
(1996) 04 AHC CK 0081
In the Allahabad High Court
Case No : Second Appeal No. 1907 of 1985

Ram Lautan Verma

APPELLANT

Vs

Ram Raj Pandey Higher Secondary School, Rohda, Basti

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (1996) 04 AHC CK 0081

Hon'ble Judges : O.P.Jain, J

Final Decision : Partly Allowed

Judgement

O. P. Jain, J.—This second appeal is directed against the judgment dated 5161985 passed by VIth Addl. District Judge, Basti by which an appeal filed by the present respondents was allowed and the judgment of Trial Court (Vth Addl. Munsif, Basti) dated 531982 was set aside.

2. The case of the plaintiffappellant in brief is that Shri Ram Raj Pandey Higher Secondary School was started as a junior High School in 1974 and plaintiff Ram Lautan Verma was its Headmaster. In 1977 the Junior High School was recognised as a High School and the plaintiff continued as the HeadMaster of the High School upto the filing of the suit. According to plaintiff he has the qualification for the Headmaster of High School. However, on 1st July, 1980 the Committee of Management of the institution published an advertisement in a newspaper inviting applications for the post of Headmaster. The plaintiff made a representation to the Deputy Director of Education and the District Inspector of Schools but they did not give any relief to the plaintiff. He therefore filed a suit.

3. It is alleged by the plaintiff in the plaint that the advertisement is illegal because there was no vacancy for the post of Headmaster and the Management Committee was also not validly constituted.

4. The suit was contested by D.I.O.S. and Deputy Director on the ground that when a Junior High School is upgraded as a High School, the post of Headmaster

is filled up by selection made by Selection Committee and there is no automatic promotion from .Headmaster of Junior High School to Headmaster of High School. It was further stated by the defendants that after upgradation in 1977 no one has been appointed as Headmaster and that the plaintiff is continuing as ad hoc Headmaster.

5. Defendant Nos. 1 and 2 i.e. the institution and the Managing Committee filed a separate written statement in which they took an additional objection that on 15/11/1980 the plaintiff submitted his resignation to the Manager and that the resignation was accepted.

6. On these pleadings the trial Court framed five issues but only issue number one is important for our purposes. That issue is to the effect whether plaintiff is the regular Headmaster of Shri Ram Raj Pandey Higher Secondary School.

7. From the pleadings it was an admitted fact that the plaintiff was the Headmaster of High School on the date of the suit. The only controversy was whether he was regularly appointed Headmaster or not. The learned Munsif found that recognition was given to the institution on the condition that a qualified Headmaster is appointed. It was an admitted fact that from 1977 to 1980 High School classes were being run in the institution and therefore it follows that there was a Headmaster in the institution. It was also found that the D.I.O.S. attested the signatures of the plaintiff on 15/11/1980 as the Headmaster of the institution. Another paper filed by the plaintiff was a statement submitted to Higher Educational Authorities. That statement was signed by the plaintiff as Headmaster and was also signed by the Manager. This shows that the Management of the institution recognised the plaintiff as the Headmaster of the institution.

8. In order to prove that he was a regularly selected Headmaster, the plaintiff called upon the Management to produce the Attendance Register of the year 1977 to 1980 and onwards, salary Register from 1977 onwards, proceedings Register of the Management Committee from 1974 onwards, service Books of the plaintiff, leave Account of the plaintiff and the staff statement of the institution from 1974 onwards. None of these documents were produced by the Management and the reply which was given was that some documents have been taken away by the plaintiff himself and some documents are with the Manager who is at Calcutta. It was also stated on behalf of the defendant institution that these papers are regularly being used in the institution and therefore it is not possible to produce them in Court. Naturally the learned Munsif drew adverse inference against the Management and came to the conclusion that the plaintiff is the regularly appointed Headmaster. The learned Munsif has also given a finding that no approval of the D.I.O.S. was required in the case of the plaintiff.

9. It was also found by the trial Court that on 10/10/1978 the Manager wrote a letter to the plaintiff that Sri Surendra Kumar Misra, Sri Triloki Nath Misra and Sri Ram Ugrah Pandey should be appointed and should be paid their salary. It was

found that Sri Surendra Kumar Misra was already working in some other institution situated at Bhagwanpur and therefore he could not have been appointed as a teacher of Shri Ram Raj Pandey, Higher Secondary School.

10. It will be recalled that the defendant Management had taken the plea that the plaintiff has resigned on 1551980 and the same has been accepted by the Management. However, no such resignation letter was produced before the trial Court and therefore it appears that the objection was raised in a casual manner and the Management was not serious about it.

11. In view of the above findings, the learned Munsif decreed the plaintiff suit with costs and restrained the defendants from interfering with the working of the plaintiff as Headmaster of the institution. The Management was further restrained from appointing any other person except the plaintiff as the Headmaster of the institution unless the services of the plaintiff are terminated in a lawful manner.

