

(2002) 03 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19589 of 1995

Mukesh Kumar Sharma

APPELLANT

Vs

D.I.O.S.Mathura

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Citation : (2002) 03 AHC CK 0055

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

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 1771995 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 Lecture's grade to the petitioner as and when it falls due.

I have heard learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. The brief facts necessary for adjudication of the writ petition are that the institution known as Gram Swalambi Vidyalaya Inter College, Baijgaon 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 271990. The committee of management on 2271990 resolved to fill the short term vacancy till Sri Ayodhya Prasad Agrawal joins or till 30th June, 1991. The petitioner was given appointment on 1191992 (Annexure2) as a lecturer in Physics up to 3061991 or till resuming charge after coming back from leave which ever is earlier. The approval was accorded by D.I.O.S. on 6121990 (Anmnexure3) By letter dated 781993 (Annexure6) Manager of the college wrote to Deputy Director for regularisation of service of petitioner. In reference to the letter dated 2711992 (Annexre8) purported to have been issued in reference to the letter dated 1511992 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 3061995 of the Management (Annexure9). It is said that application dated 1551995 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 DIOS.

3. 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 1771995 (Annexure15) which is violative of natural justice whereas his service cannot be terminated under U.P. Secondary Education Act 1921 and U.P. Secondary Education Services Commission Act 1982.

4. In counter affidavit filed by the Manager it has been asserted that the petitioner was made permanent w.e.f. 681994 (AnnexureCA1) as an out come of the meeting of 3061995 convened in reference to the letter dated 1551995 of the petitioner. Now in another affidavit filed on behalf of Sri Atul Kumar Jain "Praband Sanchalak" who in Para 3 of the counter affidavit has averred that Regional Deputy Director of Education, Agra Region, Agra by his order dated 2511995 had appointed one Sri Maya Ram Yadav as "Praband 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 "Praband Sanchalak" was to hold the election according to the Scheme of Administration of the college.

5. According to Para 16 of the counter affidavit since the permanent lecturer in Physics Sri Ayodhya Prasad Agrawal has resumed his duty from 171995, hence the petitioner could not be permitted to discharged his duty after 171995. According to Para 17 of the counter affidavit, the earlier Manager, colluded with the petitioner and concealed the facts that Sri Ayodhya Prasad Agrawal has put in his joining and has been regularly discharging his duty and the Director of Education by its order dated 2581995 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 Agrawal, the appointment of the petitioner was to automatically come to an end. According to the counter affidavit the letter dated 2711992 issued in the name of D.I.O.S. was a non existing document to be treated as forged one having no legal force.

6. In rejoinder affidavit the contentions raised by the petitioner in the writ petition have been reiterated.

7. 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 in 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 lecturers grade from 171995 when Sri Ayodhya Prasad Agrawal joined the post.

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