
(2010) 03 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 14082 of 2010

Mata Prasad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 4 AWC 3946 : (2010) 2 UPLBEC 994

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court whose substantive post is that of Lecturer has attained the age of superannuation on 2.12.2009. He was working as officiating Principal. By means of the present writ petition, he seeks quashing of the letter of the Director of Education dated 4.8.2009 wherein it has been provided that officiating Principals working in the institution shall cease to function as such on the date they attain the age of superannuation. For the remaining term of the academic session, they will work as teacher, i.e., on their substantive post. This order has been passed in pursuance to the Division Bench judgment and order of this Court dated 27.11.2006 passed in Special Appeal No. 1454 of 2006, Hari Om Tatsat Brahm Shukla v. State of U.P. and Ors..

2. Counsel for the petitioner submits that subsequently a Division Bench of this Court has expressed some doubts qua the judgment in the case of Hari Om Tatsat Brahm Shukla and as such made a reference for the question being decided by a larger Bench. The question so referred is being quoted hereinbelow:

Whether a teacher of Intermediate College who has already been appointed as officiating Principal of the Institution by virtue of his seniority on attaining the age of superannuation in the extended period of his service shall continue as officiating Principal or simply as a teacher?

3. It is further stated that a Division Bench of this Court in Special Appeal No.

252 of 2010 after taking note of the order of reference quoted above, has been pleased to grant an interim order permitting the officiating Principal to continue till the end of academic session. Petitioner, therefore, submits that on the ground of parity, similar interim order may also be granted to the present petitioner.

4. I am of the considered opinion that that the interim prayer so made has to be rejected for the following reasons:

A Division Bench judgment of this Court continues to be binding upon a single Judge till it is overruled by a larger Bench. Merely because the reference has been made to a larger Bench, the Judgment of the Division Bench in the case of Hari Om Tatsat Brahm Shukla (supra) shall not lose its precedential value.

5. In view of the aforesaid this Court records that the judgment of the Division Bench in the case of Hari Om Tatsat Brahm. Shukla (supra) continues to be binding upon this Court and mere reference made in Special Appeal No. 1987 of 2009 will not in any way whittle down the binding effect of the said judgment. The legal position in that regard has been explained by the Constitution Bench of the Hon''ble Supreme Court of India in the case of Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another,

6. Even otherwise this Court may record that grant of an interim order permitting the petitioner in the facts of the case to continue till he attains the age of 60 years, would amount to granting the final relief as has been prayed in the writ petition. The Hon''ble Supreme Court has repeatedly held that final relief cannot be granted by way of interim orders which are granted only to maintain the status as prevailing on the date of presentation of the proceedings. Admittedly the petitioner has attained the age of retirement on 2.12.2009, he is not functioning or cannot function under law as has been declared by the Division Bench in the case of Hari Om Tatsat Brahm Shukla (supra) as officiating Principal subsequent to the said date. The final relief which has been prayed in the writ petition is for his being permitted to work as officiating Principal till 60 years. (Ref. Burn Standard Co. Ltd. and Others Vs. Dinabandhu Majumdar and Another,

7. Lastly this Court may record that equity has to follow law and converse is not true. No interim order on the ground of equity is to be granted if it is not permissible under law. (Ref. Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others, Reference may also be had to the judgment in the case of Smt. Rampati Jaiswal Vs. State of U.P. and others, wherein it has been held that it is not permissible to bend the law for adjusting equity.

8. Interim application is, therefore, rejected.

Notice on behalf of respondents has been accepted by the learned standing counsel.

Respondents pray for and are granted two weeks'' time to file counter-affidavit.