
(2009) 07 AHC CK 0263
In the Allahabad High Court

Satya Dev and Committee of Management	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 07 AHC CK 0263

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—These are two connected writ petitioners arising out of the common order dated 4.10.2007 passed by the Additional Director of Education (Secondary), U.P. at Allahabad (hereinafter referred to as "ADE") deciding representation of Satya Dev Tripathi, petitioner in writ petition No. 58631 of 2007 (hereinafter referred to as "writ petition-first set") and respondent No. 5 in writ petition No. 56353 of 2007 (hereinafter referred to as "writ petition-second set").

2. Learned Counsels for the parties have requested and agreed that this writ petition may be heard and decided finally at this stage under the Rules of the Court since pleadings are complete. Hence, this Court proceed to decide the matter as under.

3. Instead of giving unnecessary details, suffice is to mention brief facts so as to give a bird eye view of the matter. Sri Satya Dev Tripathi (hereinafter referred to as the "concerned teacher") was appointed as Assistant Teacher in Sri Murlidhar Sanskrit Pathshala, Andiar, Jaunpur (hereinafter referred to as "College") in 1982. The College is recognized and affiliated to Sampurnanand Sanskrit University, Varanasi (hereinafter referred to as "the Sanskrit University"), and, being aided, the salary of its staff is being paid from the State exchequer. The appointment of the concerned teacher was approved by the Registrar of the

Sanskrit University on 11.4.1982. It is said that in 1987, the post of Principal fell vacant due to resignation of its holder, one Sri Raj Nath Dubey. The concerned teacher claimed that the resignee Principal handed over charge of the office of Principal to him. It is claimed that there was some dispute between the Management and one Sri Brahma Dev Tripathi, the real brother of the concerned teacher was got the charge of the office of Manager replacing one Sri Padmakar Tripathi with the help of the President of the Committee of Management. Sri Padmakar Tripathi obtained an order in his favour from Civil Court in Civil Suit No. 388 of 1986 pursuant where to the Vice Chancellor, Sanskrit University passed an order on 24.4.1987 resulting in revival of Padmakar Tripathi to the office of Manager displacing Brahma Dev Tripathi, the real brother of the concerned teacher. It is alleged that Sri Padmakar Tripathi, consequently, took away the charge of Principal from the concerned teacher and handed over the same to one Sri Satya Narayan Pandey. The dispute again came to be resolved by the Vice Chancellor, Sanskrit University and vide order dated 24.8.1988, he directed the Management to revoke illegal appointment of Satya Dev Pandey on the post of Principal and take steps for regular appointment on the said post and till then hand over the charge of the office of Principal to the senior most teacher. He also directed the Management to permit the concerned teacher of the College to work since the charges levelled against him were not proved and he is a teacher approved by the University. It is said that the order dated 24.8.1988 attained finality as it was not challenged by anyone before any appropriate Forum. However, Sri Satya Narayan Pandey filed writ petition No. 26635 of 1990 seeking a mandamus directing the respondents arrayed therein to pay his salary with effect from December" 1989. In the said writ petition, an ex parte interim order dated 22.10.1990 was passed to the following effect:

List for admission.

Respondents are directed to pay the salary to the petitioner on the post of Principal with effect from December 1989 till the disposal of the writ petition provided he function and discharge his duties as Principal during this period.

4. It is said that in the aforesaid writ petition neither the concerned teacher was impleaded nor even the University was impleaded and the Management being in collusion with the said petitioner chose not to file any counter affidavit. The order dated 24.8.1988 passed by the Vice Chancellor of the Sanskrit University was also not brought to the notice of this Court. It further transpires that one Sri Subhash Chandra Upadhyaya also filed writ petition No. 23451 of 1990 and pursuant to an interim order therein, he was getting salary. Later on, the concerned teacher got himself impleaded in the writ petition No. 26635 of 1990. The Sanskrit University also filed counter affidavits therein and ultimately the stay order was vacated by this Court on 8.11.2004 whereafter Sri Satya Narayan Pandey chose to withdraw the aforesaid writ petition and it was dismissed as withdrawn on 8.7.2005.

5. The concerned teacher claimed that despite of the orders of the Sanskrit

University, the Management did not permit him to attend duty and in this regard he made several representations to various authorities, mentioned in detail in para 25 of the writ petition-first set, claimed to be dated 24.8.1987, 16.10.1987, 23.1.1990, 27.3.1992, 3.6.1992, 17.10.1992, 26.3.1993, 24.1.1993, 16.10.1994, 15.4.1999, 9.8.1999, 6.2.2001, 6.6.2001, 10.7.2001, 14.12.2001, 17.12.2002, 1.8.2003, 11.1.2005, 22.10.2005 and 19.12.2006.

