
(2007) 04 AHC CK 0029
In the Allahabad High Court
Case No : Civil M.W.P. No. 31925 of 1998

Nagendra Prasad Dwivedi	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Madhyamik Shiksha Parishad, Uttar Pradesh Rules, 1991 — Rule 11, 21

Citation : (2008) 2 AWC 1435

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : R.S. Pandey, for the Appellant; Hari Shanker Mishra and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsels for the parties and perused the record.

2. Case of the Petitioner is that he was appointed as clerk vide order dated 25.6.1981 and he joined as such w.e.f. 1.7.1981 in Maharaj Sri Dandi Swami Keshawashram Higher Secondary School, Gunail Gaharpur, Meja, district Allahabad. Since then, he claims to have been performing his duties continuously. The aforesaid institution was upgrade from Junior High School to High School w.e.f. 3.11.1983.

3. The services of the Petitioner were regularized vide order dated 7.10.1988, passed by the District Inspector of Schools, Allahabad, appended as Annexure-4 to the writ petition. The institution, in question, received grant-in-aid from the State Government w.e.f. 1.4.1996. The Joint Director of Education also recommended payment of salary to the Petitioner. In the meantime, Respondent No. 3 raised the validity of Madhyamik Certificate of the Petitioner as such, Respondent No. 2 reconsidered regularization of his services and remanded back the matter to Respondent No. 3 vide order dated 27.6.1998, which has been impugned in this writ petition.

4. The grievance of the Petitioner is that his salary has not been paid though he made several representations to the concerned authorities.

5. Counsel for the Petitioner contended that the impugned order of remand is illegal and arbitrary as once his services were regularized vide order dated 7.6.1988 there was no occasion for its reconsideration by the impugned order. It is submitted that the Petitioner is entitled to salary and allowances for the post, on which he has been continuously working and non-payment of his salary amounts to begars.

6. In this regard, paragraphs 11 and 21 of the Rules of Madhyamik Shiksha Parishad, Uttar Pradesh, 1991, are relevant for the purpose of resolving the controversy involved in this petition, which are as under :

7. From perusal of record, it is evident that after appointment of the Petitioner, his services were regularized. Vice-Chancellor of Lucknow University vide letter No. 7048 dated 5.5.1986 (Annexure-8 to the writ petition) recognized "Madhyama" examination of Hindi Sahitya Sammelan, Allahabad as equivalent to Intermediate examination for admission in Bachelor of Arts. Similarly, different Universities in India as well as the Central Government have also recognized "Madhyama" examination of Hindi Sahitya Sammellan, Allahabad as equivalent to Intermediate examination.

8. If the Petitioner was not qualified he ought not to have been appointed but once he has been appointed and he worked in the institution for about 7 years, his claim for regularization could not have been rejected for two reasons :

(a) he had already been regularized vide order dated 7.10.1988, passed by District Inspector of Schools; and

(b) even he was not possessed of requisite qualifications for the reason that the degree obtained by him is not recognized or for any other discrepancy, the question of equitable estoppel would come into operation.

9. The Respondents are bound by the principle of "equitable estoppel". This view finds support from the decision of this Court in Committee of Management Subhash Memorial Junior High School Vs. State of U.P. and Others, wherein it has been held that the Respondent (teacher in that case) was not at fault when he obtained initial appointment on the basis of Shastri degree from Sanskrit University nor he misrepresented at that time. Hon"ble Supreme Court in Kumari Sudha Vijay v. Balika Vidyalaya Association, Kaimganj, Farrukhabad and Ors., 1988 UPLBEC 727 , has held that inspite of the fact that appointee teacher did not possess requisite qualifications, he cannot be terminated on the ground that she lacks in requisite qualification after she had already put a number of years continuous service. In Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, it has been held by Hon"ble Supreme Court that generally Court does not interfere where certain schemes assign reason for its financial health, but after a prolonged litigation and delay be funded institution in absorption is

liable to be interfered and in such cases, absorption of workmen cannot be refused on the ground of financial problem. Similarly, in Ram Sarup Vs. State of Haryana and Others, Hon"ble the Apex Court has laid down that the employee holding the post for nine years must be deemed to have been validly appointed on completion of necessary period of experience.

10. In a recent decision in B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others, Hon"ble the Apex Court has held that : --

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

11. For the reasons stated above, the writ petition succeeds and is allowed. The Petitioner shall be paid salary for the post of clerk w.e.f., 1.4.1996 till date and shall be entitled to receive future salary, month by month, as and when due. The impugned order dated 27.6.1998 (Annexure 7 to the writ petition) is quashed. No order as to costs.