
(2003) 04 AHC CK 0199
In the Allahabad High Court
Case No : C.M.W.P. No. 11616 of 2001

Ravindra Singh	Vs	APPELLANT
U.P. Madhyamik Shiksha Sewa Chayan Board and Others		RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 1731(2)

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : G.K. Singh, V.K. Singh and R.N. Singh, for the Appellant; Neeraj Tripathi, U.P. Singh, Sharad Kr. Srivastava, P.N. Ojha, Sumeet Kumar and U.N. Sharma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, petitioner Ravindra Singh has prayed for the following reliefs :

"(a) to issue a writ, order or direction in the nature of mandamus commanding the respondent No. 1 to pass appropriate orders in the matter pertaining to appointment and continuance of the petitioner as Principal of Amrit Inter College, Rohana Mills, Muzaffarnagar, taking into consideration the letter dated 2.3.2001 sent by Bheem Rao Ambedkar Bihar University, Muzaffarpur.

(b) to issue any other writ, order or direction as this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

(c) to award the cost of the writ petition to the petitioner."

2. The facts leading to the filing of present writ petition are broadly, as pursuance of the number of writ petitions filed in the month of October, 1998, the direction was issued by this Court on a writ petition filed by Dharmpal Singh,

who was working as ad hoc Principal of the institution in question, whereby the qualifications of the candidates, who were appearing before the respondents-Selection Board for the post of Principal of different colleges, were sought to be verified and the petitioner Ravindra Singh was directed to produce his certificates in original. It is further alleged that in compliance of the aforesaid order passed by this Court, the petitioner submitted his original certificates which, according to the petitioner, were found to be genuine by the District Inspector of Schools, Muzaffarnagar, therefore, the District Inspector of Schools issued a direction to the institution in question to permit the petitioner to join the post of Principal in question pursuant to his selection and recommendation for the post of Principal in the institution in question. Dharmpal Singh, the ad hoc Principal filed another writ petition before this Court, which was finally disposed of by this Court by issuing a direction to the Deputy Director of Education concerned to decide the question regarding the qualification of the petitioner. Similar writ petition was also filed by two other persons questioning the qualifications of the petitioner with the request that if the person, namely, the petitioner is not duly qualified, he should not be allowed to join, as he has obtained this selection by producing forged certificates. This writ petition was also disposed of by this Court on 22nd July, 1999, with the direction to the Deputy Director of Education to decide the question as to whether the certificates produced by the petitioner Ravindra Singh are genuine or not. The certificate in question was the certificate of B.Ed. obtained by the petitioner from Bihar University, Muzaffarpur, which was said to have been fabricated and was issued in the year 1978. According to the petitioner, the Deputy Director of Education has decided the controversy that the certificate of the petitioner is genuine, vide his order dated 15th November, 1999, after hearing the complainant and the petitioner. In spite of the aforesaid decision, as alleged by the petitioner, on 15th November, 1999, the respondents did not allow the petitioner to join on the post of Principal in the institution in question.

3. It is noteworthy that the fact remains that the petitioner has not joined on the post of Principal. Therefore, being aggrieved by the action/inaction on the part of the respondents in not permitting the petitioner to join on the post of Principal, petitioner filed another writ petition on 25th January, 2000, wherein this Court has passed an interim order on 2nd March, 2000, pursuant whereof the petitioner has joined his duty as Principal on 29th May, 2000. Pursuant to the petitioner's joining on the post of Principal as per direction issued on 2nd March, 2000, the management forwarded the signatures of the petitioner to be attested as is required under the provisions of law. The writ petition in which the interim order dated 2nd March, 2000, was passed, ultimately came up for hearing and was ultimately dismissed by this Court vide its order dated 21st August, 2000, copy whereof has been annexed as Annexure-9 to the writ petition.

4. Aggrieved by the judgment dated 21st August, 2000 of learned single Judge, the petitioner preferred a special appeal, the said special appeal was also dismissed by the Division Bench on 14th September, 2000. Aggrieved thereby,

the petitioner preferred SLP before the Apex Court, which was dismissed by the Apex Court by order dated 4th December, 2000. These orders of the Division Bench of this Court and the Apex Court are annexed as Annexures-10 and 11 to the writ petition. In the meantime, this Court on another writ petition filed by the petitioner passed an order directing the District Inspector of Schools concerned to keep the matter in abeyance in view of the fact that an enquiry was going on with regard to the petitioner's certificates being genuine or otherwise. The petitioner further asserts that Bihar University, Muzaffarpur, ultimately wrote a letter on 2nd March, 2001, informing them that the registration receipt No. 5421 has been verified and was found to be genuine and the certificate in pursuance thereto was also genuine. Thus, the present writ petition for the aforesaid reason.

