

(2003) 11 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9788 of 1990

Ravindra Nath Rai

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 UPLBEC 1011

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Sankatha Rai and R.K. Nigam, for the Appellant; R.N. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R. B. Misra, J.—In this petition the order dated 21.6.1989 has been challenged wheredy D.I.O.S., Ghazipur has sent a letter to the Authorised Controller, Jharkhandey Mahadeo Rastriya Inter College, Sher Karimuddipur, post office Karimuddipur, district Ghazipur whereby Sri Suresh Prasad Pandey was allowed to work as an Assistant Clerk (Librarian) from 1st July, 1987 and the petitioner's name has not been mentioned in the order.

2. It is settled proposition of law that a party has to plead the case and produce/ adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. [Vide Bharat Singh and Others Vs. State of Haryana and Others, ; M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others, ; National Buildings Construction Corporation Vs. S. Raghunathan and Others, ; Ram Narain Arora Vs. Asha Rani and Others, ; Smt. Chitra Kumari etc. Vs. Union of India and Others, and State of U.P. and Others Vs. Chandra Prakash Pandey and Others Etc., .

3. In M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh, , the Hon''ble Supreme

Court observed as under :

"The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

4. Similar view has been reiterated in *Vithal N. Shetti and Anr. v. Prakash N. Rudrakar and Ors.* (2003) 1 SCC 18.

5. In *Re: Sanjiv Datta and Others*, , the Hon"ble Supreme Court has also observed as under :

"Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from..... the filing of incomplete and inaccurate pleadings....they do not realise the seriousness of these acts and omissions. They not only amount to the Contempt of the Court but do positive dis-service to the litigants and create embarrassing situation with Court leading to avoidable, unpleasantness and delay in disposal of matters. This augurs ill for the health of our judicial system."

6. We have put large number of questions to the learned Counsel for the petitioner involving the facts and law. However, it is very sorry state of affairs that he could not render any assistance whatsoever nor he could furnish any explanation as to why a copy of the agreement has not been filed and if it contains the arbitral clause how the writ petition has been filed.

7. In *Thakur Sukhpal Singh Vs. Thakur Kalyan Singh*, , Hon"ble Supreme Court has held that in absence of proper assistance to the Court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless lawyer satisfies the Court that there is some balance in his client"s favour to alter the situation, the Court is not able to decide the case. It is not for the Court itself to decide the controversy. The Court observed as under :

"----- He (Counsel) cannot just raise objections in his memorandum of appeal and leave it to the Appellate Court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the Appellate Court itself to find out what the points for determination can be and then proceed to give a decision on those points."

8. While deciding the said case, Hon"ble Supreme Court placed reliance upon judgment of Privy Council in *Mst. Fakrunisa v. Moulvi Izarus* AIR 1921 PC 55, wherein it had been observed as under :

"In every appeal it is incumbent upon the appellants to show some reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged."

9. In *T.C. Mathai and Another Vs. The District and Sessions Judge, Thiruvananthapuram, Kerala*, , Hon"ble Supreme Court observed :

"The work in a Court of Law is a serious and responsible function. The primary duty of a -- Court is to administer -- justice. Any lax or wayward approach, if adopted; towards the issues involved in the case, can cause serious consequences for the parties concerned--..In the adversary system which is now being followed in India, both in Civil and Criminal litigation, it is very necessary that the Court gets proper assistance from both sides."

10. The Rajasthan High Court in *Bhola Singh and etc. Vs. The Prescribed Authority, The Tehsildar and Others*, , held as under :

"---the quality of the judgment depends upon the assistance rendered at the Bar. The Judge can not take the entire responsibility of laying down a correct law unilaterally without any assistance of the learned Members of the Bar. The Judge cannot afford to retire from chamber and sit in the library and find out the case law on the issues involved in every case and what is the occasion to do anything in a case where the pleadings are so vague as the petition itself cannot be entertained."

11. In *D. P. Chadha v. Triyugi Narain Mishra and Ors.* (2001) 2 SCC 221, the Hon"ble Supreme Court observed as under :

"----- Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the Court, as they are called and rightly, the Counsel have an overall obligation of assisting the Courts in a just and proper manner in the just and proper administration of justice....A lawyer must not hesitate in telling the Court the correct position of law when it is undisputed and admits of no exception..... This obligation of a Counsel flows from the confidence reposed by the Court in the Counsel appearing for any of the two sides. A Counsel, being an officer of the Court, shall apprise the Judge with the correct position of law whether for or against either party."

12. In view of the provisions of Sections 8 and 9 of the Arbitration and Conciliation Act, 1996 the Arbitrator has a power to grant interim relief. *Moreso*, in view of the provisions of Section 9 CPC the Civil Court can grant interim relief at the initial stage even prior to resorting to the proceeding of arbitration.

13. In *M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India Ltd.*, , the Hon"ble Supreme Court held that a party can approach the Civil Court even prior to commencement of the arbitration proceedings u/s 21 of the Act. There has been a complete departure in this respect if compared with the provisions contained in Arbitration Act, 1940. In large number of cases it was found very difficult to serve to respondent, therefore, the legislature considered it necessary that the provision be made in the Act, which could enable a party to get interim measures urgently in order to protect its interest.

14. The Court determines a issue on applying its minds on the facts/pleadings taken by the parties and submissions made on their behalf on legal as well as

factual issues. In absence of any factual foundation laid by the party concerned, and in absence of proper legal assistance on its behalf it is neither desirable nor possible for the Court to adjudicate upon as to whether the order impugned is worth sustainable in law. The party has to place whole case before the Court and challenged properly the correctness of the order impugned. If a pray fails to do so, or if proper assistance is not rendered by the Counsel, the Court need not decide the case at all. How the petitioner is grievance is not mentioned in the writ petition, therefore, this Court is not inclined to invoke its extraordinary jurisdiction under Article 226 of the Constitution.

15. The writ petition is dismissed.