6. The concerned teacher approached this Court by filing writ petition No. 55335 of 2005 which was disposed of by vide judgement dated 10.8.2006 observing that there being a serious dispute about the fact as to whether the concerned teacher was teaching in the institution or he was prevented from performing his duties, and, the same being a serious disputed question of fact, it would be appropriate at the first stage to be decided by the Director, U.P. Madhyamik Board (Sanskrit) Allahabad or any other Officer appointed by him on the representation made by the concerned parties before him and after giving notice to all the concerned parties including the University.

7. The case of the Management, in the writ petition-second set is that the concerned teacher did not attend the institution for about 17 years justifying the Management to treat as if the concerned teacher has abandoned his service and it did not require any order of termination. It is said that the concerned teacher was placed under suspension by the Management on 1.1.1990 whereagainst he approached the District Inspector of Schools, who vide order dated 26.11.1990 directed the Management to reinstate the concerned teacher and revoke the order of suspension pursuant where to the Management reinstated concerned teacher by order dated 5.1.1991. Despite of the said order of reinstatement, the concerned teacher neither attended the College nor performed his duties as Assistant Teacher and continued to remain absent on his own and after 12 years he made for the first time a representation on 1.4.2002 claiming salary for the period of absence and for some period earlier thereto, i.e. from 1989 to March 2002 which was not permissible, hence, could not be accepted by the Management. Later on, he filed a writ petition No. 55335 of 2006 wherein also the Management took the above stand. The Hon"ble Court permitted the parties to get the above question decided by Director pursuant where to the impugned order has been passed. The ADE by the impugned order dated 4.10.2007 has recorded his finding after considering the claim of both sides as under:

1. The absence of the concerned teacher was voluntary on his part and unauthorized. He was never prevented by the Management from working. Hence, he was not entitled for salary for the period he remained absent.

2. Since the services of the concerned teacher were not terminated in accordance with law and there being no provision for automatic termination, his service cannot be deemed to be terminated.

8. The writ petition-first set, filed by the concerned teacher, is challenging the first part of the above finding which deny him salary for the time he remained

absent. The writ petition-second set is filed by the Management challenging the later part of the finding that the concerned teacher cannot be deemed to have been terminated, i.e. by way of abandonment of his service.

9. Sri G.K. Singh assisted by Sri V.K. Upadhyay appearing on behalf of concerned teacher submitted that the finding recorded by ADE holding his absence unauthorized is perverse. He placed reliance on the averments made in para 25 of the writ petition-first set wherein he has averred that "The petitioner was continuing to work in the institution but he was always prevented by respondent No. 9 to perform his duties as officiating Principle in collusion with Satya Narayana Pandey" and submitted that a large number of representations referred to in para 25 were sent to the authorities including the Management, D.I.O.S. and University etc. but same remained unheeded. Consequently, he approached this Court in Writ Petition No. 55335 of 2005. The ADE without looking into this aspect of the matter and holding that there was no evidence that concerned teacher attended the institution has recorded a perverse finding, hence, the impugned order, to that extent, is liable to be set aside.

10. Assailing the later part of the impugned order on behalf of committee of management, Sri P.N. Tripathi, learned Counsel submitted that if a teacher has not attended the institution for more than a decade, he can validity be deemed to have abandoned the services as held by a Division Bench of this Court in Special Appeal No. 599 of 2004 Committee of Management, Veer Shivaji Inter College v. Joint Director of Education and Ors. connected with other special appeals decided on 13.12.2004 and, therefore, the view of the ADE is in the teeth of the above law laid down by this Court and, hence, is liable to be set aside.

11. Learned Standing Counsel defending the entire order passed by the ADE submitted that cogent reasons have been given by the authority and no interference is called for, therefore, both the writ petitions deserve to be dismissed.

12. I have heard the learned Counsels for parties and perused the record as well as the law on the subject including the authorities cited at the Bar.

