
(2010) 09 AHC CK 0403
In the Allahabad High Court

Madhusudan Prasad Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 09 AHC CK 0403

Hon'ble Judges : Vedpal, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the petitioner, Sri Ashok Kumar Verma, learned Counsel for respondent No. 3 and the learned Standing Counsel appearing for opposite parties 1 & 2.
2. Petitioner who is officiating on the post of Regional Ayurvedic and Unani Officer at Gorakhpur Region, Gorakhpur had approached this Court under Article 226 of the Constitution of India feeling aggrieved with the impugned order by which he has been directed to handover the charge to respondent No. 3.
3. The submission of petitioner's counsel is that in the seniority list, the petitioner is at serial No. 226 whereas respondent No. 3 is at serial No. 316. It has been further submitted that in the impugned list of cadre the petitioner is at serial No. 12 whereas respondent No. 3 is at serial No. 68.
4. Earlier the petitioner had filed writ petition No. 1135 (SB) of 2009 in which a Division Bench of this Court had directed the State Government to take a fresh decision with regard to officiating charge and also directed to ensure that seniormost person be given the charge of higher post and not to a junior person. In consequence thereof, the State Government by an order dated 13.08.2009 permitted the petitioner to continue on the post of Regional Ayurvedic and Unani Officer, Gorakhpur.

5. It appears that later on, respondent No. 3 had filed writ petition No. 1247 (SB) of 2009 with a plea that he should be permitted to officiate on the post of Regional Ayurvedic and Unani Officer, Gorakhpur. This writ petition was dismissed by judgment and order dated 28.8.2009 by holding that no document could be placed before the Bench to establish that respondent No. 3 is senior than petitioner at the time of regular selection by the U.P. Public Service Commission.

6. Their Lordships further held that argument of respondent No. 3 with regard to seniority on the basis of judgment of Dr. Chandra Prakash and Others Vs. State of U.P. and Another, with regard to counting of adhoc period is not open to be considered at this stage. The Division Bench held that the respondent wants the adhoc period of his service be counted for the purpose of determination of seniority and unless his representation is decided with regard to the question of seniority and he is declared senior than the petitioner, the officiating charge may not be given to him. The above petition was dismissed.

7. Now again by impugned order, a decision has been taken to handover the charge to respondent No. 3 of the post in question. There appears flagrant violation of the judgment and order passed by this Court. Accordingly, we stay the operation of the impugned order dated 26.08.2010, contained in Annexure No. 1 till further orders of this Court and also admit the writ petition.

8. Sri Ashok Kumar Verma tried to rely upon an order dated 8.7.2010 passed by a Division Bench of this Court at Allahabad in writ petition No. 39225 of 2010. We are of the view that the judgments referred, orders passed and decision rendered by the Division Bench of this Court at Lucknow relates to and involved the respondent No. 3 and being judgment in personam shall be binding on the parties and cannot be diluted by the general directions issued in other cases.

9. The Principal Secretary, Chikitsa Shiksha, Anubhag-II, U.P. Civil Secretariat, Lucknow is directed to file his personal affidavit containing parawise reply to contents of the writ petition, within two weeks. The Principal Secretary shall also explain as to why while passing the impugned order, he has not taken into account the orders passed by this Court (supra) almost involving same controversy. Rejoinder affidavit may be filed within one week thereafter.

10. List thereafter for peremptorily hearing along with writ petition No. 1135 (SB) of 2009.