

(2008) 12 AHC CK 0343

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.23448 of 1990

Pramod Kumar Singh and another

APPELLANT

Vs

District Inspector of School, Jaunpur and another

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0343

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.

Heard learned counsel for the parties.

This case demonstrates horrible state of affairs. Both the petitioners are peons and under interim order passed in this writ petition, they are getting the salaries of teacher and librarian.

According to the allegation made in the writ petition, petitioner No.1 was appointed by Committee of Management, Intermediate College, Bareri, District Jaunpur through its Manager, respondent No.2 on 02.11.1989 as Teacher in L.T. Grade and joined his services as such on 05.11.1989. Similarly, the allegation in the writ petition with regard to petitioner No.2, Mithai Lal is that the previous Librarian in the College in question Raj Bahadur Singh was appointed as L.T. Grade teacher and in the vacancy caused thereby petitioner No.2 was appointed as librarian on 02.11.1989 and joined as such on 05.11.1989. There are only four annexures to the writ petition which are alleged appointment letters of both the petitioners and alleged joining reports of both the petitioners. In Para4 of the writ petition, it is mentioned that Committee of Management sent the intimation of vacancy to D.I.O.S. respondent No.1 for sending the same to the Commission for appointment and as within two months appointment was not made, hence under Section 18 of U.P. Secondary Education Service Selection Board, 1982, Management appointed the petitioners. Even the date of sending the intimation

has not been mentioned. Thereafter, it is mentioned that information of appointment for seeking financial sanction was sent by the Management to the D.I.O.S. on 10.12.1989. It has further been stated that no salary was paid to the petitioners till the filing of the writ petition.

No document regarding sending of information to D.I.O.S. of vacancy or of appointment of the petitioners has been annexed. This writ petition was got reported on 25.05.1990 but was filed in September, 1990 and on 10.09.1990 following order was passed:

"Let an interim mandamus be issued directing the respondents to pay the salary of the petitioner from 05.11.1989 and also in future as admissible to them under law or show cause within four weeks."

Under the said interim order admittedly petitioners are getting salary. This writ petition was dismissed in default on 19.11.1997 and was restored after about 10 years, i.e. on 13.04.2007 (Restoration application was filed on 26.09.2006). Learned counsel for the petitioner states that even during this period, petitioners were paid salary. At this juncture, an order passed by me on 08.12.2008 in Writ Petition No.41606 of 1992 is quoted below:

"Learned counsel for the petitioner prays for and is allowed two weeks" time to file a supplementary affidavit in support of restoration application.

List thereafter.

However, on perusal of the record, it transpires that the writ petition was dismissed on 04.04.2000 still both the petitioners (alleged teachers) are being paid salary under the interim order dated 05.11.1992 passed in this writ petition, which automatically came to an end by the dismissal of the writ petition in default.

The Court is constantly noticing that in large number of cases such things are happening, i.e. writ petitions are dismissed in default but for want of knowledge of the said order salaries are being paid to the employees under the interim orders, which had been passed in the said writ petitions. This situation is most rampant and prevalent in the cases of teachers of privately managed but Government aided schools and colleges.

Accordingly, learned chief standing counsel is directed to immediately seek details of such teachers who are getting salaries under interim orders passed by this Court along with the numbers of writ petitions in which interim orders have been passed particularly, writ petitions which are more than 10 years old. On receiving the information, the Office of chief standing counsel shall immediately verify from the Computer Section and concerned office of the High Court regarding status of those writ petitions. Computer Section and office concerned are strictly directed to fully cooperate in this regard with the office of learned chief standing counsel and supply requisite information promptly on priority basis. Thereafter, details of such writ petitions, which have already been

dismissed, be immediately supplied by the office of the chief standing counsel to the D.I.O.S. concerned with the direction of stoppages of salaries with immediate effect and steps for recovery of the salary, which may have been paid after dismissal of the writ petition.

D.I.O.S. may also be directed to obtain status and information of the writ petitions from the internet on the High Court website i.e. www.allahabadhighcourt.in under the heading "status report". Similar details may also be sought from the different government offices of the Districts through District Magistrates regarding writ petitions of government employees and similar steps may be taken by learned chief standing counsel in these cases.

Let a copy of this order be supplied free of cost to learned chief standing counsel by 16.12.2008."

Writ petition was again dismissed in default on 04.09.2008 and was restored on 18.11.2008.

In the counter affidavit, it has been mentioned that both the petitioners are peons in the college in question and are working as such. It has further been stated that even the appointments of petitioners as peons are illegal however by virtue of interim order passed in the writ petition, they are getting salaries. It is also stated in the counter affidavit that there are only five posts of L.T. Grade teachers and only one post of clerk sanctioned for the institution and appointments of the petitioners even if made are over and above the sanctioned strength. It has been stated that petitioners earlier also filed Writ Petition No.12401 of 1988 along with others. Annexure CA1 is list of Class III & IV employees of the institution submitted by the institution itself. The names of both the petitioners are at Serial Nos.9 & 10 in the said list (CA1). The names of five teachers working against the sanctioned posts are mentioned in Para8 of the counter affidavit, which do not include the name of petitioner No.1. It has been denied that any vacancy was ever notified to Commission through D.I.O.S. It has further been stated that there was no vacancy. It has been stated that against one post, three clerks are already working, hence appointment of petitioner No.2 as librarian was absolutely illegal. It is also stated that no information of appointment was sent to the D.I.O.S.

From the above, it is crystal clear that petitioners played fraud upon this Court and obtained the interim order. Salary over and above the salary of peons paid to the petitioners shall at once be recovered from them.

Writ petition is accordingly dismissed.