

(2007) 09 AHC CK 0054
In the Allahabad High Court

Ram Nayan Singh, Clerk, Bhagwan Parashuram Dham
Uchchatar Madhyamik Vidyalaya

APPELLANT

Vs

Joint Director of Education, VIIth Region, District Inspector of
School, Committee of Management, Bhagwan Parashuram
Dham Uchchatar Madhyamik Vidyalaya and Avadhesh Singh

RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Citation : (2007) 4 AWC 4182

Hon'ble Judges : H.L. Gokhale, C.J;Anjani Kumar, J

Bench : Division Bench

Judgement

H.L. Gokhale, C.J.—Heard Mr. O.P. Singh Sikarwar in support of this appeal, Mr. T.N. Tiwari for respondent No. 3, Mr. Raj Kumar Jain assisted by Mr. Rahul Jain for respondent No. 4 and Mr. Avinav Upadhyay, learned Standing Counsel for the State.

2. The appellant herein claims to have been working in a High School (here-in-after shall be referred to as "institution") since 2nd July, 1979. The said institution was upgraded to the position of High School in the year 1981 and was recognised on 8th February, 1982. The appellant has been adjusted in a clerical capacity by the order passed by the District Inspector of Schools concerned dated 8th February, 1982.

3. This very order was challenged by another fellow employee, who is the respondent No. 4 herein by means of writ petition No. 41371 of 1999 before this Court. That writ petition was heard by learned single Judge. He held that the order dated 8th February, 1982 adjusting the appellant herein on the post of clerk in the said institution is illegal and the same was a promotional post and meant for the respondent No. 4 herein. Learned single Judge therefore set aside the order dated 8th February, 1982 passed by the district Inspector of Schools concerned. Being aggrieved by that order, the present special appeal has been filed.

4. Mr. O.P. Singh Sikarwar, learned Counsel for the appellant submits that by virtue of the order impugned in the present appeal, the appellant is being terminated from his services, though he was appointed way back in the year 1979 and this is being done admittedly without the appellant being heard.

5. There has been some controversy as to whether the appellant was joined in the proceeding. The original writ petition did not show joining of the appellant as additional respondent, but the respondent No. 4 herein moved an application for amendment and the appellant also moved an application for impleadment and both the applications were stated the allowed by a common order. It is the case of the respondent No. 4 that the necessary amendments were carried out on 28th April, 2003. From the record, however it appears that the slip adding the name of the appellant as additional respondent is missing. There is no endorsement on the original unit that the appellant was joined as additional respondent.

6. In this connection, we may observe that when any such amendment is carried out, an endorsement must be on the original-preceding. The amendment must be in the body of the writ petition and also in the prayer clause. What we find in these amendments is that the amendment is carried Out (sic) a slip and (sic) not on the body of the writ petition. Consequently if the slip is removed, the endorsement also vanished along with the amendment.

7. One does not know what has actually happened, though it appears that some slip was there in the title and it does not appear to be in existence. From that alone we can not infer that the amendment had been carried out and the slip has subsequently been removed or vanished otherwise. However, the fact remains that the appellant has not been heard in allowing the writ petition, which factually (sic) terminating his services as a result of passing of the order by the learned single Judge which undoubtedly has been passed without any appearance on his behalf.

8. In these circumstances, for this reason alone, we have to set aside the order passed by learned single Judge and restore the writ petition No. 41371 of 1999 to the file of learned single Judge. We permit the respondent No. 4 herein to carry out the necessary amendments in the restored petition once again and the office will see that while carrying out the amendment, the effect of amendment having been carried out will be recorded on the body of the writ petition and not on the slip incorporating the amendment so that the history will not repeat itself again. The respondent No. 4 herein will carry out the necessary amendments within two weeks" from today and the appellant herein (respondent in the writ petition) may file counter affidavit within two weeks" thereafter.

9. We make it clear that the judgment and order of learned single Judge is set aside only in writ petition No. 41371 of 1999 and we request the learned single Judge to hear and decide the restored writ petition at the earliest.

10. With the aforesaid observations, this appeal is disposed of final y.