

(2001) 01 AHC CK 0095

In the Allahabad High Court

Case No : C.M.W.P. No's. 1511 of 1986, 5525 of 1997, 44794 of 1999 and 37177 of 2000

Murlidhar Singh and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 781 : (2001) 1 UPLBEC 875

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Gyan Chandra Dwivedi, Ajay Kumar Dwivedi and Ms. Anu Jaiswal, for the Appellant;

Final Decision : Allowed

Judgement

A. K. Yog, J.—Heard Ms. Anu Jaiswal, learned counsel for the petitioner and the learned standing counsel for the respondents.

2. Jagannath, Suresh, Smt. Naseem, Kundan Singh (who has died during pendency of writ petition) and Jag Narain (petitioner 1 to 5), claim to be appointed as class-IV employees. Arvind Kumar Singh, Chandra Shekhar Singh and Jawahar Pandey (petitioners 6, 7 and 8) claim to be appointed as Assistant Teachers (L.T. and C.T. Grade). Murlidhar is said to be appointed as head-master of "Janta Inter College, Garhmukhteshwar, Ghaziabad", (called the college). These persons (petitioners) have filed these petitions under Article 226, Constitution of India and prayed for issuing a writ, order or direction in the nature of certiorari to quash the impugned order dated 27.1.1997 (Annexure-7 to the writ petition) passed by the District Inspector of Schools, Ghaziabad/ respondent No. 1 directing the Treasury Officer (Hapur-Ghaziabad) to return salary bills of all the persons of the college staff, including petitioners for the month of April, May and June, 1996, except eight persons mentioned in that order on the ground that in view of the dispute in the college, an inquiry is

contemplated by the Government. The petitioners also claim a writ, order or direction in the nature of mandamus directing the Manager, Zila Sahakari Bank, Garhmukteshwar, Ghaziabad (respondent No. 2) to transfer the salary amount into the accounts of the petitioners and any other writ, order or direction which this Court may deem fit and proper in the facts of the case.

1. Murlidhar Singh and others v. State of U. P., W.P. No. 1511 of 1986.

3. The college, which was initially a Junior High School and governed by U. P. Basic Education Act was upgraded to the level of High School wide order dated 2.3.1984 and consequently the college came within the purview of U. P. Intermediate College Education Act, 1921 (as amended upto date). When institution was at "Junior High School" level, it received grant-in-aid from the Government as per rules applicable to it as such. It ceased to receive said grant-in-aid with the change of its status. This interrupted payment of salary to its staff and the then Head-Master, and other members of college staff, Murlidhar Singh and eleven other, filed Writ Petition No. 1511 of 1986 and an interim order was passed on 18.10.1986 as in following terms :

"Let interim mandamus issue directing the District Inspector of Schools, respondent No. 3/District Inspector of Schools, Ghaziabad, respondent No. 2 to pay the petitioners within six weeks from the date of production of a certified copy of this order before them, the salary due to the petitioners since March 1, 1985, till August 31, 1986 or show cause".

The record of the case shows that under aforesaid interim order, those petitioners were paid their salary beyond August, 1986 but it was again stopped for obscure reasons. Later, in the year 1990, an application was filed by the petitioners in this case and an interim order dated 28.8.1990, quoted below, was passed :

"The respondents are hereby directed to pay the salary of the petitioner from 1st May, 1990, onwards within six weeks from the date on which a certified copy of this order is produced before them. Regarding future salary, the respondent shall pay to the petitioners, if and when it becomes due."

No counter-affidavit has been filed in this Writ Petition No. 1511 of 1986 till date, i.e., even after lapse of 14 years approximately.

4. This Court in its Judgment in ALR 1990 302, has held that on upgradation of an institution, as in the present case, salary of validly appointed staff of the Junior High School should not be withheld or stopped. In view of the above, writ petition deserves to be allowed. The college has been upgraded and, as stated at the Bar now also brought on the grant-in-aid list of schools and college under U. P. Intermediate Education Act, 1921. In view of this admitted position, grievance of non-payment of salary to these petitioners does not survive as on date. No relief is required to be granted now in the said petition at this stage.

5. It is made clear that the dismissal of this Writ Petition No. 1511 of 1986 will

not prejudice, in any manner, the other two connected petitions.

6. The writ petition is dismissed as being rendered as infructuous.

2. Jagannath and others v. D.I.O.S. and others, W.P. No. 5525 of 1997.

7. Certain posts of Assistant Teachers, clerks and class IV employees were sanctioned due to the increased strength of students, by the concerned authorities. It is stated that petitioners were appointed on these posts, as per Rules. The D.I.O.S., however, passed impugned order dated 27.1.1997 as a consequence of which salary of the petitioners was withheld for the month of April, May and June, 1996 and released salary of other eight persons mentioned in the said order. The impugned order further mentioned that due to dispute in the college, the Government had decided to hold an inquiry (Annexure-7 to the writ petition).

8. Learned counsel for the petitioner, Ms. Anu Jaiswal argued that the limited grievance of the petitioner in the case is that their salary has been withheld on the basis of impugned order dated 27.1.1997 without notice or affording an opportunity of hearing besides that no reason or ground is mentioned in the impugned order.

