
(2001) 08 AHC CK 0109
In the Allahabad High Court
Case No : Special Appeal No. 1009 of 1999

Ram Bahadur Singh	Vs	APPELLANT
State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Citation : (2001) 4 AWC 2628 : (2001) 91 FLR 1254 : (2002) 1 UPLBEC 48

Hon'ble Judges : S.K. Sen, C.J;R.K. Agarwal, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant; Ran Vijay Singh, S.C. and Arun Tandon, for the Respondent

Final Decision : Allowed

Judgement

S.K. Sen, C.J.—We have heard Sri Ashok Khare, learned senior advocate for the appellant, Sri Ran Vijal Singh, learned standing counsel for the State respondent Nos. 1 and 2 and Sri Arun Tandon, learned advocate appearing for respondent No. 3.

2. This special appeal is directed against the judgment and order dated 9.9.1999, passed by the learned single judge in Civil Misc. Writ Petition No. 38478 of 1999, dismissing the writ petition on the ground that the writ petitioner, appellant herein, has already exercised the option on 20th December, 1990, to retire on attaining the age of 58 years and the said option was accepted by the competent authority.

3. The contention of the writ petitioner, appellant herein, is that he has exercised his first option on 20th December, 1990, to retire on attaining the age of 58 years. Thereafter the petitioner exercised another option on 20th December, 1991, in view of the Government order dated 17.2.1991, claiming that he was entitled to continue in service till he attains the age of 60 years. The learned single Judge held that since the District Inspector of Schools has recorded clear and categorical finding that the first option exercised by the petitioner in the year

1990 has already been accepted and his second option was not approved by the department, the petitioner continued to hold the said post after 30th June, 1998, illegally. The learned single Judge further held that the findings recorded by the District Inspector of Schools are based on relevant evidence available on the record. On the basis of the aforesaid facts and taking into account that no rejoinder-affidavit had been filed to the short counter-affidavit filed by respondent No. 3. Committee of Management, the writ petition was dismissed since there was no denial to the allegations made in the short counter-affidavit.

4. Sri Ashok Khare, learned senior advocate appearing for the appellant has argued before us that it is open to the petitioner to withdraw his first option anytime before he reaches the age of superannuation taking into account that he is to retire at the age of 58 years which is 30th June, 1998, i.e., at the end of the academic session. In the instant case, the option was withdrawn on 20th December, 1991 and as such, the first option exercised by him to retire at the age of 58 years stood withdrawn. In support of his contention, learned counsel for the appellant has relied upon the following decisions :

Balram Gupta Vs. Union of India (UOI) and Anr, ; Paware Finance Corporation Ltd. v. Framed Kumar Bhalla 1997 (4) SCC 2354 and Shambhu Murari Sinha v. Project and Development India, JT2000 (6) 358."

5. Learned advocate for the appellant has also submitted before us that the competent authority to accept the option is the Deputy Director of Education and not the District Inspector of Schools and in support of his contention, he has relied upon the following decisions :

Kamla Sharma (Smt.) Vs. Deputy Director Education and Others, ; Prabha Kakkar (Smt.) Vs. Joint Director of Education and Others,

6. Sri Arun Tandon, learned advocate appearing for respondent No. 3 and Sri Ran Vijay Singh learned standing counsel, appearing for the State respondents do not dispute the legal propositions as has been advanced by Sri Ashok Khare, learned senior advocate for the appellant. Sri Ran Vijay Singh, learned standing counsel also fairly submits that since no counter-affidavit has been filed in the writ petition, there is no scope for disputing the factual matter, since it was recorded by learned single Judge himself that the District Inspector of Schools recorded clear and categorical finding that the option exercised by the petitioner in the year 1990 had already been accepted but the second option was not approved by the department. From the record. It appears that the same was countersigned by the Associate District Inspector of Schools. In that view of the matter, there is no scope for raising any dispute with regard to the fact that it was not countersigned by the Deputy Director of Education. In view of the settled position of law, in our opinion, since the fact regarding counter signature cannot be disputed, the writ petitioner should have been granted relief by the learned single Judge. The learned single Judge, however, failed to properly appreciate the scope and nature of the contentions raised on behalf of the writ

petitioner-appellant. There cannot also be any dispute that the petitioner worked up to 30th August. 1999 and for that period, he was entitled to salary. Sri Khare, learned advocate for the appellant also accepts that the petitioner has received his salary for that period. In that view of the matter, the said order directing the said amount of salary to be recovered is not proper inasmuch as the petitioner was entitled to the same having continued in service. As such, we are of the view that the appellant should have been treated in service for the period until he attained the age of 60 years, i.e., 30th June, 2000.

7. In the facts and circumstances of the case, since the appellant did not work for the remaining period, i.e., from 30.8.1999 to 30.6.2000, in our view the interest of justice shall be best served if the appellant petitioner is paid half of the amount due and payable to him for each and every month from September. 1999 to June. 2000. However, it is made clear that the appellant shall be entitled to all retiral financial benefits, treating that he is deemed to have retired on 30th June, 2000 and he should be treated to be continued in service for that period without any break.

8. Learned counsel for the appellant petitioner is agreeable to accept half of his salary for that period to which he did not work and in the interest of justice, it is directed that the payment due to the appellant including all retiral benefits shall be made available to him within three months from the date of production of a certified copy of this order before the authority concerned.

9. In the result, the appeal is allowed and the impugned order dated 9.9.1999, passed by the learned single Judge is set aside.

10. The special appeal succeeds and is allowed to the extent indicated above.