13. First I propose to consider the case of the concerned teacher to the extent he has assailed the impugned order of ADE regarding non entitlement of salary for the period of absence. From the record it does appear that since 1989, the concerned teacher has neither signed the attendance register nor there is anything to show that he discharged his duties as Assistant Teacher of the College. So far as his submission that he was regularly attending the duties but was prevented by the Management in collusion with Satya Narayan Pandey is concerned, in the entire writ petition this averment has been made. Only in Para 25 and that too in the following manner he has said:

25. That respondent No. 9 Manager Padmakar Tripathi in connivance of the Clerk namely Sri Ram Yash Vishwakarma struck out the name of the petitioner from

the Teachers attendance Register although the petitioner was continuing to work in the Institution but he was always prevented by respondent No. 9 to perform his duty as officiating Principal in collusion with Satya Narayan Pandey. The petitioner wrote several representations before the educational authorities and when no heed was paid by them the petitioner made complaint before the District Magistrate, Jaunpur on 24.08.1991 and the District Magistrate vide order dated 02.08.1991 directed the District Inspector of Schools to put the name of the petitioner in the Teachers Attendance Register which was illegally struck out by the respondent No. 9 however, since the Office of the District Inspector of Schools, Jaunpur was colluded with the respondent No. 9 did not inform directly to the petitioner regarding any order with regard to put his name in the Teachers Attendance Register of the institution and also for the payment of the salary however, the petitioner was running from pillar to post to seek justice against the illegal action of the Committee of Management which was colluding with Satya Narayana Pandey who had been illegally appointed as Officiating Principal by the respondent No. 9 in place of the petitioner and who was being allowed to continue in pursuance of the interim order passed in Civil Misc. writ petition No. 26635 of 1990. True and photocopies of the representations dated 24.08.1987, 16.10.1987, 23.01.1990, 27.03.1992, 03.06.1992, 17.10.1992, 26.03.1993, 24.01.1993, 16.10.1994, 15.04.1999, 09.08.1999, 06.02.2001, 06.06.2001, 10.07.2001, 14.12.2001, 17.12.2002, 01.08.2003, 11.01.2005, 22.10.2005 and 19.12.2006 moved by the petitioner before the authorities concerned are being filed herewith and marked as Annexure-13 to this writ petition.

14. This paragraph has been sworn by the concerned teacher in his affidavit on the basis of record. The fact as to whether he was actually attending the College but was prevented by the Management or anyone having not been sworn on the basis of personal knowledge, though it ought to be in the knowledge of concerned teacher, the said averment is wholly unreliable and cannot be acted upon. On requiring the learned Counsel for the concerned teacher to show as to whether any such complaint was made in the alleged numerous representations referred to by him in Para 25, though it includes two representations dated 24.08.1987 and 16.10.1987 which obviously relate to an earlier period and could not have been concerned with the said dispute, he failed and could not show that any such complaint was ever made in any of his aforesaid representation at all.

15. Sri G.K. Singh drew the attention of his Court to para 7 of his representation dated 3.6.1992 on page 94 of the paper book of writ petition-first set, which asserts as under:

7- ;g fd oM+s nq%[k ds lkFk dguk iM+ jgk gS fd voS/kkfud s ijs"kku fd;k x;k vkSj QthZ iz/kkukpk;Z dks osru fn;k x;k gSA

16. He further referred to Para-C of his representation dated 27.3.1992 (page 99 of the paper book of writ petition-first set) wherein it is said that he is a validly selected and approved teacher and in the order of seniority is working as an officiating Principal since February" 1987 and also referred some averment in the

representation dated 9.8.1999 on page 103 of the paper book of writ petition-first set. He sought to argue on the basis thereof that the above averments show that he was regularly attending the institution but prevented by the Management from discharging the duties.

17. On the contrary, in the writ petition-second set, Annexure-4 has been filed which is said to be a representation dated 1.4.2002 given by the concerned teacher wherein it is said that despite of revocation of suspension, he was absent from the institution but since could not submit any application seeking leave etc. therefore, could not get his salary and now he is submitting requisite application. Therefore, his absence may be regularized and he may be paid salary from 1989 to March 2002. Learned Counsel appearing for the Management sought to argue that the above representation of the concerned teacher clearly shows that he was absent on his own, and his story of harassment by the Management is false and fabricated. The reply of para 16 of the writ petition-second set has been given by the concerned teacher in para 38 which is very interesting and it may be reproduced as under:

38. That the contents of paragraphs 16 and 17 of the writ petition are false and incorrect hence denied in reply thereto it is stated that on 01.04.2002 when the deponent went to Tahasil Mariyagoon for getting information regarding his complaint dated 01.05.2002 wherein S.D.M Mariyagoon conducting enquiry in pursuance of the order of the District Magistrate, Jaunpur, the petitioner No. 2 alongwith Satya Narain Pandey were standing out side of the Office of the S.D.M. they called the deponent and started to talk about the services of the deponent and during the conversation the petitioner No. 2 gave betel to the deponent in which some intoxicative material was there and thereafter they compelled the deponent to sign on some blank paper against his will regarding which the deponent made complaint before the authorities concerned. A photocopy of the complaint dated 07.05.2002 alongwith the letter of the Chairman of the Human Right Commission are being filed herewith and marked as Annexure-CA-10 to this affidavit.

