

(2017) 01 AHC CK 0319
In the Allahabad High Court
Case No : 55 of 2015

Ram Nakshatra Prasad Maurya

APPELLANT

Vs

State Of U.P. And Ors.

RESPONDENT

Date of Decision : 06-01-2017

Acts Referred:

Citation : (2017) 01 AHC CK 0319

Hon'ble Judges : V.K. Shukla, Sangeeta Chandra

Bench : Division Bench

Advocate : Harindra Prasad, Indra Raj Singh, J.S. Maurya, S.K. Chaturvedi, Sanjay Chaturvedi

Judgement

1. Ram Nakshatra Prasad Maurya is before this Court, assailing the validity of the order dated 23.04.2013 passed by the learned Single Judge in Civil Misc. Writ Petition No. 60802 of 2007 (Ram Nakshatra Prasad Maurya Vs. State of U.P. through Secretary, Basic Education, Secretariat, Lucknow and others), wherein learned Single Judge has proceeded to dismiss the writ petition by observing that actually petitioner-appellant was not at all working in the institution and accordingly not entitled for claiming any salary.

2. Brief background of the case is that petitioner-appellant claims to have been appointed as Assistant Teacher in the institution, namely, Vidya Mandir Junior High School, Belthararoad, District Ballia on 02.08.1976 and also claims that his appointment was approved by the Assistant Director of Basic Education on 22.04.1980 when the institution was accorded permanent recognition. Petitioner-appellant has contended that thereafter under "Three Language Scheme" of the State Government, District Basic Education Officer, Ballia vide order dated 16.05.1989 has approved the engagement of petitioner-appellant. Petitioner-appellant has contended that salary was not being paid to him by the institution concerned, and in this regard he had filed Civil Misc. Writ Petition No. 28007 of 1996 for payment of salary, and this Court on 12.08.1992 had issued interim mandamus to pay salary or to show cause, and even then salary was not paid,

then petitioner-appellant proceeded to file Civil Misc. Writ Petition No.34910 of 2009 claiming salary as Sanskrit Teacher and said writ petition was disposed of in limini vide order dated 01.11.1996 asking the District Basic Education Officer, Ballia to consider and decide the claim of the petitioner-appellant with regard to his claim for salary. Pursuant to the order passed by this Court, claim of the petitioner-appellant has been considered and turned down vide order dated 24.07.1997. Said order has been subjected to challenge in Civil Misc. Writ Petition No.36091 of 1997 and ultimately said writ petition has been allowed in part on 13.10.2006 and the matter has been remanded back to District Basic Education Officer for taking fresh decision and specially in regard to petitioner-appellant's right to receive salary etc. Pursuant to the directives issued by this Court, District Basic Education Officer, Ballia once again examined the matter and has proceeded to non suit the claim of petitioner vide order dated 20.09.1997. This particular order has been subjected to challenge in Civil Misc. Writ Petition No. 60802 of 2007 and same has been turned down on 23.04.2013 and thus impelling the petitioner-appellant to prefer present Special Appeal before this Court.

3. Sri Indraj Singh, learned counsel for the petitioner-appellant submitted before us that earlier directives issued by the learned Single Judge of this Court in Civil Misc. Writ Petition No. 36091 of 1997 has not at all been complied with in its word and spirit and learned Single Judge proceeded to dismiss the writ petition and at no point of time appreciated this facet of the matter and contrarily issue that has never been an issue has been raised, as such Special Appeal deserves to be allowed.

4. Countering the said submission, learned Standing Counsel as well as Sri Sanjay Chaturvedi, Advocate and Sri S.K. Chaturvedi, Advocate on the other hand contended that claim of petitioner-appellant is totally false and fact of the matter is that he has not worked in the institution concerned since 1989 and as such no interference is required to be made, and certainly in this backdrop when learned Single Judge has recorded finding that petitioner-appellant has never functioned in the institution and there is no documentary evidence to show and substantiate that petitioner has functioned in the institution.

5. After respective arguments has been advanced, factual situation on which there appears no dispute inter-se parties that petitioner-appellant has been engaged as Assistant Teacher in the institution, namely, Vidya Mandir Junior High School, Belthararoad, District Ballia on 02.08.1976 and his appointment? has been approved by the Regional Assistant Director of Basic Education VIIth Region, Varanasi on 22.04.1980. This much is also reflected that the petitioner-appellant from 08.02.1989, as per Manager has not functioned, whereas he claims that he has been functioning and as there has been dispute in respect of right to run and manage the affairs of the institution inter-se two warring groups, he has been made victim of same. This much fact is also reflected from the record that inspection in question has been carried out and in the said inspection,

petitioner-appellant has been found in the institution, whereas in another inspection it has been mentioned that petitioner-appellant has not at all been attending the institution since last one year. Fact of the matter is that there is serious dispute, as to whether petitioner-appellant has been functioning since 08.02.1989 or not?. Factum of petitioner-appellant functioning and performing and discharging his duties as Assistant Teacher Sanskrit is not at all supported by any documentary evidence and same is based on bald statement of fact and in this backdrop? merely because inspection has been carried out and petitioner-appellant has been found in the institution concern, same is not at all indicative of the fact that petitioner-appellant has been performing and discharging his duty whereas there is a contrary report also on this score.? Once there has been serious issue as to whether petitioner-appellant has functioned or not, said issue is to be answered on the basis of evidence adduced.?

6. It is true that Management of the institution has taken categorical stand that since 08.02.1989 petitioner-appellant has never functioned in the institution and this is also equally true that at the point of time when the matter has been decided by this Court on 13.10.2006 categorical mention was made to pass order in regard to entitlement of receipt of salary by the petitioner-appellant.

7. Learned Single Judge against whom judgment present special appeal has been filed, has proceeded to record categorical finding that at no point of time petitioner-appellant had functioned in the institution and has been paid any salary, and even before us learned counsel for the petitioner-appellant has miserably failed to demonstrate that petitioner-appellant has ever functioned after 08.02.1989 and whatever averment has been asserted before us that petitioner-appellant has been teaching in the institution concerned. Once petitioner-appellant claims that he has been teaching in the institution as Sanskrit Teacher under Three Language Scheme, as observed by the learned Single, then there ought to have been documentary evidence available on record indicating therein that he has been teaching the subject of Sankrit to the student, and his name in the time table and signature in the attendance register must be there. District Basic Education Officer, Ballia pursuant to the order passed by this Court, has proceeded to examine the matter in detail and has recorded categorical finding that after 08.02.1989 petitioner-appellant has never functioned.

8. Once categorical finding has been recorded that after 08.02.1989 petitioner-appellant has not functioned, then it may be true that there is no order of termination, but the fact of the matter is that once petitioner-appellant has not at all functioned then salary cannot be ensured to him. Here one more additional reason that has swayed, District Basic Education Officer refuse to accord salary, is that in the managers return, against 15 sanctioned posts, petitioner-appellant's name was not at all there. Once against 15 sanctioned posts other incumbents were already there who were being paid their salary from the State Exchequer, then qua 16th incumbent, in the absence of additional post salary by

no stretch of imagination could have been ensured. Petitioner-appellant accordingly cannot get salary from State Exchequer. Coupled with this once categorical finding has been recorded that petitioner-appellant after 08.02.1089 has never worked and there is no material to show and substantiate the fact that petitioner-appellant has worked then even though may not have? been terminated, but no salary can be paid to him. In view of this, judgement passed by the learned Single judge, warrants no interference . With the above, present Special? Appeal stands dismissed.