5. In the present writ petition, the learned single Judge of this Court granted time to the respondents to file counter-affidavit in the matter by the order dated 29th March, 2001. During the pendency of the present writ petition, the Deputy Secretary of the Commission had directed the District Inspector of Schools concerned to permit the petitioner to join vide its order dated 15th May, 2001. Pursuant to the aforesaid direction of the Deputy Secretary of the Commission, which was passed as a consequence of the petitioner's filing of the writ petition on 29th March, 2001, the District Inspector of Schools directed the management to permit the petitioner to function as Principal in the institution in question. It appears that in the month of June, 2001, pursuant to the dismissal of the petitioner's writ petition, special appeal and the special leave petition, the District Inspector of Schools stayed the order dated 29th May, 2001, which was passed by him earlier as he receives some sort of instructions from the Commission. On 7th June, 2001, namely, the order passed by the Commission, whereby the order dated 15th May, 2001, was cancelled, is annexed as Annexure-4 to the supplementary-affidavit. It is in pursuance of the aforesaid order, the petitioner was asked to stop work as Principal. Thus, the present writ petition.

6. Learned counsel appearing on behalf of the petitioner submitted that the order, which has been filed as Annexure-4 to the supplementary-affidavit, whereby the Commission has cancelled its earlier order dated 15th May, 2001, has been passed without affording any opportunity whatsoever to the petitioner. It was next contended by learned counsel for the petitioner that ultimately after enquiry, the Bihar University, Muzaffarpur, has found the receipt and certificate of the petitioner to be genuine as such all action and inaction and consequential orders issued by this Court stood wiped out and the petitioner's selection by the Commission cannot be said to be illegal or is suffering from any error of law.

7. Learned counsel for the respondents, on the other hand, submitted that the petitioner took resort to the filing of writ petitions before this Court, time and again and was directed to join only by virtue of the interim order passed by this Court, whereas the writ petition filed by him was ultimately dismissed by the learned single Judge. The order passed by the learned single Judge dismissing

the petitioner's writ petition was affirmed by the Division Bench of this Court and when his special appeal was dismissed, the petitioner took his chance before the Apex Court and the SLP was also dismissed and, therefore, the controversy stood finally set at rest between the parties and it is now not open to the petitioner to take recourse to an order subsequent to the disposal of the SLP by the Apex Court and seek a mandamus sought for in the present writ petition. According to the learned counsel for the respondents, the controversy between the parties having finally settled by this Court and thereafter the order of this Court dated 21st August, 2000 stood merged into the special appeal and becomes finally settled between the parties when the SLP was dismissed by the Apex Court. Learned counsel for the respondents relied upon a decision in *Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda and Others*, wherein the Apex Court has finally laid down the law that SLP having been dismissed, the controversy stood finally settled between the parties and the High Court has rightly refused to interfere as the High Court cannot re-open the controversy when a review petition was filed before the High Court.

8. In reply to the aforesaid argument advanced on behalf of learned counsel for the respondents, learned counsel for the petitioner has submitted that since the SLP has been dismissed in limine by the Apex Court, the order passed by the Apex Court in dismissing the SLP in limine cannot operate as *res judicata* and admittedly the order by which the petitioner has been restrained from functioning as Principal of the institution in question was passed without affording any opportunity to the petitioner, the order deserves to be set aside and in view of the report of the Bihar University, Muzaffarpur, the selection and recommendation of the Commission with regard to the petitioner's appointment as Principal of the institution in question deserves to be upheld. That being so, the petitioner is, in law, entitled for the reliefs asked for by means of this writ petition.

9. I have given my anxious thought to the submissions advanced on either side and in view of the decision referred to above 1997 (4) SCC 78 (*supra*), I have no option but to hold that the result of the subsequent report by the Bihar University, Muzaffarpur, cannot help the petitioner as the controversy between the parties stood finally decided by the Apex Court and is binding between the parties. The principles of constructive *res judicata* will definitely come in the way of petitioner and thus the contention of learned counsel for the petitioner cannot be accepted on this aspect. So far as the argument advanced on behalf of the petitioner that no opportunity whatsoever has been afforded to the petitioner before passing of the order dated 29th May, 2001, suffice it to say that the orders are consequential in nature and the Judgment between the parties having been finally settled, the argument that the petitioner ought to have been given an opportunity, cannot be accepted. The law, on this aspect, is settled by the Apex Court in the case of *Tariq Islam Vs. Aligarh Muslim University and Others*, In this view of the matter, since the petitioner cannot demonstrate to have a right to be appointed on the post of Principal in view of the decision of this Court,

which has been affirmed by the Apex Court no writ of mandamus, as prayed for by learned counsel for the petitioner, can be granted in favour of the petitioner. The writ petition, therefore, is devoid of merits and is accordingly dismissed. The interim order/orders, if any, stands vacated. However, the parties shall bear their own costs.