

(2001) 01 AHC CK 0101

In the Allahabad High Court

Case No : C.M.W.P. No's. 1757, 607 and 7865 of 1986

Kant Krishan Sharma

APPELLANT

Vs

U.P. Public Services Tribunal-II, Lucknow and others

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Constitution of India, 1950 — Article 12
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 12
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 21, 26

Citation : (2001) AWC 1377 : (2001) LabIC 3933 : (2001) 2 UPLBEC 1443

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Raj Kumar Jain, for the Appellant; S.C., U.N. Sharma and P. Chand, for the Respondent

Judgement

A. K. Yog, J.—All the above petitions arise out of same set of facts and events, and, therefore, decided together.

1. Civil Misc. Writ Petition No. 1757 of 1986

(Referred to as Leading Writ Petition)

2. Kant Krishna Sharma, petitioner was employed as "teacher" in Mahatma Gandhi Palika Inter College, Ujhani (District Budaun) a recognised institution run and managed by Nagar Palika, Ujhani, Budaun. Admittedly, the provisions of Uttar Pradesh High School and Intermediate College (Payment of Salary of Teachers and Other Employees) Act, 1971. U. P. Act No. 24 of 1971. are applicable to the said College. The petitioner was appointed as Hindi-cum-Sanskrit Lecturer in the said College on July 2, 1973 on one year probation, which he successfully completed and was confirmed on July 9, 1974.

3. It may be stated that earlier the petitioner's services were sought to be determined by passing termination order and his salary was withheld/stopped by

raising dispute, whether the post was sanctioned/approved. Kant Krishna Sharma was constrained to approach U. P. Public Services Tribunal by filing Claim Petition 872/1-78. Kant Krishna Sharma v. Nagar Palika. Ujhani and others.

4. The said claim petition was allowed and the order of termination dated June 20, 1977 was quashed vide judgment and order dated February 2, 1982 (copy filed as Annexure-6 to the Writ Petition No. 1757 of 1986]. The facts, mentioned in the said order of the Tribunal, show that Kant Krishna Sharma never slept over the matter and did take steps, whatever were within his means, for redressal of his grievance.

5. The employer did not sit at rest and petitioner continued to be engaged with litigation as can be seen from the judgment and order dated September 2, 1995 in Writ Petition No. 17664 of 1984, Nagar Palika Ujhani. Budaun v. U. P. P. S. T.-11, Lucknow and others.

6. Petitioner has prayed for following reliefs :

"(i) to issue a writ of certiorari, order or direction in the nature of cerfiorari. quashing the order dated 8.10.1985 (Annexure 14) of the Tribunal to the extent it is against the petitioner.

(ii) to issue a writ of mandamus, order or direction in the nature of mandamus, commanding the opposite party Nos. 2 to 6 to pay the salary of the petitioner from 21.5.1975 onwards.

(iii) to issue any other suitable writ, order or direction in the nature of writ which this Hon"ble Court may deem fit and proper under the circumstances of the case to which the petitioner is entitled in law.

(iv) to award the costs.

(v) to issue a writ, order or direction in the nature of writ of certiorari quashing the order dated 22.11.1985 of the Administrator written on the letter dated 11.11.1985 of the Officer [ncharge (Annexure-9) and order dated 6.12.1985 of the Officer Incharge (Annexure-5) communicating the order dated 22.11.1985.

(vi) to issue a writ, order or direction in the nature of mandamus commanding the opposite parly Nos. 1 to 5 to pay the pension of the petitioner from 1.7.1986 and continue to pay the same."

7. Vide order dated October 8. 1985 (Annexure-14 to the Writ Petition) the Tribunal partly allowed Claim Petition No. 42/11/83. Kant Krishna Sharma v. State of U. P. and others.

8. Tribunal allowed the claim petition for arrears of pay and allowances with effect from June 21, 1977 against opposite parly Nos. 4 and 5 and directed that the petitioner is entitled to his monthly salary.

9. The Tribunal also awarded interest at the rate of 9 per cent on arrears of salary in ease of failure of the concerned party to pay aforesaid amount within

six months from the date of judgment.

10. The claim petition was dismissed against opposite party Nos. 1, 2 and 3 (namely, The State of U. P. through the Education Secretary, The Director of Education, U. P., Allahabad and the District Inspector of Schools, Budaun). u/s 12. U. P. Act 24 of 1971 (Payment of Salaries Act, 1971). with respect to recognized Institutions receiving maintenance grant, the liability of ensuring payment of salary to the teachers and other employees is that of the State Government and the State Government is authorised to recover the same from the Institution. The Tribunal observed that the claim of the petitioner for arrears of salary and allowances for the period between June 21, 1975 to June 16, 1977 was time barred. The Tribunal, however, did not give facts or reasons to justify its conclusion on this score.