Reference is made to writ para 14A which reads :

" 14A. That before passing the impugned order no notice nor any opportunity was given to the petitioners."

In reply, para 13 of the counter-affidavit (filed on behalf of the respondent No. 1/ District Inspector of Schools) is quoted :

"That the contents of para 14 (a) of the writ petition are denied. The deponent is advised to state that the principle of natural justice is not ritual which should be followed ignoring each and every norms. The facts of the present case are very peculiar and strange to the canon or law as the entire thing have been done after fabricating original sanctioned letter. In the facts and circumstances of the present case, the present writ petition is devoid of merit and deserves to be dismissed."

9. The impugned order cannot be allowed to stand as admitted passed in violation of principle of natural justice.

10. The impugned order dated 27.1.1997 (Annexure-7 to the writ petition), passed in violation of principles of natural justice is hereby quashed. The Writ Petition No. 5525 of 1997 is allowed subject, however, to the condition it will not affect subsequent order passed after inquiry or otherwise in the matter. No costs.

3. Chitendra Kumar Sharma and other v. Addl. Director of Education (Madhyamik), Uttar Pradesh, Allahabad and others, W.P. No. 44794 of 1999.

11. It has been filed against impugned order dated 7.9.1999 (Annexure-20 to the writ petition), (passed in compliance of this Court order dated 29.1.1998 in

Writ Petition No. 2033 of 1998, Suneel Kumar Gaur and five other Assistant Teachers) on the ground that it is arbitrary, based on erroneous finding, suffers from mis-reading of document, conclusions drawn by the authority are against the record presumption drawn against the petitioner is erroneous and misconceived because the District Inspector of Schools himself failed to maintain his record properly and prove that petitioners were, in any manner responsible for loss of dispatch entries/record ; the report of the District Inspector of Schools/ Accounts Officer has been ignored for no reason which clearly indicated that posts were duly sanctioned and appointment in question were made in accordance with law.

12. Petitioners claim for issue of a writ of certiorari calling for the record of the case, setting aside the impugned order dated 7.9.1999 (Annexure-20 to the writ petition) and issue a writ of mandamus commanding respondent No. 1 for peaceful functioning of the Assistant Teacher in L.T. Grade in the college and pay their salary month by month without fall, which is due, and other usual relief including costs of the petition.

13. Learned counsel for the petitioner pointed out that the District Inspector of Schools failed to appear in the inquiry on 2.4.1999 and also failed to produce the original document/record relating to the appointment in question, notification, advertisement, approval, order sanctioning the posts in question and other relevant files/documents which were supposed to be maintained and available in the office of the concerned District Inspector of Schools. It is argued that respondent No. 1 recorded finding in the impugned order against the petitioners only on the basis of alleged presumption drawn from the sole circumstance that 903 dispatch entries were not placed before him. Learned counsel for the petitioner submitted that non-production of relevant original record/entries by the then District Inspector of Schools, is a circumstance in their favour and against the respondents as it clearly indicates that records were not properly maintained and were admittedly tampered with by adversaries or otherwise withheld. In such circumstances it gives no authority/justification to the concerned educational authority to presume that the appointments of the petitioners were illegal/irregular. It is submitted that non-production of relevant record, otherwise gives rise to a presumption that, if record was produced, it would have gone against the party not producing this record.

14. The learned standing counsel failed to demonstrate from the record of the case that District Inspector of Schools ever appeared or produced original record/document like notification, sanctioning of appointment letter and appointment procedure of appointment, etc., at any point of time. There is no finding in the impugned order against the petitioners being responsible for loss of 903 dispatch entries/register. There is no whisper to the said effect. Consequently, no adverse presumption could be raised against the petitioners. The argument of the petitioners is that in order to injure their adversaries due to dispute in the college, the office of District Inspector of Schools manipulated/ tampered with

the record and withheld it as an after-thought. The argument further proceeded that in absence of a finding to the effect that 903 dispatch entries were lost because of direct or indirect act of the petitioners, the petitioners could not be put to blame or faulted.

15. Respondent No. 1 should have at least, referred and given, even though briefly, some cogent reason to reject the report of the then District Inspector of Schools in favour of the petitioner.

16. In view of above impugned order dated 7.9.1999 cannot be sustained and it is accordingly, quashed with direction to the concerned authority to decide the matter afresh in accordance with law after affording opportunity of hearing to the all concerned and are likely to be affected/prejudiced by the decision including the Committee of Management and, in any way or authorised controller, if any within four months from the date a certified copy of this order being produced before respondent No. 1.

17. The Writ Petition No. 5525 of 1997 is allowed.

4. Committee of Management v. Joint Director of Education and others, W.P. No. 37177 of 2000.

18. Has been filed against impugned order dated 28.6.2000-passed by respondent No. 1. This petition is maintainable at the instance of the petitioner since it represents, the erstwhile management, even after appointment of Authorised Controller as admitted and noted above. This petition also deserves to be allowed and impugned order is set aside as a consequence of the judgment and order in W.P. No. 44794 of 1999.

19. No order as to costs.