

(2009) 01 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.16985 of 1988

Radhey Lal Verma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 226

Citation : (2009) 01 AHC CK 0080

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

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned counsel for the parties.

2. This writ petition was dismissed on 23.7.2003 as infructuous on the ground that petitioner had already retired. Against the said order petitioner filed special appeal No.533 of 2003. Appeal was allowed and order of dismissal of writ petition was set aside and writ petition was restored and directed to be decided in respect of prayer of the petitioner for payment of salary from 1.4.1980 to 30.10.1989.

3. In this writ petition on 1.11.1989 an interim order was passed for payment of salary till further orders. Petitioner retired in 2001 (Admittedly since 1.11.1989 till his retirement, petitioner got the salary). Petitioner was headmaster in Sardar Patel Higher Secondary School Bairi/Akbarpur, Kalyanpur District Kanpur Nagar. Initially the school was upto Junior High School level.

4. In prayer "a" of the writ petition it was prayed that respondents 2 and 3, D.I.O.S. and Manager of the school be directed to pay salary to the petitioner from September 1983. However, through amendment application it was prayed that due to inadvertence the said period was mentioned while in fact petitioner had not been paid salary from April 1981. Amendment application dated 18.3.1996 has been allowed.

5. The facts of the case as disclosed in the writ petition are that petitioner was appointed as Assistant teacher in the school in the year 1970 when it was Junior High School and he was appointed as headmaster in the year 1971, that in the year 1980 institution was upgraded to the High School and petitioner was appointed as acting headmaster of the High School. It has further been stated that in the year 1980 a raging dispute of Management arose in between two committees, one known by the name of Shiksha Samiti Sardar Patel H.S. School and the other by the name of Sardar Patel Trust (para 4). It has further been stated that lot of litigation took place in between the two committees and they also filed representations before Education authorities. It has further been stated in para 10 of the writ petition that petitioner is on good terms with one of the two rival management committees i.e. Shiksha Samiti hence the other committee appointed Sri Chhatra Pal Kanaujia as headmaster and petitioner was also charge sheeted by the same committee. Thereafter it is stated in para 11 of the writ petition that the management friendly to the petitioner i.e. Shiksha Samiti filed O.S. No.137 of 1986 for permanent injunction restraining the rival committee from removing the petitioner as acting headmaster and an interim injunction was granted in the said suit. It is alleged that on 3.3.1984 D.I.O.S. also passed some orders for payment of salary to several employees of the school in question including the petitioner. It is alleged in para 13 that in pursuance of the said order petitioner for the first time made representation for payment of salary on 30.6.1987 asking for salary from April 1980.

6. In the amendment application it has been stated that the school was brought on grantinaid list w.e.f. 1.4.1991.

7. It is stated in para 14 that on 25.2.1988 representation was made by the petitioner to D.I.O.S. to the effect that he must be paid salary in terms of interim order passed by the Civil Court. In the said representation it was stated that rival management was not permitting the petitioner to work as headmaster. It has further been stated that on 9.3.1988 D.I.O.S. passed the order that petitioner must be given the charge. The only effective prayer made in the writ petition is for payment of salary.

8. Admittedly, petitioner did not work until passing of interim order in this writ petiion. Petitioner did not file any suit. Suit was filed by the management favourable to the petitioner. In the said suit no prayer for making payment to the petitioner was made. In case petitioner wants to take benefit of the suit filed by management friendly to him then he will have to sink or sail with the said suit. Prayer for payment of salary having not been made in the said suit, it is barred by Order 2 Rule 2 CPC or the principles thereof. Petitioner did not make representation/demand for payment of salary promptly. According to the own case of the petitioner, first representation was filed by him in the year 1987 i.e. after about 6 or 7 years. By filing representation and that also after a long delay claim can not be kept alive. Vide C. Jacob v. Director of Geology & Mining, 2008 AIR SCW 7233 and AIR 2006 SC 1581, ?Karnataka Power Corporation Ltd. v. K.

Thangappan?.

9. Moreover, according to the own case of the petitioner, the school was brought on grantinaid list w.e.f. 1st April 1991. Accordingly, state is not liable to pay salary prior to the said date.

10. Last but not the least, petitioner has not worked for the period for which he is asking for salary. Under the facts and circumstances of the case he is not entitled for salary for the said period under the principle of no work no pay.

11. Acordingly, writ petition is dismissed.

(Petition dismissed)