12. Being aggrieved against the decision of the learned Munsif the institution filed an appeal which was decided by VIth Addl. District Judge, Basti. In the appellate Court the so-called resignation letter of the plaintiff was produced and the plaintiff admitted that the letter is written and signed by him. However, it was said on behalf of the plaintiff that at the time of entry in service a resignation letter was obtained from him and the date 1551980 is not in the handwriting of the plaintiff. The 1st appellate court after a perusal of the resignation letter came to the conclusion that the ink used for writing the date is different from the ink used in the rest of the document. The appellate court therefore came to the conclusion that even after 1551980 the plaintiff continued as Headmaster of the institution and the contention on behalf of the Management that the plaintiff had resigned on 1551980 is not correct.

13. The 1st appellate court, however, came to the conclusion that the plaintiff was not appointed Principal of the institution after selection by a Selection Committee and therefore he will be deemed to be ad hoc Principal only and he cannot be treated as a regular Principal. The 1st appellate court has observed in Paragraph 18 of the judgment that after upgradation of the Junior High School in 1977 the plaintiff did not automatically become Headmaster of the High School nor he was appointed as Headmaster after upgradation.

14. That 1st appellate court has also held on the basis of Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, AIR 1976 SC 888 that a contract of personal service cannot be specifically enforced and the Court will not grant the relief of declaration and reinstatement to the plaintiff. It has been held in the above case that there are three exceptions to the above Rule. Firstly when some public servant is removed from service in contravention of Article 311 of the Constitution, secondly when the services of an industrial labour are terminated against the provisions of Industrial Disputes Act and thirdly where a Statutory body terminates the services of an employee against the provisions of the

statute. According to learned Addl. District Judge the plaintiff could have filed a suit for damages but the defendants cannot be compelled to accept the plaintiff as regularity appointed Headmaster of the institution. Another authority relied upon by the learned A. D. J. is Agarwal Digamber Jain Samiti Moti Katra v. Badri Prasad Srivastava, 1984 UPLBEC 633. It was also held by the learned A. D. J. that the plaintiff has impleaded the D.I.O.S. and the Deputy Director and therefore the State Government is also a necessary party and in the absence of the State Government no effective decree can be passed.

15. In view of these findings the learned A. D. J. allowed the appeal and dismissed the suit with costs. Being aggrieved against the decision of the 1st appellate court the plaintiff Ram Lautan Verma has filed the present second appeal.

16. I have heard learned counsel for the parties and have gone through the record.

17. There is no dispute about the fact that plaintiff Ram Lautan Verma was the Headmaster of the Junior High School. The controversy is limited to the effect whether on the upgradation of the Junior High School to High School. The plaintiff automatically became Headmaster of the High School. The trial Court has held that the plaintiff became the regularity appointed Headmaster of the High School and a contrary view has been taken by the 1st appellate court. It is not necessary to examine the various provisions of U. P. Intermediate Education Act and the Regulations framed thereunder because this question has been settled by Ram Kunwar Singh v. State of U. P., 1986 UPLBEC 413 which is a Division Bench case. It has been clearly held after a consideration of Regulations 4 and 2 framed under U. P. Intermediate Education Act as well as the provisions of U. P. Secondary Education Services Commission and Selection Boards Act of 1982 (U. P. Act No. 5 of 1982) that where a Junior High School is raised to the level of a High School, the Headmaster of such Junior High School is not entitled to any automatic promotion to the post of Headmaster in the High School. The same view has been taken by another Division Bench in 1986 UPLBEC 477 Shiksha Prasar Samiti Babhanan District Gonda v. State of U. P. These two cases have been relied upon by this Court on 18/11/1987 in this very case while vacating the interim order, dated 18/12/1985. It must therefore be held that plaintiff/appellant Ram Lautan Verma did not automatically become; regularity appointed Headmaster of the High School. However, there is no dispute about the fact that plaintiff was the ad hoc Headmaster of the upgraded High School and he was regular Headmaster of the Junior High School.

13. This Court fully agrees with the views expressed by two courts below that the plea taken by the Management that the plaintiff resigned on 15/11/1980, is totally false. The 1st appellate court has seen the so-called letter of resignation and has observed that an undated resignation letter was obtained from the plaintiff at the time of his appointment and later on 15/11/1980 was introduced by a different ink. The theory of resignation is therefore a myth.

