
(2015) 11 AHC CK 0080
In the Allahabad High Court
Case No : Special Appeal No. 814 of 2015

Namita Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 11 AHC CK 0080

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Siddharth Khare, for the Appellant

Final Decision : Dismissed

Judgement

Vimlesh Kumar Shukla, J.—Namita Singh is before this Court assailing the validity of the judgment dated 30th September, 2015 passed by learned Single Judge, dismissing the writ petition.

2. Brief background of the case is that petitioner-appellant has been engaged as Siksha Mitra in Academic Session 2003-04 and she claims to have continued to perform and discharge her duties upto Academic Session 2006-07 and then petitioner-appellant has come up with the case that she was not permitted to discharge her duties resulting in impelling her to file writ petition before this Court bearing Writ Petition No. 50963 of 2007 (Namita Singh vs. State of U.P. and others) and this Court on 12th October, 2007 asked the District Magistrate to look into the grievance of the petitioner-appellant and pass appropriate orders on the same. In consonance with the directives issued by this Court, the District Magistrate concerned took up the matter and on 30th January, 2008 found that the services of petitioner-appellant had been recommended for being dispensed with by resolution of Village Education Committee, but on the pretext and premises that the order of disengagement has not been passed by competent authority, which was the Committee headed by Chief Development Officer, a mention was made that resolution of the Village Education Committee could not

be given effect too, but noticing the record of service of petitioner-appellant, orders have been passed for disengagement of petitioner-appellant as Siksha Mitra and she has been directed to be paid honorarium upto the date of disposal of her representation.

3. During this interregnum period, with all the activities on-going, the State Government took a policy decision on 10th July, 2007 making provision for undertaking the training of Special B.T.C. Course and in the said scheme in question dated 10th July, 2007, 10% seats were reserved for Siksha Mitra, who has worked for at least three academic sessions. Relevant clause of the said Government Order is being extracted below:

4. Petitioner-appellant applied for being permitted to undertake training programme and she was selected. It appears that during the training period, complaint has been made that she has succeeded to get her candidature accepted based on incorrect facts and then petitioner-appellant was subjected to a show cause notice. Petitioner-appellant submitted her reply and then the impugned order dated 2nd December, 2008 has been passed by Principal, District Institute of Education and Training (D.I.E.T.), Rai Bareilly for cancelling the candidature of petitioner-appellant, who has been selected for Special B.T.C. Course and this action of Principal, D.I.E.T. has impelled petitioner-appellant to be before this Court and this Court on 18th December, 2008 proceeded to dismiss the writ petition in question on the plea that this Court has no territorial jurisdiction to entertain the writ petition as the order impugned was of Principal, D.I.E.T., Rai Bareilly. Aggrieved against the same, petitioner-appellant has preferred Special Appeal No. 39 of 2009 (Namita Singh vs. State of U.P. and others) and Special Appeal Bench of this Court on 5th February, 2009 proceeded to allow the said Special Appeal and took the view that part of cause of action has arisen at Fatehpur, within the territorial jurisdiction of this Court and accordingly, the writ petition is also maintainable at Allahabad and asked the learned Single Judge to decide the matter on merits and pursuant to the said remand order, the learned Single Judge took up the matter and refused to accord any relief to the petitioner-appellant and the said judgment of learned Single Judge has made the petitioner-appellant to be once again before this Court assailing the validity of the order dated 30th September, 2015.