It is further stated that inspite of several representation before the Educational Authorities, they could not taken action on account of collusion with petitioner No. 2 and one Clerk Namely Ram Yash Vishwakarma, a clerk posted in the Office of the District Inspector of Schools, Jaunpur in connivance whereof Satya Narain Pandey was getting salary on the post of Principal in place of deponent in view of the interim order passed in writ petition No. 26635 of 1990 and when the said writ petition was dismissed in the year 2005 then the deponent filed a Civil Misc. Writ Petition No. 55335 of 2005.

18. This shows that concerned teacher has not been able to dispute his signature on the representation dated 1.4.2002, but thereafter has sought to explain the same in a different manner. He has failed to explain as to why the copy of alleged complaint dated 7.5.2002 was not sent to the Sanskrit University and Management who were more concerned with the matter. Be that as it may, the

order passed by the ADE shows that he has considered all these aspects of the matter and, thereafter, has recorded a finding of fact that there is nothing to show that the concerned teacher attended the College or that he was prevented from performing his duties by the Management. There is nothing on record to show that the said finding is perverse. ADE has also noticed that the letter reinstating the petitioner was sent by registered post was received back by the postal authorities with the endorsement "ysus ls budkj fd;k", meaning thereby that the intention of concerned teacher in respect of discharge of duties was lacking bona fide since very beginning. Apart from fact that no such complaint was ever addressed by the concerned teacher in any of his alleged representations, the alleged representations are also of much longer gap inasmuch one representation is said to have been given in 1990, three in 1992, two in 1993, one in 1994 and thereafter there is a gap of about five years and in 1999 he said to have given two representations, four representation in 2001, one in 2002, one in 2003 and two in 2005. It is inconceivable if a person is regularly trying to attend his job, but is being illegally prevented from doing so by the Management, would keep silence for almost about one and a half decade and refrain from taking any legal step. In the entirety of facts, as, discussed above, I am of the considered view that the findings recorded by ADE that the absence of the petitioner throughout the above period was voluntary and deliberate on his part and there was nothing to show that he was prevented from attending his duty by the Management is neither incorrect nor perverse, hence does not warrant any interference. In view of the above, the writ petition No. 58631 of 2007 filed by the concerned teacher deserves to be dismissed.

19. Now, I come to the writ petition-second set filed by the Management challenging later part of the order about abandonment of service by the concerned teacher. It is not disputed by learned Counsel for parties that College being affiliated with the Sanskrit University, the terms and conditions of its teachers are governed by the Sampurnanand Sanskrit Mahavidyalaya First Statute, 1978 (hereinafter referred to as "the first Statute"). It is also not disputed that there is no provision for automatic termination of service of a teacher or employee, if he remains absent for a long period. On the contrary, Statute 17.06 provides for procedure whereunder the services of a regularly appointed teacher can be terminated by the Management. It lays down a complete procedure therefor. It is also not disputed by Sri P.N. Tripathi, learned Counsel for the Management that the procedure laid down under Statute 17.06 was never observed since the case of the Management is that the concerned teacher was not terminated by the Management as they deemed it to have been terminated by way of automatic termination which does not require any order of termination.

20. The short question, therefore, now remains to be considered by the Court is whether the concerned teacher could be deemed to be terminated automatically or he could not have been terminated except in accordance with the procedure prescribed under Statute 17.06 or if he has attained the age of superannuation,

retired or resigned.

21. In this regard, reliance has been placed by Sri P.N. Tripathi on a Division Bench judgment of this Court in Committee of Management, Veer Shivaji Inter College (supra). A perusal of the aforesaid judgment shows that there one Sri Ram Vilas Sharma claimed to be a teacher of Veer Shivaji Inter College. Management contended that he was not at all a teacher and was never appointed. The Division bench after considering material on record recorded a finding that he could not show that he was appointed or validly appointed in the College and further observed as under:

Be that as it may, in view of the findings recorded by us earlier, we see no justification for granting relief of payment of salary to Sri Sharma. It was incumbent upon Sri Sharma to have satisfied us that he had been appointed in accordance with law in order to claim relief for payment of salary and in the absence of the same no relief can be granted to him.

