

(2003) 08 AHC CK 0047
In the Allahabad High Court
Case No : C.M.W.P. No. 6544 of 1999

Jokhai Ram

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2003) 6 AWC 4848

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : B.K. Shukla and K.S. Mishra, for the Appellant; H.N. Tripathi, Sanjay Mishra, V.P. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the records.

2. This petition has been filed by the Petitioner against the order dated 1.12.1998, passed by the Committee of Management, Lala Man Mohan Das Inter College, Jhunsi, Allahabad. By the aforesaid order the Committee of Management had taken the decision for recovery of the salaries and others emoluments drawn by the Petitioner from the department during the period he was admitted as regular student from Lala Man Mohan Das Inter College affiliated to the Sampurnanand Sanskrit University, Varanasi as a regular candidate.

3. The Petitioner claims himself to be Acharya and B. Ed. from the Sampurnanand Sanskrit University, Varanasi, which is the educational qualification for the appointment on the post of Lecturer in the College.

4. The Petitioner was appointed as C.T. Grade Teacher in Lala Man Mohan Das Inter College, Jhunsi, Allahabad in 1969 and was promoted to L.T. grade teacher in 1986. The college is running under provisions of U.P. Intermediate Education Act, 1921 applied the contention of the Petitioner is that he obtained the degree of Acharya in 1988 and information in this regard was given by him to the Principal of the College, when the post of Lecturer in Sanskrit fallen vacant

permanently due to retirement of the then Lecturer Sri Ram Chandra Upadhayay on 30.6.1995. The Petitioner moved an application to the manager of the said college for promotion as Lecturer on the grounds that he was only L.T. grade teacher qualified for the post.

5. It appears that the management notified a post of Lecturer in Sanskrit for appointment by direct recruitment. He also moves an application to the management and when he did not receive a favourable response, Petitioner moves an approach to District Inspector of School. A letter dated 11.12.1997 was written by the District Inspector of School directing the management to take action on the application of the Petitioner but inspite of aforesaid letter he alleges that the college did not take any action compelling the Petitioner to file Writ Petition No. 44493 of 1998 before this Court. A prayer was made in the aforesaid petition for issuance of a writ of mandamus directing the Respondent, the Committee of Management, to promote the Petitioner under the quota. This petition was disposed of with a direction to the Committee of Management to consider the claim of the Petitioner.

6. It is alleged by the Petitioner that the Committee of Management have become prejudiced against him and passed a resolution as well as writing a letter to Deputy Director of Education (R) alleging the irregularities against the Petitioner regarding permission and leave for appearing in the examination of Shashtri in the year 1983 and Shiksha Shashtri in the year 1986 and further by this letter the Committee of Management have sought guidance from the Deputy Director of Education (R) for recovery of the salary paid to the Petitioner during the period of examination of Shashtri and Shiksha Shashtri, the present writ petition has been filed.

7. It is alleged by the Petitioner that he had obtained permission and leave from the principal for appearing in the Examination of Shashtri and Shiksha Shashtri. A copy of the permission is appended as Annexure-8 to the writ petition. A letter dated 8.9.1991, has also been filed as Annexure-9 written by the principal to the Commission certifying that the Petitioner has passed the Examination of Shashtri and Shiksha Shashtri and by which it is alleged that the permission was granted to the Petitioner, which is as under:

other language

8. It is further alleged that the Committee of Management does not want to appoint the Petitioner lying vacant since 1985 though the Petitioner is only qualified and is entitled to get promotion.

9. Counter-affidavit has been filed by the Principal of the College, the Committee of Management and the District Inspector of School, Allahabad and others. The principal in his counter-affidavit has stated that the Petitioner without taking permission from the Committee of Management joined Sampurnanand Sanskrit Vidyalaya, Varanasi for obtaining the degree of Shiksha Shastri, which is equivalent to the Graduate degree. And the Committee of Management came to

know about it only when the Petitioner started claiming for promotion. It is further stated that when the management came to know about the aforesaid facts a notice was sent to the Petitioner as to how he has obtained the degree though attending the regular classes in the Sampurnanand Sanskrit Vidyalaya, Varanasi. In reply to the query the Petitioner informed that he had obtained the degree by appearing as a private candidate, thereafter an enquiry was made by the Sampurnanand Sanskrit Vidyalaya regarding the Petitioner. It was informed by the Sampurnanand Sanskrit Vidyalaya that the Petitioner has appeared as a regular student and attended the classes from 11 a.m. to 3.30 p.m. with effect from July, 1984 to June, 1985. It was further informed by the Sampurnanand Sanskrit Vidyalaya that they did not know from where the Petitioner has obtained his degree of Acharya and that the Petitioner has not submitted the letter of permission from an employer while taking classes.

10. It is not disputed that the Petitioner had been drawing his salary from the institution and had also been attending regular classes during the aforesaid period. w.e.f. July, 1984 to June, 1985.

11. The counsel for the Respondents has placed reliance on the Government order dated 22.7.1975 and 11.9.1958, requiring permission by the teacher who intends to graduate or study any other course during his employment.

12. The Committee of Management in its counter-affidavit have reiterated the aforesaid facts and submitted that no adverse order has been passed against the Petitioner and only guidance was sought and as such the writ petition is premature and are not maintainable. It is further submitted that the principal did not grant leave to the Petitioner for appearing in the Shashtri and Shiksha Shashtri examination and the Petitioner cannot therefore, claim promotion as a matter of right. In the counter-affidavit filed by D.I.O.S., it is stated that no teacher can get higher qualification without prior permission of the competent authority. And no such averments have been made in paragraph 4 of the writ petition, as such the so-called degree of the Acharya neither can be added to the service record nor such qualification can be considered for the purpose of promotion for higher post. It is submitted that proper action should be taken by the competent authority as the act of the Petitioner amounts to insubordination. A perusal of the record of the writ petition shows that prior approval is to be taken from the management and the person appearing in the examination has to take leave from the date of admission to the date of written examination for appointment of substitute teacher in his place.

13. From the record of the writ petition it appears that an enquiry conducted by the institute. It appears that the Petitioner was a regular student and attended the classes in the said school between 11.00 a.m. to 3.30 p.m. and that he had not informed the college about these facts and has fraudulently drawn his salary during the relevant period.

14. It has been stated that the Petitioner had not submitted any letter of

permission for grant of permission to the Committee of Management and the Petitioner has thus obtained the degree by misrepresentation of rules and Government orders.

15. The writ petition is not only premature but also has no force. No interim order was passed in favour of the Petitioner at the time of admission. The Petitioner cannot be granted benefit of degree obtained by misrepresentation, fraud and against the rules.

For the reasons stated above the writ petition fails and is dismissed. No order as to costs.