5. Shri Ashok Khare, Senior Advocate submitted with vehemence that, in the present case, once the District Magistrate, Fatehpur by treating the petitioner-appellant in service till the date of passing of the order, had directed for payment of honorarium in the said direction, then in all eventuality, it ought to have been accepted that petitioner has been in service on 10th July, 2007 and once remuneration has been paid to her, then such a situation should be regarded as if she has been in continuous service for three years and the learned Single Judge has clearly erred in law, at the point of time, when he has proceeded not to consider the impact of the order passed by District Magistrate in its correct perspective and further the factum of actual working of petitioner-appellant till

30th July, 2007 stood duly supported by the extracts of the attendance register of Prathamik Vidyalay, Sikarpur, Majra Kasba Sohan, Block Airaiyan, District Fatehpur, which clearly demonstrated the continued working of petitioner-appellant till 30th July, 2007 and in view of this, once on 10th July, 2007, petitioner-appellant has been functioning, then the benefit of the Government Order could not have been denied to her and accordingly, this Court should come to the rescue and reprieve of the petitioner-appellant.

6. Learned Standing Counsel resisted the claim of petitioner-appellant by submitting that entire claim of petitioner-appellant is based on manipulation and manoeuvring and here rightful view has been taken in the facts of case by learned Single Judge, accordingly, Special Appeal be dismissed.

7. After respective arguments have been advanced, the factual situation that is so emerging in the present case that petitioner-appellant was appointed as Siksha Mitra at Prathamik Vidyalay, Sikarpur, Majra Kasba Sohan, Block Airaiyan, District Fatehpur for the first time during Academic Session 2002-03 and thereafter, on the basis of annual renewal during the Academic Sessions 2003-04, 2004-05, 2005-06 and 2006-07, she has been permitted to perform and discharge her duties. Accepted position is that as far as Academic Session 2007-08 is concerned, no orders were passed with regard to further renewal of petitioner-appellant and this much is also reflected that a resolve has been taken not to renew the engagement of petitioner for Academic Session 2007-08.

8. The absence position of petitioner has been detailed out in the counter affidavit that has been so filed. The same reads as follows:

"i. January, 2005 to May 2005 (30 Days)

ii. July 2005 to 19th May, 2006 and she attend the institution on 20th May, 2006 only for one day.

iii. 1st July, 2006 to 30 July, 2006 and w.e.f. 31st July 2006 to 31st May, 2007, she attended the Institution and after 31st May, 2007, she did not worked in the Institution."

9. In reply to the said averments, in rejoinder affidavit petitioner has proceeded to mention following facts:

"That the contents of paragraph No. 5 of the counter affidavit is wrong and denied in reply thereto it is stated that the petitioner was not absent as detailed in the paragraph under reply, in support thereof attention is drawn to the experience certificate issued by the Respondent Authorities dated 03.08.2007, apart from the aforesaid attention is further drawn to relevant of the attendance register duly signed by the Respondent Authorities. A true copy of the attendance register is annexed as Annexure No. RA-1 to the rejoinder affidavit. So far as the allegation to the effect that petitioner only attended the institution on 20th May, 2006 i.e. one day is absolutely wrong in support thereof, attention is drawn to a certificate issued by D.I.E.T., Fatehpur which would demonstrate

that petitioner had undergone training from 20.02.2006 to 03.02.2006. A true copy of training certificate issued by the D.I.E.T., Fatehpur is annexed as Annexure No. RA-2 to this rejoinder affidavit. Apart from the aforesaid, it is necessary to state that no such objection had been taken in the order impugned, therefore, it is settled principle of law that the order impugned cannot be supplemented by means of a counter affidavit which is being done in the present case."

10. Government Order dated 10th July, 2007 incorporated provision providing for facility to Shiksha Mitras, who had continuously functioned as Shiksha Mitra for undertaking training of Special B.T.C. Course and for the said purpose requirement was that such Shiksha Mitra should submit certificate to the effect that they were continuously working on the date of application. The moot question to be answered, in the present case, is as to whether petitioner-appellant, in the facts of the case, can be extended the benefit of Government Order dated 10th July, 2007, wherein the Government came up with the scheme of making provision for ensuring training and Special B.T.C. Course wherein 10% of the seats were reserved for Shiksha Mitra.