22. The Division Bench said that a party who has pleaded a case is under a statutory obligation to adduce sufficient evidence to substantiate his submission made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain such pleas and for the said purpose relied on the Apex Court decisions in 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., It was then further contended on behalf of Sri Ram Vilas Sharma that in similar circumstances two other persons were paid salary, therefore, he could have not been discriminated. The said argument was also rejected by the Division bench observing that two wrongs would not make one right and Article 14 is not meant to perpetuate an illegality as it provides only for positive equality and not negative equality. The law pertaining to abandonment thereafter has been considered by the Division Bench observing "In view of the findings recorded by us earlier, we would not have examined this aspect but since the judgement of the learned Judge deals with this matter, we propose to examine the issue." Thereafter, the Hon"ble Court has referred to certain decisions pertaining to labour matters and observed that it does not agree with the view of the learned Single Judge that in a situation where the incumbent has remained absent for 12 years and did not make any representation or approach the Court for any relief whatsoever, yet he should have been issued a show cause notice as there is no provision for automatic termination on account of absence without leave. However, but the Special Appeal has not been decided on this finding as would be evident from the observation noticed below:

In view of the proposition of law laid down in the aforesaid decisions we do not agree with the observations made by the learned Judge that even in such a situation a show cause notice was required to be given to Sri Sharma before

termination of his services as there is no provision for automatic termination on account of absence without leave. In any view of the matter, it was for the petitioner to have pleaded and proved that he had been appointed in accordance with law and in the absence of the same it is not open to him to raise such grievance.

23. Another decision relied by Sri P.N. Tripathi is Constable No. 817 Nand Lal Singh v. U.P. State Public Services Tribunal, Lucknow and Ors. 2007 (5) ADJ 480 but a perusal of the said judgment show that therein on account of absence of the concerned employee an enquiry was conducted but the employee failed to avail the opportunity and did not appear before the enquiry officer, and, in these circumstances, the Court held that the Tribunal rightly treated as if the employee has abandoned the services and the Division Bench did not interfere with the matter. The Division Bench categorically recorded a finding that the contention of the employee that no opportunity was given to him and the principles of natural justice were violated cannot be accepted since despite of having knowledge of the pendency of disciplinary enquiry, he did not participate in the said enquiry. Therefore, the said judgement has no application to the question involved in this matter.

24. On the contrary, I find that in the matter of educational justification itself, the Apex Court has considered this very question in Laxman Dundappa Dhamanekar and Anr. v. Management of Vishwa Bharata Seva Samiti and Anr. 2002 (8) SCC 378 and in para 12 of the judgment, the Apex Court has clearly held as under:

...even though the appellants were probationers, their services could not have been ceased to have effect either by non-approval by the Head of the Department or by their remaining absent from their respective duties. There is no provision either in the Act or the Rules providing for automatic termination of services of a teacher on account of being absent without leave. If any teacher remains absent without any leave, it is open to the management to terminate the services of such teacher only after complying with the provisions of the Act and the Rules of principles of natural justice. In the present case, we do not find any provision either in the Act or Rules providing for automatic termination of services of a teacher in the event of a teacher remaining absent without leave. In the absence of such a provision in the Act or Rules, the alleged deemed termination of service of the appellants without giving any opportunity to the appellants was unlawful and deserves to be set aside.

25. A similar question up before the Apex Court again in V.C., Banaras Hindu University and Others Vs. Shrikant, and in para 41 of the judgment, it was held:

41. Although, laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of the Constitution of India. If the action taken by the authority is found to be illogical in nature and, therefore, violative of Article 14 of the

Constitution, the same cannot be sustained. Statutory authority may pass an order which may otherwise be bona fide, but the same cannot be exercised in an unfair or unreasonable manner.

26. In the Division Bench Judgement of this Court in Veer Shivaji Inter College (supra) also where it has referred to the Apex Court decisions in Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another, and Aligarh Muslim University and Others Vs. Mansoor Ali Khan, it has noticed that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceased to be in service meaning thereby in the absence of a provision, the theory of deemed termination would have no application when conditions of service are governed by statutory rules. This is consistent with the view expressed by the Apex Court in Laxman Dundappa Dhamanekar (supra).

27. In view of the above discussion, I am of the view that the order of ADE deciding to disapprove deemed termination of the concerned teacher is faultless and warrants no interference. The writ petition-second set also fails.

28. Both the writ petitions are accordingly dismissed. Costs made easy.