11. Kant Krishna Sharma, feeling aggrieved against the said judgment (to the extent it was against him), filed instant Writ Petition No. 1757 of 1986, Kant Krishna Sharma v. U. P. Public Services Tribunal-11. Lucknow and others.

12. Nagar Palika, Ujhani also filed Civil Misc. Writ Petition No. 607 of 1986 against the above-referred order dated August 8, 1985 passed by the Tribunal. Nagar Palika, Ujhani. while the aforesaid two petitions were pending passed another order of termination dated December 6, 1985 on the pretext of the post (held by Kant Krishna Sharma) having been abolished under Administrator's order dated November 22, 1985. Feeling aggrieved, Kant Krishna Sharma challenged the aforesaid order of termination dated December 6, 1985 by filing Civil Misc. Writ Petition No. 7865 of 1986.

13. Heard learned counsel for both the parties at length and perused the record.

14. The petitioner is aggrieved against the impugned order dated October 8, 1995 (Annexure-14 to the Writ Petition) on two scores only.

15. Ground No. (I).--The Tribunal had erred in holding that salary for the period June 21, 1975 to June 19, 1977 was time barred.

16. It will be noted that the finding of the Tribunal on the above score is not supported or followed by reasoning.

17. Apart from it, the Tribunal in its judgment and order dated February 2, 1982 (Annexure-6 to the Writ Petition), show that the petitioner had throughout been pressing for his right and never acquiesced to the adverse orders/actions of his employer. He challenged them promptly through legal action. Hence, the conclusion (that the petitioner's claim for salary is time barred) is uncalled for and perverse.

18. Nagar Palika is an instrumentality of "State" under Article 12. Constitution of India. Ours is a welfare State. It cannot be and should not be allowed to plead "limitation" against its employee on the question of salary for the period during which a person has by physical volition served it. It is not the "question of

limitation", but the question of a welfare State as employer acting fairly in contrast to an individual employer. As far as question of liability of State Government to pay salary to its employee is concerned the only relevant consideration will be whether employee disentitled himself under law or equity and he should not be normally denied payment of arrears of salary on ground of limitation. The plea of limitation is based on public policy, but nonetheless a welfare State like ours, should act in accordance with good-conscience and fair play. An employee who, out of his limitations or reservations for various reasons (including financial or lack of knowledge of law of limitation or to avoid embarrassment/confrontation with his employer), failed to claim salary, while continued to litigate to protect his service, should not be denied his salary.

19. The State Government ought to pay arrears of salary and discharge its obligation as employer. Keeping in tune with the changing arena where the conventional concept of law is yielding to new concepts and horizons. Concept of "Welfare State" demands that State should not plead limitation in the matter of salary, post-retirement benefits, and like where employee has been victim of misfortunes like the present case, and not guilty otherwise.

20. The impugned order of the Tribunal cannot be allowed to stand to deprive Kant Krishna Sharma. petitioner (a teacher by profession) of his salary for about two years.

21. Ground No, II.--The Tribunal has for no good reason exempted the State Government from the liability to ensure payment of arrears of salary for the period June 21, 1975 to June 19, 1977.

22. The contention of the petitioner has force. The Tribunal has given no reason to exempt the State Government ; particularly when it allowed the petitioner to continue in service and there is no finding that no grant-in-aid was paid by State Government to the institution for the relevant period under U. P. Act 24 of 1971.

23. The learned counsel for the Nagar Palika submitted that Tribunal had no jurisdiction to decide the claim petition and the order of the Tribunal, in the instant case, is a nullity. The learned counsel representing Nagar Palika. Shri Prem Chand Srivastava was specifically required to show whether this objection was raised before the Tribunal and whether copy of the judgment/objection in the writ have been brought on record. The learned counsel failed to show either from the record. Consequently, the said objection, at this stage, cannot be allowed. The parties have contested the matter before the Tribunal without objection on this score. It is too late in the day for Nagar Palika to raise this objection and non-suit the petitioner by their own conduct.

24. In view of the above, the order dated October 8, 1985 of the Tribunal (Annexure-14 to the leading Writ Petition) is quashed to the extent it is against the employee (viz. whereby it held that salary for the period June 21, 1975 to June 19, 1977 was time barred. The finding that respondent Nos. 1, 2 and 3 (State Government etc. are not liable) is set aside. The order of the Tribunal in

Claim Petition Wo. 42/II/83. Kant Krishna Sharma v. State of U. P. and others, Is hereby modified to the extent that petitioner shall be entitled to salary for the period June 21, 1975 to June 21, 1977 with 9 per cent, simple interest from the date it became due till the date of actual payment and the liability to pay shall be joint and several of all the opposite party Nos. 1 to 5 in the aforesaid claim petition.

