

(2008) 09 AHC CK 0236
In the Allahabad High Court

Mahipal Singh

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 AHC CK 0236

Hon'ble Judges : V.M. Sahai, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.M. Sahai and Pankaj Mithal, JJ.—We have heard Sri Mithilesh Kumar Tiwari learned Counsel for the appellant, learned standing Counsel appearing for respondents No. 1 and 2, Sri V.K. Singh learned Counsel appearing for respondents No. 4 and 5 and Sri J.N. Maurya, learned Counsel appearing for respondents No. 3 and 6.

2. This intra court appeal has been preferred by the appellant against the judgment and order dated 1.9.2008 passed by the learned single Judge dismissing his writ petition No. 43748 of 2008 with the direction to the petitioner to move a representation with regard to his grievance before the District Magistrate, who has been directed to decide the same within a time bound period. It further provides that if the appellant is not satisfied by the decision of the District Magistrate on the representation he may file a civil suit.

3. Learned Counsel for the appellant has urged two points. First, the order dated 25.7.2008 impugned in the writ petition was passed by the District Basic Shiksha Adhikari on the direction of the District Magistrate to terminate the services of the appellant as Shiksha Mitra and. therefore, there was no justification to relegate the appellant to file a representation before the District Magistrate.

4. Secondly, it has been argued that the appellant's right to seek redressal by invoking Article 226 of the Constitution in future has also been taken away, which

is not permissible under law.

5. We have perused the order of the District Basic Shiksha Adhikari dated 25.7.2008. The order clearly recites that the services of the appellant were terminated on a complaint made to the District Magistrate, on the direction of the District Magistrate. Therefore, we are of the opinion that there was no purpose in sending the appellant to the District Magistrate for ventilating his grievance. The District Magistrate has already taken a decision in the matter and, as such, the exercise of making a representation before him on the face of it is futile.

6. Regarding the other submission, it is necessary to reproduce the relevant pari of the impugned judgment and order of the learned single Judge which is as under:

The petitioner may move a fresh representation ventilating his grievance before the District Magistrate, Kanpur Dehat within a period of one week from today who shall decide the same by a reasoned and speaking order, in accordance with law within another period of two weeks thereafter. In case the petitioner is aggrieved by the decision of the representation, he may approach the Civil Court by filing civil suit as he has an alternative and efficacious remedy by way of filing civil suit before the Civil Court.

7. A plain reading of the aforesaid order indicates that the court has not only relegated the appellant to an alternative remedy of making a representation, which under the facts and circumstances stated above is nothing but illusory and a futile exercise, but at the same time has directed him not to approach this Court again even if the decision on his representation goes against him. In other words, the doors of justice has been closed for him with a further rider that in future also the door of justice would not be opened for him and instead he should file a civil suit. This part of the order of the learned single Judge is more in the nature of advisory jurisdiction and amounts to pre-closing the doors of justice for the appellant in future. This has been done even before the appellant has knocked the doors of justice again. We cannot subscribe to the view taken by the learned single Judge in this regard as it is not for the courts to give advise. The appellant has not solicited the advise and there was no question of such solicitation as the order has not yet been passed by the District Magistrate.

8. Besides the above, the court is not supposed to pass orders in vacuum or in anticipation so as to foreclose the right of the appellant to invoke the extra ordinary jurisdiction of the Court in future for a cause of action which has not yet arisen.

9. In view of aforesaid facts and circumstances, we are of the opinion that the order passed by learned single Judge exceeds jurisdiction and, therefore, if cannot be sustained under law. Accordingly, we allow the appeal and set-aside .the judgment and order of the learned single Judge dated 1.9.2008 and send back the matter before the appropriate Bench of the learned single Judge

for decision afresh on merits.

10. The special appeal is allowed as above. No order as to costs.