
(2014) 11 AHC CK 0052

In the Allahabad High Court

Case No : Special Appeal Defective No. 915 of 2014

Narayan Dwivedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 ADJ 155 : (2015) 2 AWC 1410 : (2015) 1 ESC 422

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Yogish Kumar Saxena, Advocates for the Appellant

Judgement

1. The appellant was appointed in 1970 as an Assistant Teacher and was promoted on the post of Lecturer in 1998, a post on which he worked until 30 June 2010 which was the date of his superannuation. The case of the appellant, however, is that he was allowed to work until 30 June 2012. On 5 September 2002, the appellant received a National Award for the year 2001. According to the appellant, the National Award made him eligible for being granted an extension of service in terms of Government Orders dated 6 May 1982 and 23 October 1991. The claim of the appellant for extension in service was not being decided, following which he filed a writ petition which was disposed of with a direction that an appropriate decision be taken on the claim of the appellant for extension in service within three months. The claim was rejected on 26 July 2010 on the ground that the appellant had completed his B.Ed., without obtaining leave, irrespective of the fact that the place of training was at the distance of 20 kilometers from the institution where he was employed. The appellant challenged the order dated 26 July 2010 in a writ petition (Writ-A No. 49233 of 2010). The petition was allowed by the learned Single Judge of this Court on 4 January 2011 with a direction to the State to examine the case of the appellant for extension of service afresh in accordance with the relevant Government Orders. Thereafter, a fresh order was passed on 29 April 2011. The order states that the Selection

Committee had declined to grant its recommendation in regard to the extension of service and reliance was also placed on a decision of this Court dated 2 November 2010 in *Tarkeshwar Nath Srivastava v. State of U.P.*, Writ-A No. 45202 of 2010, wherein it was held that in the event the conduct and work of a teacher is not satisfactory, the State Government is not obliged to grant an extension in service.

2. The learned Single Judge dismissed the writ petition filed by the appellant for challenging the order of the State Government dated 29 April 2011, by the impugned order dated 6 September 2014 holding that the extension of service was not a matter of right but was at the sole discretion of the employer. Moreover, it was held that the application for extension was rejected by a reasoned order, which could not be interfered with under Article 226 of the Constitution.

3. The Government Orders dated 6 May 1982 and 23 October 1991 specify the conditions on which a claim for extension in service can be considered. The Government Order of 6 May 1982 provides that an extension can be considered in respect of those teachers who are National or State Award winners and are otherwise mentally and physically fit. The Government Order dated 23 October 1991 provides for constitution of a Selection Committee presided over by the Principal Secretary, Secondary Education. The Government Order specifies that it would be open to the Committee to consider whether there is any complaint against the work and conduct of the teacher concerned. In a judgment of the learned Single Judge of this Court in *Tarkeshwar Nath Srivastava (supra)*, the learned Single Judge adverted to the judgment of the Division Bench in *Shri Nath Sahai Vs. Devendra Nath Dwivedi and Others*. The Division Bench in the aforesaid decision adverted to an earlier judgment of a Division Bench in *Dr. Prem Dutt Chamoli Vs. State of Uttar Pradesh and Others*, . When a special leave petition (SLP (C) No. 16808 of 1998) was filed before the Supreme Court against the judgment of this Court, the Supreme Court observed as under:

"The Committee appointed by the State Government, however, is at liberty not to grant extension in service to the teachers concerned, if they are of the opinion that the teachers have deteriorated in their performance as teachers after obtaining the National Award or if there was or is any complaint against them involving moral turpitude."

4. A reference to the order passed by the Supreme Court in the special leave petition is contained in the judgment of the learned Single Judge in *Tarkeshwar Nath Srivastava (supra)*. The relevant Government Orders to which we have already made a reference contemplate an extension of service for a specific class of teachers. That class consists of teachers who have been commended with a National or State Award. Therefore, first and foremost, a plea for extension of service can be considered only of a teacher fulfilling the requirement of being conferred with either a National or State award. The second requirement which is embodied in the Government Order dated 6 May 1982 is that the teacher should

be physically and mentally fit. The subsequent Government Order dated 23 October 1991 provides for constitution of a Selection Committee for considering the cases of such teachers for grant of extension in service. The Government Order specifically states that if any complaint is pending in regard to the service of such a teacher, due and necessary steps should be taken to conclude the enquiry.

5. The grant of extension of service to such teachers who have been conferred with a National or State award is a measure which was adopted by the State Government in the public interest of securing the services of eminently qualified teachers who had been conferred with National and State awards. The learned Single Judge cannot be faulted in holding that the grant of extension in service is not a matter of right. As a matter of fact, the Government Order dated 23 October 1991 provides for constitution of a Selection Committee for the purpose of examining whether an extension in service should be granted. At the same time, it must be also emphasized that the grant of an extension in service to such teachers who have been recipients of National and State awards, is not a matter of subjective satisfaction. If, it is found that the service of the teacher has not been satisfactory, particularly after the receipt of the National or State award, that may be an important circumstance which would have a bearing on whether or not an extension of service should be granted.

6. In the present case, the ground which had initially weighed with the Committee was that the petitioner/appellant had not been granted leave for pursuing his B.Ed., and the Institution was situated at a distance of 20 kms from the institution where he was employed. The appellant has, in fact, relied upon a letter dated 30 May 1978 of the Manager of the institution granting permission to the appellant to pursue his B.Ed., studies. The appellant had completed his B.Ed., in 1978 and it is his case that since then, he continued in service without any complaint in regard to his work, conduct or behavior. Both the orders which were passed in the present case rejecting the claim relied upon essentially the same ground. In the earlier writ petition, the learned Single Judge by his order dated 4 January 2011 had set aside the order of rejection by directing the State to consider the claim for extension in service afresh. Once again, essentially the same ground for rejection has been set out with the addition that the case of the appellant has not been recommended for extension. In this view of the matter, we are of the view that the issue as to whether the overall performance and conduct of the appellant was satisfactory and whether the appellant met all the required conditions of eligibility should be re-examined by the Committee afresh. Such a direction is necessary, since it appears from the record that the principal ground which had weighed in declining to grant an extension is based on the same issue pertaining to whether the appellant had obtained leave from the educational institutional for pursuing his B.Ed., course. We also note the contention of the appellant that during the last three years, he had taught as a teacher with a hundred percent result in respect of the subject, in which he had imparted instruction in the institution. We keep this issue open to be examined

by the Committee.

7. For the aforesaid reasons, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 6 September 2014. In consequence we direct that the Committee constituted under the relevant Government Orders shall make a fresh determination of the question as to whether the appellant should have been granted an extension of service as a National Award Conferred Teacher. We clarify that in arriving at its conclusion the Committee would be at liberty to peruse the service record of the appellant including that after obtaining the National Award and it would also be at liberty to consider, if there was any complaint in regard to the work or conduct of the appellant.

The special appeal is, accordingly, disposed of. There shall be no order as to costs.