar Pradesh Secondary Education Service Commission and Selection Boards (Amendment) Act, 1991;

(b) possesses the qualification prescribed under or is exempted from such qualification in accordance with the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the Institution from the date of such appointment upto the date of the commencement of the Act referred to in sub-clause (iii) of clause (a);

(d) is not related to any member of the management or the Principal or Head-Master of the Institution concerned in the manner specified in the explanation to sub-section (3) of Section 33-A;

(e) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2) shall be given substantive appointment by the Management.

(2)(a) For each region, there shall be a Selection Committee comprising-

(i) Regional Deputy Director of Education of that region, who shall be the Chairman,

(ii) One officer holding a Group "A" post (specified as such by the State Government from time to time) in any department other than Education Department, to be nominated by the state Government,

(iii) Regional Inspectress of Girls Schools of that region:

Provided that the Inspector of the district shall be co-opted as a member while considering the case for regularisation of that district.

(b) The Selection Committee constituted under clause (a) shall consider the case

of every such teacher and on being satisfied about his eligibility and suitability in view of the provision of sub-section (1) shall, subject to the provisions of sub-section (3) recommend his name to the management for appointment under sub-section (1) in a substantive vacancy.

(3) (a) The names of the teachers shall be recommended for substantive appointment in order of seniority as seniority from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is older in age shall be recommended first.

(4) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(5) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(6) Nothing in the Section shall be construed to entitle any teacher to substantive appointment if on the date of commencement of the Act referred to in sub-section (iii) of clause (a) of sub-section (1), such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

8. There is no dispute that Section 33-B has been enacted with effect from 7.8.1993. There is also nothing to suggest that it operates retrospectively. It is well-settled principle of law that in the absence of any thing to the contrary, the provision enacted operates prospectively. Therefore, I am of the view that the sentence "such vacancy was subsequently converted into a substantive vacancy" in Section 33-B(1)(a)(i) means, the short term vacancy converted into substantive vacancy after commencement of the Act, that is, after 7.8.1993 and not prior to that. The submission of learned counsel for the petitioner that in case if it will not include those cases where the short term vacancy has been converted into substantive vacancy prior to 7.8.1993, the Section will become unworkable and redundant cannot be accepted. It very well covers those cases where the appointment has been made prior to 13th May, 1989 against the short term vacancy as C.T. Grade teacher in accordance with Para-graph-2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and such short term vacancy subsequently converted into a substantive vacancy after 7.8.1993 and further where the teacher so appointed continued as a teacher on the date of commencement of the Act, that is, U.P. Secondary Education Services Commission and Selection Boards (Second Amendment) Act, 1992. The object of the Section is very clear. It provides regularisation of those teachers, who have been:

(i) appointed prior to 13th May, 1989;

(ii) such vacancy subsequently converted into the substantive vacancy after the

date of enactment of the Section, i.e., after 7.8.1993;

(iii) such teacher, so appointed, continued as a teacher on the date of commencement of the Act, that is, U.P. Secondary Education Services Commission and Selection Boards (Second Amendment) Act, 1992.

9. In view of the foregoing discussions, I am of the view that the petitioner is not entitled for regularisation u/s 33-B(1)(a)(i) of the Act.

10. In the result, the writ petition being devoid of merit is dismissed. The interim order stands discharged. No order as to cost.