11. The factual situation that is so emerging in the present case is that, at the point of time, when petitioner has proceeded to append her certificate of continuous functioning, in the said certificate in question, the last line has been deliberately scored out that she has been functioning w.e.f. 2nd July, 2007. There has been a serious dispute as to whether petitioner has functioned as Shiksha Mitra post 31.05.2007. Petitioner has been insisting that she has been functioning even thereafter w.e.f. July, 2007 onwards. Respondents have been very very specific that she has functioned only upto 31.05.2007 and had been paid her honorarium for the said period, petitioner after 31.05.2007 has not functioned, however honorarium has been paid to her under the orders of District Magistrate. Not only this, in paragraph 9 of the Counter Affidavit, categorical mention has been made that petitioner had submitted forged verification report of Head Master by putting forged signature of Head Master of Primary School where she was appointed as Shiksha Mitra. Qua the same in paragraph 6 of Rejoinder Affidavit, mention has been made that no verification report has been submitted. Actual functioning of petitioner-appellant could have been ensured for Academic Session 2007-08, once it was preceded by renewal in her favour and here accepted position is that for Academic Session 2007-08, at no point of time, the contractual engagement of petitioner has been renewed rather record in question suggests that Gram Shiksha Samiti has already taken a resolve not to accord renewal to the contractual engagement of petitioner-appellant as Shiksha Mitra whereas under the relevant scheme in question, renewal has to be accorded on the recommendation of Gram Shiksha Samiti. Not only this, the Committee headed by Chief Development Officer alongwith District Basic Education Officer and District Panchayat Raj Officer also did not recommend for renewal and in view of this, petitioner-appellant's submission that she continued to function July, 2007 onwards without there being any order of renewal, appears to be an

unreliable statement of fact, and contrary to the scheme and as far as the attendance register appended by her are concerned, the respondents are resisting the claim of petitioner-appellant by specifically submitting that she has functioned only upto May, 2007 and has been paid her honorarium accordingly. Learned Single Judge, on factual front, has mentioned that disputed question of fact cannot obviously be determined under Article 226 of the Constitution.

12. Learned Single Judge, in the present case, has proceeded to make a categorical mention that clause 18 of Government Order dated 10th July, 2007 clearly provides for facility of training to those Shiksha Mitra, who has worked continuously and were in service and accordingly, the requirement of previous work in three academic sessions cannot be read de-hors the condition of the Shiksha Mitra being continuously working on the date of Government Order was promulgated.

13. On this preposition, no dispute is being raised, contrarily it is being suggested that all the pre-requisite condition stands fulfilled once the order passed by District Magistrate is read and understood contextually.

14. Here, as far as the order that has been passed by the District Magistrate is concerned, it has to be accepted as compensatory order for the reason that petitioner-appellant was not communicated of the resolution of District Level Committee and decision has been taken at the level of Gram Shiksha Samiti. In the opinion of District Magistrate, prima-facie, there has been procedural impropriety and accordingly, honorarium has been directed to be paid till the date of decision on representation. The District Magistrate himself looking to the conduct of the petitioner-appellant and her husband has clearly proceeded to mention that petitioner-appellant's services should be disengaged keeping in view the recommendation of District Level Committee. Qua this there is no issue that resolution of District Level Committee was nothing else but the ratification of the view of Gram Shiksha Samiti of not according renewal. In pith and substance District Magistrate has accepted the resolution for not according renewal passed by Gram Shiksha Samiti and ratified by District Level Committee and on procedural front it has not been approved of. This order has been permitted to attain finality and as such, this much is accepted position that there existed material on record that warranted to take decision for not renewing the appointment/engagement of petitioner-appellant and once, in this direction, a conscious decision has been taken not to renew the appointment of petitioner-appellant and to permit her to function, then the order of the District Magistrate has to be accepted as mere compensatory order and it cannot be a substitute of the fact that petitioner has continuously functioned.

15. Consequently, the opinion formed by Learned Single Judge cannot be said to be faulty on any count.

16. Special Appeal stands dismissed accordingly.