
(2014) 08 SC CK 0088

In the Supreme Court Of India

Case No : Civil Appeal No. 9130 of 2014 (Arising out of SLP (C) No. 342 of 2011)

Ram Bahadur Pandey

APPELLANT

Vs

The State of Uttrakhand

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 — Rule 11, 9

Citation : (2014) 6 ALJ 648 : (2014) 4 ESC 676 : (2014) LabIC 4506 : (2014) 11 SCALE 579 : (2015) 2 SCC 142 : (2015) 1 SCC(L&S) 326 : (2014) 4 SCT 479 : (2015) 1 SLJ 304

Hon'ble Judges : Uday Umesh Lalit, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Sanjiv Sen, Sr. Advocate, Alok Tripathi and Rajeev Sharma, Advocates for the Appellant; Ajay Srivastava and Mridula Ray Bharadwaj, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil R. Dave, J.—Leave granted.

2. Looking at the facts of the case and in view of the fact that pleadings are complete, the learned Counsel appearing for the parties have desired that the appeal be finally heard today. In the circumstances, the appeal is finally heard.

3. Being aggrieved by the judgment delivered by the High Court of Uttrakhand at Nainital dated 29th July, 2009 in Special Appeal No. 130 of 2009, the Appellants have approached this Court.

4. The facts, which are not in dispute, are that the Appellants were working as Assistant Teachers in Tribal Primary Schools, managed by Bhotia Tribal Service Society, which are recognized schools by the State of Uttrakhand. Certain complaints had been received against them with regard to their work and therefore, after serving show-cause notices upon the Appellants, their services

had been terminated by orders dated 25th June, 1998.

5. The Appellants had challenged the validity of the action taken against them by filing writ petitions in the Allahabad High Court, which had been subsequently transferred to the High Court of Uttarakhand at Nainital, upon bifurcation of the erstwhile State of Uttar Pradesh. After hearing the concerned parties, the High Court had disposed of the said writ petitions vide order dated 18th August, 2006, whereby the Secretary, Samaj Kalyan, Government of Uttarakhand was directed to look into the matter and pass an appropriate order. In pursuance of the said order, the Secretary, Samaj Kalyan, Government of Uttarakhand, had considered the matter with regard to termination of services of the Appellants and had come to a conclusion that the Government had no role to play in the matter as the Appellants were employees of a Society, which was a self-financed society.

6. In pursuance of the aforesaid order passed by the Secretary, Samaj Kalyan, Government of Uttarakhand, the Appellants had again approached the High Court of Uttarakhand at Nainital by filing Writ Petition No. 452 of 2009 (SS), wherein they had challenged the orders whereby their services had been terminated. The said petition had been dismissed and therefore, the Appellants had filed Special Appeal No. 130 of 2009 in the High Court. The said appeal was partly allowed vide order dated 29th July, 2009, whereby the matter had been remanded to the learned Single Judge for considering whether the Appellants were entitled to salary for the period prior to termination of their services. The appellate Court, however, did not interfere with the orders of termination i.e. the orders of termination had been confirmed.

7. In the afore-stated circumstances, the Appellants have approached this Court by filing the present appeal.

8. The main ground which has been submitted by the learned Counsel appearing for the Appellants for challenging the validity of the impugned judgment is that the termination of services of the Appellants is bad in law because it is in violation of Rule 11 of the Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975 (hereinafter referred to as "the Rules").

9. It has been submitted that without taking prior approval in writing of the Basic Shiksha Adhikari, the services of the Appellants were terminated, which is in violation of the provisions of the Rule 11 of the Rules. It has been further submitted that the Appellants were working in a recognized school and therefore, the provisions of the Rules were applicable to them and as their services had been terminated without prior approval of the Basic Shiksha Adhikari, the orders of termination were bad in law and therefore, the Appellants must be reinstated in service with back wages.

10. The learned Counsel appearing for the Respondent-institution has submitted that the Appellants had not been given appointment after following the procedure prescribed in Rule 9 of the Rules and at the time of their appointment,

applications from other deserving candidates were not invited and therefore, appointment of the Appellants was not legal and therefore, it was not necessary to follow the provisions of Rule 11 of the Rules. He has, therefore, submitted that the orders terminating services of the Appellants are just, legal and proper.

11. Rule 11 of the Rules is reproduced herein below:

11. Dismissal and removal of teachers.-No order dismissing, removing or terminating the services of a teacher or other employee of a recognised school shall be passed save with the prior approval in writing of the Basic Shiksha Adhikari:

Provided that in case of recognised schools established and administered by minority referred to in Clause (1) of Article 30 of the Constitution, such an order shall not require the approval of the Basic Shiksha Adhikari but shall be reported to him.

12. We have heard the learned Counsel appearing for the parties and have also gone through the relevant record.

13. It is not in dispute that the Appellants were working as Assistant Teachers in recognized schools. In view of the fact that the Appellants were working in recognized schools, according to Rule 11 of the Rules it was necessary to obtain prior written approval of the Basic Shiksha Adhikari before terminating their services. It is an admitted fact that no such prior approval had been obtained before terminating services of the Appellants and therefore, there was a clear violation of the provisions of Rule 11 of the Rules.

14. It may be true that there might be irregularities in appointment of the Appellants as Assistant Teachers in the past but as they were working in the schools duly recognized under the Rules, in our opinion, it was obligatory on the part of the Management to follow the provisions of Rule 11 of the Rules while terminating services of the Appellants by way of punishment.

15. In the circumstances, we set aside the impugned judgment delivered by the High Court and direct that the Appellants be reinstated in service within two months from today and in view of the fact that their appointments were not in accordance with the Rules, they shall not be paid back wages. If the Appellants had not been paid their salary for the period prior to termination of their services, it would be open to the Appellants to take appropriate action for recovery of salary for the said period. It is not on record whether the Appellants had not been paid for the period prior to their termination and therefore, we do not pass any order with regard to payment of back wages. We also clarify that it would be open to the management to take appropriate disciplinary action against the Appellants in accordance with law for the irregularities committed by them, if they think it appropriate.

16. The appeal is accordingly disposed of as allowed, but with no order as to costs.