25. Writ petition stands allowed with costs, quantified at Rs. 5.000 (Five Thousand) against respondent Nos. 5 and 6 (Nagar Palika, Ujhani, Budaun and Manager Mahatma Gandhi Palika Inter College. Ujhani. Budaun (U. P.) to be paid within four months from today.

2. Civil Misc Writ Petition No.607 of 1986

26. This petition is also against judgment and order dated October 8, 1955 challenged in leading writ petition.

27. In view of the reasons given in the judgment in Civil Misc. Writ Petition No. 1757 of 1986, this petition stands dismissed.

No costs.

3. Civil Misc. Writ Petition No. 7865 of 1986

28- In this petition, petitioner has claimed following relief :

"(i) to issue a suitable writ, order or direction, directing the opposite party Nos. 1 and 2 to produce the copy of the order dated 22. 11. 1985 of the Administrator before this Hon"ble High Court.

(ii) to issue a writ of mandamus, order or direction in the nature of mandamus, commanding the opposite parties to treat the petitioner in service and not to give effect to the order dated 22.11.1985 and 6.12.1985.

(iii) to issue a writ of mandamus, order or direction in the nature of mandamus, commanding the opposite parties to pay the arrears of salary and continue to pay the salary of the petitioner.

(iv) to issue any other suitable writ, order or direction in the nature of writ which this Hon"ble Court may deem fit and proper under the circumstances of the case to which the petitioner is entitled in law.

(v) to award the costs of this petition to the petitioner.

(vi) to issue a writ, order or direction in the nature of writ of certiorari quashing the order dated 22.11.1985 of the Administrator written on the letter dated 11.11.1985 of the Officer Incharge dated 11.11.1985 and order dated 6.12.1985 of the Officer Incharge (Annexure-5] communicating the order dated 22.11.1985.

(vii) to issue a writ, order or direction in the nature of mandamus commanding the opposite party Nos. 1 to 5 to pay the pension of the petitioner from 1.7.1986

and continue to pay the same."

29. It is sad to note that Kant Krishna Sharma, a teacher, was not allowed to devote to his academic duties for one reason or the other and for which he could not be blamed. Termination on the ground that there was no post at the fag end of the tenure of the petitioner, and after he succeeded in litigation against his employer, can be anything but not fair and clearly vitiates it on the ground of its being malicious and vindictive. It may be noted that the petitioner attained age of superannuation on October 16, 1985 and under relevant rule, he had to continue upto the end of academic session June 30, 1986, as visualized under Regulation 21 of Chapter III of the regulations framed under U. P. Education Act.

30. It may be noted that earlier order dated June 20, 1977 was quashed by the Tribunal vide judgment and order dated February 2, 1982. The said order was challenged by both Kant Krishna Sharma and Nagar Palika and thereafter the question of payment of salary came up and Tribunal passed order dated October 8, 1985. This shows that the parties stick to their earlier case and pleaded their case on the original facts.

31. It is also evident that after the order of Tribunal dated October 8, 1985, though the Nagar Palika had challenged the said order by filing Writ Petition No. 607 of 1986, but having realized that they were on losing side, as an afterthought, and as may be advised, issued the present impugned order dated December 6, 1985 (Annexure-6 to the Writ Petition).

32. This letter shows that some order dated November 22, 1985 was passed by the Administrator of the Nagar Palika deciding the issues and abolished the post and as a consequence of which services of petitioner were purported to be brought to an end. The facts of the instant case clearly show that this order was passed with ulterior motive and much less in good faith and acting fairly.

33. Regulation 26 of Chapter III of the Regulations (framed under the Act) required three months' notice or pay in lieu thereof, but it has not been followed. The impugned order of termination dated December 6, 1985 has been passed in contravention of the said regulation. Even otherwise before passing impugned order, interest of the institution in particular should have been kept in mind.

34. In the case of an educational institution, employer must prove its bona fide and show from its conduct that it had no prejudice in mind or pre-conceived notion and while doing so, interest of students of the institution has been kept in mind as held by this Court in the case of Irfan Ahmad, 2000 (3) ESC 1538 (DB).

35. In view of the facts of the instant case, mala fide is writ large and I record a finding to that effect and it is held that the order of termination was passed mala fide.

36. It is further directed that arrears, if any, of the petitioner Kant Krishna Sharma shall be paid within four months on receipt of certified copy of this judgment and order by the respondents. In case Nagar Palika refuses to pay, the

same shall be recovered from the Nagar Patlka by the petitioner as land revenue. On behalf of Kant Krishna Sharma it is submitted that he may be paid post-retiral benefit. For this purpose, he may approach concerned authority observing requisite formalities. It is needless to mention that this Court has no doubt that the same shall be paid by the concerned competent authority in accordance with law.

37. Consequently, the impugned order dated November 22. 1985 is hereby quashed. Writ petition stands.