
(1996) 08 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22775 of 1996

Pyare Lal Gaur

APPELLANT

Vs

Director of Secondary Education U.P.& Ors.

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 08 AHC CK 0089

Hon'ble Judges : B.S.Chauhan, J

Final Decision : Dismissed

Judgement

Dr. B. S. Chauhan, J.—As per the averments made in the petition the petitioner was granted L. T. Grade long time back and the respondent No. 4, Nanhoo Mai Sharma filed a writ petition bearing No. 28141 of 1995 before this court claiming the benefit of L. T. Grade from back date. The said petition was disposed of finally by order of this Court dated 28995 and it appears from the said order which is contained in Annexure5 to the writ petition that the present petitioner was a party in the said writ petition and as per the averments made by the respondent No. 4 that the present petitioner was appointed much later than the respondent No. 4 and the present petitioner had wrongly been given the L. T Grade without considering the claim of the respondent No. 4. The petition filed by respondent No. 4 was disposed of with a direction to the Director of Education to decide the controversy after hearing the present petitioner and other necessary parties.

2. In pursuance of the order of this Court dated 28995, the Director of Education issued notices to the present petitioner, respondent No. 4, Committee of Management and the principle of the institution. The notices were issued on 261195, 261295 and 22196 which are contained in Annexure 7 to 9 to the petition. In pursuance of the said notices, all the parties including the present petitioner appeared before the Director of Education and made their submissions. After hearing all the parties the impugned order dated 1961996 was passed.

3. While deciding the said representation the claim of respondent No. 4 was rejected and it was found that petitioner had also been wrongly given the L. T grade and thus the petitioner was also deprived of the said benefit. Being aggrieved and dissatisfied the petitioner has filed the instant writ petition.

4. The first contention of the learned counsel for the petitioner is that in spite of the fact that the present petitioner was a party in the earlier writ petition, the order dated 28995 was passed without hearing the petitioner. The said order of this Court does not adversely affect the petitioner as it simply directed the competent authority to decide the claim as in the earlier writ petition there had been specific allegation and averments made by the respondent No. 4 that the present petitioner had wrongly been given the L. T Grade. This Court had specifically directed the competent authority to decide the dispute after giving opportunity of hearing to the present petitioner also and the present petitioner was heard and the impugned order was passed after considering his submission. Thus, this contention of the learned counsel for the petitioner has no force and is rejected.

5. The second contention of the learned counsel for the petitioner is that the impugned order has been passed in violation of the principle of natural justice as the petitioner had never been given a notice to show cause as to why he should not be deprived of the L. T grade given to him earlier.

6. In view of the fact that there had been specific allegation in the writ petition filed by respondent No. 4 before this Court that the present petitioner had wrongly been given the L. T. grade and the present petitioner was impleaded in the said writ petition and this Court while passing the order dated 28995 specifically directed the competent authority to decide the issue after giving the opportunity of hearing to the present petitioner, it is not open for the petitioner to raise this issue as the petitioner was the only teacher from the said institution who was given the notice and opportunity of hearing. The order of this Court dated 28995 was in the knowledge of the petitioner and he was fully aware of the averments and allegations made in the said writ petition that he had wrongly been given the benefit of L. T grade as is evident from the order dated 28995 itself. I find no force in this contention also and the same is hereby rejected.

7. Learned counsel for the petitioner further submits that as the petitioner had been given the benefit of L. T grade long time back, it was not permissible for the competent authority to deprive the petitioner of the said benefit after a lapse of such a long time.

8. The contention is preposterous particularly, in view of the law laid down by the Hon'ble supreme Court in Smt. Ravindra Sharma v. State of Punjab, 1995 (1) SCC 138, where in it has been held that if some benefit has been given to an employee to which he is not entitled under the law, he can be deprived of the same as no acquiescence or estoppel applies against the employer.

9. Learned counsel for the petitioner has also raised the issue that earlier the

claim of respondent No. 4 had been rejected and thus the present proceedings were barred by the principle of constructive res judicate. However, the present petitioner knowing the factual controversy did not raise this issue before the competent authority nor any document was filed by the present petitioner in support of the contention raised in this petition now before the competent authority. Thus, issue arises whether the petitioner can be allowed to agitate this issue first time in writ petition. This issue this Court has to go into the evaluation of facts. This is beyond the scope of Article 226 of the Constitution. Moreover, it has not asserted that the finding returned by the competent authority is inaccurate factually. The present petitioner has filed certain documents now in support of his contention in this petition which were not filed before the competent authority nor this issue was agitated expressly or impliedly before the said authority.

10. The only submission of the present petitioner before the competent authority has been that "Shri Nanhoo Mai Sharma had worked only for two years as a teacher and he was teaching Art subject in 1979 and thus, he was not entitled for L. T. grade as per the Government Order No. 5583". The present petitioner has never made submissions as how he was entitled for the L.T. grade. Under the circumstances, this Court is precluded from entering into this controversy.

11. In *Ratanlal Sharma v. Managing Committee*, 1993 (4) SCC 10, the Apex Court has observed as under:

"A point not raised before the Tribunal or administrative authority may not be allowed to be raised for the first time in writ jurisdiction, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course a must."

Thus, a plea not specifically raised before the competent authority which goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the writ court can be justified in entertaining it but if the plea requires investigation of fact, this Court may not permit a petitioner to raise such a plea first time in writ jurisdiction as observed by the Constitution Bench of the Hon'ble Supreme Court in, *A. St. Arunachalam pillai v. Mis. Southern Roadways Ltd.* and another, AIR 1960SC1191.

12. The same view had been taken by the Apex Court in *A M. Alison v. State of Assam*, AIR 1957 SC 227; *Cantonment Board Ambala v. Pyare Lal*, AIR 1966 SC 108; *State of U.P. v. Dr. Anupam Gupta*, AIR 1992 SC 932; *Bhanwar Lal v. T. K. A. Abdul Karim*, AIR 1992 SC 2166 and *Rajeshwari Amma v. Joseph*, AIR SC 719.

13. The writ jurisdiction is not meant for a party who is not diligent at the first available opportunity to protect his interest. He was careless. He cannot be permitted now to use the writ jurisdiction to remedy his own faults and laches.

14. In view of the law laid down in the aforesaid cases, I am of the considered

opinion that the petitioner ought to have raised these pleas before the Director of Education and produce the evidence before him. As he failed to take the appropriate steps before the appropriate authority it is not permissible for the petitioner to raise all these pleas for the first time in writ jurisdiction.

15. In view of the above, this petition is dismissed in limine.