19. The next question which arises for consideration is whether the plaintiff-appellant is entitled to the declaration and injunction prayed for by him. The 1st appellate court has held that in the case of a contract of personal service no such relief can be given. The 1st appellate court has relied on Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, AIR 19,6 SC 888. In Para 18 of that case it was observed that it is clear that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the, contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. The court thereafter proceeded to lay down three exceptions namely, (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India ; (ii) where d worker is sought to be reinstated on being dismissed under the Industrial Law ; and (iii) where statutory body acts in breach or violation of the mandatory provisions of the statute. It will thus be seen that the rule laid down in Vaish Degree College case (supra) is to apply ?ordinarily and normally?. An inflexible rule has not been laid down, which is apparent from the fact that in Para 28 of the judgment the Apex Court proceeded to enumerate the circumstances which disentitled the plaintiff for discretionary relief of declaration or injunction. In the same case Hon''ble Bhagwati, J. (as his Lordship then was) has delivered a separate concurring judgment and it has been observed in Para 35 that the first respondent, on this view, would ordinarily be entitled to the declaration an J injunction prayed by him, but the relief of declaration and injunction being discretionary and having regard to the peculiar facts and circumstances of the case, it is not a proper case where such relief of declaration or injunction should be granted to the first respondent. The judgment shows that the plaintiff was deprived of the relief of declaration and injunction mainly due to the circumstances of the case narrated in Paragraph 28 of the judgment.

20. In this connection a reference may be made to (1981) 1 SCC 722 Ajay Hasiya v. Khalid Mujib Suhravardi in which it has been held that a registered Society which carried on the administration of an educational institution receiving grant from the State comes within the meaning of word ?authority? in Article 12 of the Constitution.

21. A reference in this connection should also be made to Manmohan Singh v. Commissioner of Union Territory, Chandigarh, AIR 1985 SC 364S in which it has been held that an aided School which receives grant upto 95% Of its expenditure, teachers receiving protection under the Act and the School subject to Regulations made by Education Department is ?other authority? within the meaning of Article 12 of the Constitution and amenable to writ jurisdiction of High Court. While making these observations Hon''ble Court had relied on the case of Ajay Hasiya (supra) in Paragraph 3 of the judgment. It is true that the cited case relates to exercise of writ? jurisdiction whereas this Court is dealing with a second appeal. However, in a civil appeal similar views were expressed by the Apex Court in 1989 Suppl (2) SCC 732Kayasth Pathshala, Allahabad v,

Rajendra Prasad. In that case a number of earlier cases on the point were reviewed. Ultimately the plaintiff was not found fit for the relief of reinstatement but there are observations in the case that in a fit case such a relief can be granted.

22. In AIR 1989 SC 1067 it has been observed that if the rights are of purely a private character no mandamus can issue, if the Management of the college is purely a private body with no public duty mandamus will not lie. But once these are absent the mandamus cannot be denied. In Paragraph 11 of the cited case *Vaish Degree College v. Lakshmi Narain* (supra) has been considered and has been distinguished on the ground that there is no plea for specific performance of contractual of service. The respondents , are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the College. They are claiming only the terminal benefit of arrears of salary payable to them. On this basis the trust was ordered to pay the arrears of salary.

23. The position in the instant case is exactly the same. The services of plaintiff Ram Lautan Verma have not been terminated and he is not seeking reinstatement. The plaintiff is praying for an injunction that the Management should not interfere in his functioning as Headmaster of the Institution unless his services are terminated in a lawful manner. He also prayed for an injunction that the vacancy in the office of Headmaster should not be notified and no advertisement should be published for filling up the vacancy. This prayer has been made because according to plaintiff he is the regularity appointed Headmaster and no vacancy exists. In the opinion of this Court the plaintiffappellant is not entitled to a declaration that he is the regularity appointed Headmaster. Nor he is entitled to get an injunction restraining the Management from notifying the vacancy to U. P. Secondary Education Services Commission. The plaintiff is only entitled to a declaration that he is the ad hoc Headmaster of Shri Ram Raj Pandey Higher Secondary School, Rohda and he is also entitled to get an injunction against the Management that no interference should be made so long he continues as the ad hoc Headmaster of me institution. Under the provision of U. P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 the ad hoc appointment can be made by promotion under Clause 4(c). Such ad hoc appointment comes to an end when a candidate recommended by the Commission or the Boards joins the post.

24. In view of the above discussion the judgment of the 1st appellate court dismissing the suit should be set aside. The relief granted to the plaintiff by the trial court is required to be modified in the manner indicated above.

25. The second appeal is partly allowed and while setting aside the judgment and Decree passed by VIth Addl. District Judge, Basti on 51085, the plaintiff suit is partly decreed and it is declared that the plaintiff id continuing as ad hoc Headmaster of the High School from the time when it was upgraded. The

defendants are restrained from interfering with the functioning of the plaintiff. This decree will not prevent? the defendants from notifying the vacancy to the Commission and as soon as a candidate recommended by the Commission joins the post of Headmaster of Shri Ram Raj Pandey Higher Secondary School, Rohda the ad hoc appointment of the plaintiff shall cease to have effect. The cost of this litigation throughout will be paid to the plaintiff by the Management of the High School (respondent Nos 1,2 and 3).