

(2012) 04 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 17984 of 2012

Ram Sher Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2012) 6 ADJ 306 : (2012) 6 AWC 5765

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Suresh Kumar Singh and Gyanendra Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned counsel for the parties.

Petitioner before this Court claims to have been appointed in Dev Vani Pracharak Sanskrit Vidyalaya, Shahganj, Jaunpur, which is an aided and recognised institution, as an Assistant Teacher on 30.7.1972.

According to the petitioner he was paid salary till 2008 and since January, 2009, the management started harassing him and his salary was stopped. Despite his complaint, no action was taken. The petitioner, therefore, approached this Court by means of Civil Misc. Writ Petition No. 67762 of 2010. The writ petition was disposed of on 20.11.2010 with a direction upon the Additional Director of Education (Sanskrit) U.P. at Allahabad to examine the grievance of the petitioner.

2. The Deputy Director of Education is stated to have referred the grievance of the petitioner to the District Inspector of Schools, Jaunpur after recording that there is a serious issue as to whether the petitioner is physically fit to discharge his duties as teacher or not? The District Inspector of Schools was asked to get the petitioner medically examined and to take appropriate action.

3. Not being satisfied, the petitioner filed second Writ Petition No. 29816 of 2011

which was decided on 5.7.2011. The petitioner was got medically examined by the High Court under order dated 25.5.2011. On medical examination it was found that the petitioner was physically disabled to discharge his duties as teacher as he was practically blind in both eyes. The Court required the District Inspector of Schools to take appropriate decision in light of the directions contained in the order of the Deputy Director of Education dated 16.3.2011. The writ petition was disposed of finally.

4. The District inspector of Schools passed an order dated 24.10.2011 compulsorily retiring the petitioner with a right of pension. The District Inspector of Schools to the aforesaid order added a Note-3 which provided that the Manager and Principal of the institution must submit salary bill of the petitioner for the period January, 2009 to June, 2009. Since June, 2009 the Manager had issued an order removing the petitioner from service because of his being physically disabled to discharge his duties.

5. Against this order the petitioner filed third writ petition being Writ Petition No. 72742 of 2011 challenging the order of the District Inspector of Schools. The writ petition was dismissed by the High Court on 15.12.2011. It was held that there was no illegality in the order of the District Inspector of Schools. The Court further observed that the petitioner appears to be fond of litigation and there has been misuse of the process of the Court. The petition was dismissed with cost of Rs. 10,000.

6. This fourth writ petition has been filed with a prayer that the respondents may be directed to pay salary to the petitioner for the period January, 2009 till the date on which medical report was submitted by the Chief Medical Officer, M.D. Eye Hospital, Allahabad under orders of the Court referred to above dated 29.1.2011 and in the alternative to accept his voluntary retirement w.e.f. 29.6.2011. In my opinion, this writ petition is a further abuse of the process of the Court at the hands of the petitioner. The relief which has been prayed for in the present writ petition was available to the petitioner at the time of filing of his third writ petition. If such prayer was made then it stands refused under the order of the writ Court dated 15.12.2011 whereby Writ Petition No. 72742 of 2011 was dismissed. If the relief was not claimed then in view of the principle enshrined under Order II, Rule 2, C.P.C. the petitioner cannot be permitted to claim the same in this subsequent petition. Even otherwise the prayer made in this 4th petition is more or less an attempt to challenge the part of the order of the District Inspector of Schools dated 24.10.2011 which directed that the petitioner shall be paid salary for the period January, 2009 to June, 2009 only with the help of change in the language of the prayer. Such attempt of the petitioner cannot be approved of. His rights stand decided finally with the dismissal of Writ Petition No. 72742 of 2011. The issues cannot be permitted to be re-opened by filing this writ petition in the manner it has been done.

Writ petition is dismissed.