
(1998) 09 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 25481 of 1990

Prakash Narain Misra (Decd.) through L.R.	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 AWC 329

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Advocate : K.M. Misra, for the Appellant;

Final Decision : Allowed

Judgement

B.K. Roy, J.—This writ petition was filed by Prakash Narain Misra. Head Master, Rajkiya Inter College, Mainpuri, praying to quash the order dated 15.9.90 (as contained in Annexure-1 to the writ petition) suspending him from his post.

2. From the petition along with amendment application supported by affidavit of his widow Smt. Sarla Devi, filed on 2.3.98, I find that a prayer has been made for substituting the name of his widow Smt, Sarla Devi, stating, inter alia, that she is legally wedded wife of the petitioner, who died on 21.12.97, leaving behind her as his sole heir and legal representative and it would be in the interest of justice to substitute her name ; that the sole petitioner had retired from service on 30th June, 1993 ; that vide order dated 15.5.90 this Court had stayed operation of the suspension order ; that after the death of her husband the suspension order has become infructuous (Mr. Misra states that in place of the words "become infructuous" the word "frustrated" has been wrongly mentioned in Paragraph 7 of the affidavit) : that the Department till date has not completed any disciplinary enquiry : that due to the pendency of this writ petition the respondents have not paid the entire retirement benefit, pension, gratuity, etc. to the petitioner's widow and it would be expedient in the interest of justice to allow the substitution and the proposed amendments, which reads

thus :

"(a) Issue a writ order or direction in the nature of mandamus directing the respondents to pay the entire retirement benefits, pension, gratuity and rest of salary to the legal heir and representative of the petitioner Smt. Sarala Mishra wife of late Sri Prakash Narain Mishra immediately.

(b) Issue a writ order or direction in the nature of mandamus directing the respondents to pay the entire other benefits and Interest regarding nonpayment of retirement benefit to the petitioner's wife Smt. Sarala Mishra who is the sole legal heir of the petitioner immediately, because due to nonpayment of retirement benefit she is suffering irreparable loss and injury."

3. After pressing the substitution and amendment application aforementioned, Mr. Mishra, learned counsel for the widow contended as follows :

(i) The impugned order of suspension has been passed by the Education Secretary and not by the Director of Education, Agra Region, Agra. who was his appointing authority, at the behest of the Chief Minister and is thereby wholly mala fide, without jurisdiction, illegal and Is liable to be quashed on this ground alone.

(ii) It has been passed after a lapse of six years of the alleged charges when the petitioner was working as Basic Shiksha Adhikarf, Etawah who has not committed any illegality and/or irregularity in that capacity.

(iii) Under the Rules the enquiry should have been completed within four years but this has not been done.

4. In my view, no ground has been made out for exercise of discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

5. A perusal of the impugned order shows that it has been passed pursuant to the direction of the Governor of U. P., though in the pen of the Education Secretary. The Education Secretary of the State is higher in rank than that of the Director of Education.

6. The petitioner has also not impleaded the Chief Minister of the State either as such or by his name though he has come up with an allegation that it was done at his behest and it was passed on account of "political pressure of polities". This writ petition is, thus, bad for defect of non-impleadment of necessary party.

7. A perusal of the impugned order also shows that charges were serious in nature. The learned counsel could not show me any Rule that there is a limit prescribed by the Rules in relation to formation of charges. It is well known that charges are being framed after a preliminary enquiry and in some cases, the preliminary enquiry itself takes considerable time. Simply because an interim order was passed earlier by the Court staying operation of the impugned order coupled with the fact that the writ petitioner is no more will not deprive this Court to examine the writ petition on merits when his widow has come up for

grant of further reliefs.

8. For the aforementioned reasons, this writ petition is dismissed but since the petitioner is no more, without there being any order as to cost.

9. In view of the death of the petitioner the Government is directed to proceed in regard to the claim of certain benefits by the "petitioner if she files an appropriate application along with properly filled up forms within two months from today, as prayed for by Mr. Mishra, learned counsel for the widow.

10. The petitions seeking substitution and amendment are allowed.

11. The office is directed to correct its record in terms of this part of the order.