
(1996) 11 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 14395 of 1992

Ram Jee Das

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Citation : (1996) 11 AHC CK 0014

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : V.S. Dwivedi, for the Appellant;

Judgement

M. Katju, J.—This writ petition has been filed with a prayer to refix the Petitioner's pension on the basis of the length of his service as 36 years five months and to restore the salary of 123 days deducted from the pension.

2. I have heard Dr. R. S. Dwivedi learned Counsel for the Petitioner and learned standing counsel.

3. The Petitioner retired as permanent Principal of Dhata Inter College, Dhata, District Fatehpur on 30.6.1985. He had started his service as permanent assistant teacher in a primary school under the Nagar Mahapalika, Allahabad on 20.1.1949 vide Annexure-1 to the writ petition and served there upto 28.8.1961. The total period of this service is 12 years seven months and nine days. On 29.8.1961 the Petitioner joined as L. T. grade teacher in Jawahar Lal Nehru Inter College, Sarsawan, Allahabad, where he served upto 10.7.62 when he got his appointment as Headmaster in Junior High School, Dhata, District Fatehpur. The Junior High School, Dhata was subsequently raised to High School and then Intermediate standard. In paragraph 6 of the writ petition, it is alleged that there was a law and order problem in the college because of which the Petitioner was directed by the authorities to abstain from attending the college from 29.7.1974 to 26.2.1975 but the Petitioner was paid salary for this period. It is alleged in paragraph 7 of the writ petition that on 28.12.1973 some unruly teachers and

students tried to burn the Petitioner alive, and a lot of furniture and other household materials were burnt, but the Petitioner somehow escaped. A true copy of the F.I.R. is Annexure-3 to the writ petition. In view of this law and order situation, the Sub-Divisional Officer, Khaga, asked the Petitioner to close the college sine die vide letter dated 22.4.1974 Annexure-4 to the writ petition. The college was closed but somehow the examination was held. On the reopening of the college in July 1974. the District Inspector of Schools, Fatehpur. on the request of the Manager directed him to grant leave on full pay to the Petitioner for the period 29.7.1974 to 26.9.1974 and this leave was extended upto 26.2.1975 vide Annexures 6 and 6A to the writ petition. In paragraph 9 of the writ petition, it is stated that the State Government had started a scheme known as "Triple Benefit Scheme" which also includes grant of pension vide Annexure-6 to the writ petition. The Petitioner has alleged that he is entitled to get the benefit of thirty six years of service without any deduction for the period in respect of which he was on leave, but the Petitioner has been granted pension on the basis of service counted only for twenty three years instead of thirty six years vide Annexure-8 to the writ petition. In this order, the period of service calculated is only twenty one years after excluding two years service when he was Headmaster of Junior High School, Dhata. In paragraph 11 of the writ petition, it is alleged that the salary of 123 days was deducted holding that it was illegally paid to the Petitioner. Aggrieved, this writ petition has been filed.

4. A counter-affidavit has been filed on behalf of Respondent No. 3. In paragraph 5 of the same, it has been stated that the Petitioner wants to add the period of his service as assistant teacher in a private school run by the Nagar Mahapalika, Allahabad and Jawahar Lal Nehru Inter College, Sarsawan, Allahabad, which cannot be accepted. It is further stated that the Petitioner had worked on temporary basis from 29.8.1961 to 10.7.1962 in Jawahar Lal Nehru Inter College, Sarsawan, Allahabad, and left the job after resigning and the such period cannot be added for computing the pension. The leave of 123 days was not accorded to the Petitioner as per rules, and as such the said salary has been rightly deducted. In the rejoinder affidavit, it has been stated in paragraph 4B of the same that the primary school run by the Nagar Mahapalika, Allahabad, was an aided school and the service in Jawahar Lal Nehru Inter College was not temporary but was a substantive one on probation. A photocopy of the certificate in this connection is Annexure R.A.-I. It has been denied that the salary for 123 days was wrongly given to the Petitioner. In paragraph 6 of the rejoinder affidavit, it is stated that the primary school is run by a local authority, and was thus not an un-aided institution.

5. In my opinion, this writ petition deserved to be allowed. I have held in *Ram Janam Singh v. Dy. Director of Education and Ors.* in Writ Petition No. 111855 of 1994, decided on 14.9.1995 that even the period for which the Petitioner worked as a clerk has to be added in the length of his service. Similarly in *Ram Raksh Pal v. Slate of U.P. and Ors.* Writ Petition No. 34579 of 1993 decided on 1.9.1995, it has been held that even the service in a private institution has to be added to

the length of the service.

6. Following these decisions, I am of the opinion that the service rendered by the Petitioner in the school run by the Nagar Mahapalika, Allahabad and Jawahar Lal Nehru Inter College is to be added in calculating his pension. Hence, this writ petition is allowed. Mandamus is issued to the Respondents to refix the Petitioner's pension on the basis of length of service as thirty six years five months which would be done within a month of the production of the certified copy of this order before the authority concerned and the payment should commence forthwith thereafter. The arrears of pension should be paid within three months. As regards the deduction of salary of 123 days, in my opinion, there was no basis for making this deduction particularly when the amount had already been paid in accordance with the direction of the District Inspector of Schools. Hence, the salary for 123 days which has been deducted from the Petitioner's pension shall also be paid to him within two months.