
(2012) 06 AHC CK 0075

In the Allahabad High Court

Case No : Special Appeal No's. 1063, 1054, 1066 and 1073 of 2012

Mukti Nath Tiwari and Others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 6 ADJ 485

Hon'ble Judges : Syed Rafat Alam, C.J; Vikram Nath, J

Bench : Division Bench

Advocate : Radha Kant Ojha, S.C. Tripathi, R.C. Dwivedi, Ashok Khare, Ved Byas Mishra, Hari Pratap Gupta and Manish Goyal, for the Appellant; A.K. Yadav, B.R. Singh, R.K. Ojha and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. These four intra-Court appeals have been filed against the judgment and orders dated 3rd May, 2012 of the learned Single Judge passed in Writ Petition Nos. 28500 of 2011 and 67890 of 2011. The judgment in Writ Petition No. 67890 of 2011 has been passed following the judgment in Writ Petition No. 28500 of 2011. We have heard Shri Radha Kant Ojha and Shri S.C. Tripathi, learned counsel for the appellant and the learned Standing Counsel for the respondents in Special Appeal No. 1063 of 2012; Shri Ashok Khare, learned Senior Counsel with Shri R.C. Dwivedi, Advocate, for the appellant and Shri R.K. Ojha, Shri A.K. Yadav, Shri B.R. Singh, Advocates and the learned Standing Counsel for the respondents in Special Appeal No. 1054 of 2012; Shri Ved Byas Mishra, learned counsel for the appellant and Shri B.R. Singh as well as the learned Standing Counsel for the respondents in Special Appeal No. 1066 of 2012, and Shri Manish Goyal with Shri Hari Pratap Gupta, learned counsel appearing for the appellants and Shri B.R. Singh and the learned Standing Counsel for the respondents in Special Appeal No. 1073 of 2012.

2. In Special Appeal Nos. 1066 of 2012 and 1073 of 2012, the appellants are working as Assistant Teachers in the L.T. Grade in the institution in question.

However, in Special Appeal Nos. 1063 of 2012 and 1054 of 2012, the appellants are working as Lecturers in the institution in question.

3. Mukti Nath Tiwari, the appellant in Special Appeal No. 1063 of 2012 filed Writ Petition No. 28500 of 2011 praying for quashing the result dated 7.5.2011 published by the U.P. Secondary Education Services Selection Board, Allenganj, Allahabad (hereinafter referred to as the "Board") whereby it declared the panel for the post of Principal for the institution in question wherein Rajendra Kumar Singh, the appellant in Special Appeal No. 1054 of 2012 was placed at Serial No.

1. The ground of attack to the declaration of the result was manifold including the very appointment of Rajendra Kumar Singh as Teacher in the institution and further that the order of the District Inspector of Schools, Kushinagar dated 29.12.2008 whereby he had declared Mukti Nath Tiwari as senior-most teacher in the institution in question over and above Rajendra Kumar Singh and Dinesh Pratap Singh had not been set aside and was still operative.

4. In the aforementioned Writ Petition No. 28500 of 2011, certain interim directions were issued to the Secretary, Secondary Education to conduct an enquiry and submit a report with regard to the validity of appointments of the teachers in the institution in question. The Secretary submitted the report dated 9.10.2011 recommending that the appointments of not only the appellant Mukti Nath Tiwari and the contesting respondent Rajendra Kumar Singh were not in accordance with law but also the appointment of other teachers of the institution also suffered from various infirmities as the records were not available. Pursuant to the said report of the Secretary, Secondary Education, the District Inspector of Schools, Kushinagar passed the order dated 4.11.2011 stopping the salary of all the teachers of the institution. This gave rise to filing of Writ Petition No. 67890 of 2011 by the appellants of Special Appeal Nos. 1066 of 2012 and 1073 of 2012.

5. The learned Single Judge, after calling for the records and the reports from the educational authorities, recorded a finding that the appellants in Special Appeal Nos. 1054 of 2012, 1066 of 2012 and 1073 of 2012 had not been validly appointed in the institution and, therefore, they were not entitled to continue any longer and further held that the decision taken by the Secretary of the Board to stop the salary of such appellants was justified. However, with regard to Mukti Nath Tiwari, the appellant in Special Appeal No. 1063 of 2012, the learned Single Judge did not record any such finding that he was not entitled to continue in the institution in question nor stopped his salary but declined to grant the second relief claimed by the said appellant to the effect that the respondent Board be directed to declare the result of the appellant treating him to be the senior-most Lecturer of the institution or to allow him to function as officiating Principal of the institution in question. The only reason recorded by the learned Single Judge is that the appellant Mukti Nath Tiwari had not placed on record the relevant material with regard to his service nor was there any pleading to that effect.

6. All the appellants have been working in the institution in question from 1976 except Mukti Nath Tiwari, who claims to have been working from 1974 and were

regularised. Further, the effect of the judgment and order of the learned Single Judge is that all the teachers in the institution except Mukti Nath Tiwari would stand thrown out from the institution resulting in a complete vacuum of teachers in the institution in question.

7. It is the admitted case of the parties that Mukti Nath Tiwari has functioned as officiating Principal of the institution after the seniority in question was decided by the District Inspector of Schools vide order dated 29.12.2008, However, pursuant to the result declared by the Board and an order being passed by a Division Bench of this Court in a special appeal against the interim order granted in favour of Mukti Nath Tiwari, Rajendra Kumar Singh started functioning as officiating Principal.

8. It is also the case of the appellants that their appointments had earlier been challenged in separate petitions which were dismissed and their appointments were found to be in order which judgments have not been taken into consideration by the learned Single Judge while passing the impugned order.

9. In the facts of the case and for the reasons recorded above, we are of the view that the matter requires consideration and hearing. Admit.

10. Respondents in all the appeals already represented may file their counter-affidavits. Notices be issued to the unrepresented respondents in all the appeals returnable within six weeks. Requisites be filed within two weeks.

11. Considering the facts and circumstances of the case, as an interim measure, it is provided that both the judgment and orders of the learned Single Judge dated 3.5.2012 passed in Writ Petition No. 28500 of 2011 and 67890 of 2011 as also the order dated 4.11.2011 passed by the District Inspector of Schools, Kushinagar shall remain stayed until further orders of this Court. It is further provided that in view of the findings recorded by the learned Single Judge in respect of the appellant Mukti Nath Tiwari in Special Appeal No. 1063 of 2012, he be allowed to function as the officiating Principal of the institution in question until further orders of this Court.