
(2002) 03 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 19589 of 1995

Mahesh Kumar Sharma

APPELLANT

Vs

District Inspector of Schools, Mathura and Another

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Citation : (2002) 2 AWC 1624 : (2002) 94 FLR 310 : (2002) 3 UPLBEC 2452

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Pradeep Verma and H.N. Singh, for the Appellant; Om Prakash and Vashistha Tiwari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In this writ petition, the petitioner has sought direction in the nature of certiorari quashing the order of termination dated 17.7.1995 passed by the Manager of the college and for further direction to the respondents not to interfere in the working of the petitioner and to make payment of salary of Lecturer's grade to the petitioner as and when It falls due.

2. I have heard learned counsel for the petitioner and learned standing counsel for the respondents.

3. The brief facts necessary for adjudication of the writ petition are that the institution known as Gram Swalambi Vidyalaya inter College, Brijgaon Chhatikara, district Mathura governed by the provisions of U. P. Intermediate Education Act. 1921 and Secondary Education Act, 1982, in which short term vacancy arose in the lecturer grade in the year July, 1990, when the lecturer of Physics proceeded on leave from 2.7.1990. The Committee of Management on 22.7.1990 resolved to fill the short term vacancy till Sri Ayodhya Prasad Agrawal joins or till 30th June. 1991. The petitioner was given appointment on 11.9.1992 (Annexure-2) as a lecturer in Physics upto 30.6.1991 or till resuming charge after coming back from leave which ever is earlier. The approval was accorded by

D.I.O.S. on 6.12.1990 (Annexure-3). By letter dated 7.8.1993 (Annexure-6) Manager of the college wrote to Deputy Director for regularisation of service. In reference to the letter dated 27.1.1992 [Annexure-8) purported to have been issued in reference to the letter dated 15.1.1992 of Manager saying that the service of the petitioner has been adjusted against the vacant post and more so in reference to the meeting dated 30.6.1995 of the Management (Annexure-9). It is said that application dated 15.5.1995 of petitioner had been considered by the Principal and the Manager of College has been informed that the service of petitioner has been regularised and pending for approval to the D.I.O.S.

4. It has been stated on behalf of the petitioner that he has been regularly attending the institution but the Manager has terminated his services on 17.7.1995 (Annexure-15] which is violative of natural justice whereas his service cannot be terminated under U. P. intermediate Education Act, 1921 and U. P. Secondary Education Services Commission Act. 1982.

5. In counter-affidavit filed by the Manager, it has been asserted that the petitioner was made permanent w.e.f. 6.8.1994 (Annexure-CA-1) as an out come of the meeting of 30.6.1995 convened in reference to the letter dated 15.5.1995 of the petitioner. Now in another affidavit filed on behalf of Sri Atul Kumar Jain, Trabandh Sanchalak" who in para 3 of the counter-affidavit has averred that Regional Deputy Director of Education, Agra Region, Agra, by his order dated 25.1.1995 has appointed one Sri Maya Rarn Yadav as "Prabandh Sanchalak" of the aforesaid college on receiving the enquiry report in respect of the charges of irregularities and actions having been done beyond his power by the erstwhile Manager and the Trabandh Sanchalak" was to hold the election according to the Scheme of Administration of the college.

6. According to para 16 of the counter-affidavit since the permanent lecturer in Physics Sri Ayodhya Prasad Agrawal has resumed his duty from 1.7.1995, hence the petitioner could not be permitted to discharge his duty after 1.7.1995. According to para 17 of the counter-affidavit, the earlier Manager, colluded with the petitioner and concealed the facts that Sri Ayodhya Prasad Agarwal has put in his joining and has been regularly discharging his duty and the Director of Education by its order dated 25.8.1995 has also directed to make payment of salary to Sri Ayodhya Prasad Agrawal and to stop the payment of salary to the petitioner. According to para 18 of the counter-affidavit, the appointment of the petitioner was given for certain period on leave vacancy, therefore, no show cause notice or opportunity is required to be given and the petitioner's services are not governed by the U. P. Secondary Education Services Act. 1982, because his appointment was against a leave vacancy and after joining by Sri Ayodhya Prasad Agarwal the appointment of the petitioner was to automatically come to an end. According to the counter -affidavit, the letter dated 27.1.1992, issued in the name of D.I.O.S. was non-existing document to be treated as forged one having no legal force.

7. In rejoinder-affidavit, the contentions raised by the petitioner in the writ

petition have been reiterated.

8. I have gone through the contents of the writ petition, counter-affidavit and rejoinder-affidavits I find that the post was absolutely temporary and the petitioner was given time bound appointment for limited period to place of Sri Ayodhya Prasad, who proceeded on leave without pay and after his joining, the temporary arrangement has come to an end and when vacancy and post does not exist, the appointment of the petitioner could not be made without any vacancy and the petitioner is not entitled to receive salary of lecturer's grade from 1.7.1995 when Sri Ayodhya Prasad Agrawal joined the post.

9. The petitioner is not entitled to get the relief as prayed for in the writ petition, therefore, the writ petition is dismissed accordingly.