
(2009) 07 AHC CK 0171
In the Allahabad High Court
Case No : Special Appeal No. 447 of 2009

Ram Naresh and 59 others	Vs	APPELLANT
State of U. P. and others		RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Allahabad High Court Rules, 1952 — Chapter 8, 5

Citation : (2009) 07 AHC CK 0171

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Devendra Kumar Arora, J

Final Decision : Dismissed

Judgement

C.K. Prasad, CJ and D.K. Arora, JJ.—This intra Court appeal, at the instance of the writ petitionersappellants, under Rule 5 Chapter VIII of the Allahabad High Court Rules, arises out of an order dated 29.5.2009 passed in Civil Misc. Application No.1845 (W) of 2009 filed in Writ Petition No.7621 (SS) of 2008.

The short facts giving rise to the present appeal are that by order dated 19.5.2009 passed in Writ Petition No.7621 (SS) of 2008, interim order dated 7.1.2009 was vacated and the writ petition was directed to be listed for hearing on 20.7.2009. The writ petitionersappellants, preferred Special Appeal No.361 of 2009 (Ram Naresh and others Vs. State of U.P. & Others) and a Division Bench of this Court, vide order dated 29.5.2009 disposed of the aforesaid appeal as well as other analogous appeals.

2. It seems that an application for correction of order dated 19.5.2009 was filed, which was registered as Civil Misc. Application No.55130 of 2009 in Writ Petition No.7621 (SS) of 2008. By order dated 29.5.2009, the corrections have been made in the order dated 19.5.2009. Additions or alterations made in the order are as follows:

1. Words holding brief of Sri A.K. Tiwari (shown in bracket) added.
2. For the word recall, vacation (shown in bracket) substituted.

3. For the word petitioners, similar claim (shown in bracket) substituted.

3. As, much has been said about the corrections so made, we would like to reproduce the same in entirety, which is as follows:

"Heard Mr. Mahendra Pratap Singh, (holding brief of Sri A.K. Tiwari), learned counsel for the applicants/opposite parties 3 to 5 and Mr. Pankaj Srivastava, learned counsel for the petitioners.

Applicants/opposite parties 3 to 5 have moved an application for recall (vacation) of the order dated 07.01.2009, whereby the respondents have been restrained from filling the vacancies in question unless the services of the petitioner as well as other employees are considered for regularization in terms of resolution of the Board of Management dated 09.07.2007, followed by the Government Order dated 22nd September, 2008.

Learned counsel for the applicants/opposite parties 3 to 5 does not dispute the aforesaid resolution of the Board of Management as well as Government Order issued on 22.9.2008, but submits that the Hon"ble Supreme Court has rejected the claim of the petitioners (similar claim) for regularization in the light of the decision rendered in the case of Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 Supreme Court Cases 1, the relevant paragraphs 43, 45, 54 are reproduced hereinunder."

4. Prayer of the appellants deserves to be noted in extenso.

"The relief sought in this appeal is that the order of the learned Single Judge dated 29.5.2009 and 19.05.2009 passed in writ petition no.7621 of 2008: Ram Naresh and 59 others Vs. State of U.P. & Others, be set aside and the interim order be restored and appeal may kindly be allowed throughout with cost."

Their further prayer is as follows:

"It is therefore most respectfully be prayed that the present appeal may kindly be allowed with cost throughout and the interim order passed in the cases be restored till the decision of the writ petition to meet the ends of justice between the parties."

5. Mr. Pankaj Srivastava, learned counsel appearing on behalf of the appellants, while assailing the order dated 29.5.2009, submits that while considering the application for correction, the Court cannot enter into the merit of the case and in the present case, by amendment the Court had gone into the merit of the case, which vitiates the order dated 29.5.2009. In support of his submission, he has placed reliance on large number of decisions of the Supreme Court, viz. State of Punjab Vs. Darshan Singh, reported in AIR 2003 SC 4179, Dwarika Das Vs. State of Madhya Pradesh, reported in AIR 1999 SC 1031 and Jayalakshmi Coelho Vs. Oswald Joseph Coelho, reported in AIR 2001 SC 1084.

6. We do not have the slightest hesitation in accepting the broad submission of Mr. Srivastava, that while considering the application for correction, the Court

cannot go into the merit of the case and dilute or alter the effect of the ultimate order. However, in this case, the aforesaid submission is absolutely misconceived. By order dated 19.5.2009, after assigning certain reasons, the learned Single Judge had vacated the interim order dated 7.1.2009 and the said order was unsuccessfully challenged in Special Appeal No.361 of 2009. By a detailed order passed in the said Special Appeal, the Division Bench of this Court has upheld the order dated 19.5.2009 and while doing so observed as follows:

"In the meantime, since the interim order which was granted on 7.1.2009 has been vacated, therefore, the present special appeals have been filed.

At this juncture, Sri Anil Tiwari, has very fairly and candidly stated that (i) there is one writ petition already pending at Allahabad, in which an interim order is continuing and, therefore, selection process cannot be initiated unless some orders are passed at Allahabad; (ii) he has instructions to say that the present appellants or the petitioners who are still in service, though on daily wage/contract basis, would not be removed from service for the simple reason that their request for regularization has been turned down by the State Government or that the interim order has been vacated. He says that looking to the exigency of work, there may be requirement of more workers. However, since the writ petition has been directed to be decided at an early date, the appellants or similarly situated persons would not be ousted from service till the decision of the writ petition.

In view of the aforesaid statement given by the learned counsel for the Corporation, we do not find that any controversy remains to be decided in special appeals."

7. We have heard this appeal for considerable length and we have reminded the counsel for the appellants that we are spending public time on this litigation.

8. We are of the opinion that the correction in the order is clerical in nature and the appellants cannot be allowed to challenge the order. We wonder how the correction made has in any way bearing on the order vacating the interim order dated 19.5.2009. As stated earlier, it has been affirmed in appeal. In this appeal, the appellants seek restoration of the interim order and seek to challenge order dated 19.5.2009, the challenge to which had already failed in the special appeal.

9. We are of the opinion that this appeal is absolutely malafide and deserves to be dismissed.

10. We are conscious of the fact that appellants, who are sixty in number, are low paid employees but in order to prevent uncalled for, frivolous and malafide litigation, an exemplary cost deserves to be awarded. Accordingly, while dismissing the appeal, we award cost of Rs.50,000/ (Rupees Fifty Thousand Only) to be realized from each of the appellants in equal proportion. Said amount shall be paid by appellants, within four weeks and shall be deposited in the account of Allahabad High Court Mediation and Conciliation Centre, at Lucknow.

If they do not do so, the District Magistrate, Sahjahanpur, shall recover the same as arrears of land revenue and deposit the same in the above account.