
(2009) 02 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 48287 of 2007

Shashibala

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Citation : (2009) 02 AHC CK 0118

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the petitioner, learned counsel for respondent Nos. 1 to 4 and learned counsel for respondent No. 6, the Head Master.

2. Late Shri Krishna Kumar husband of the petitioner was a teacher in Bhutpurva Sainik Adarsh Junior High School, Kalluwala District Bijnore, which is a recognized and aided Junior High School. Husband of the petitioner died in harness. Petitioner applied for appointment under dying in harness rule. Initially District Basic Shiksha Adhikari, Bijnore recommended the name of petitioner for appointment on the post of Clerk in another Junior High School i.e. Rani Phool Kumari Kanya Junior High School, Sherkot District Bijnore however petitioner prayed that she might be granted appointment in the school in question itself where her husband was working. Director of Education through order dated 25.2.2002 directed the appointment of the petitioner in the school in question. However, it was stated in the said order that the appointment would be subject to the result of writ petition No. 7829 of 1999 which had been filed by one Sheo Kumar who was also claimant to the post of Clerk in the Institution in question. In pursuance thereof District B.S.A., Bijnore also issued a letter on 11.11.2002 to the Committee of Management of the School in question. The Manager of the school in question issued the appointment letter on 16.11.2002 to the petitioner and in consequence thereof petitioner submitted the joining report on 2.12.2002 (Para 6 of the writ petition). Petitioner also applied for impleadment in the writ

petition filed by Sheo Kumar. Sheo Kumar had filed another writ petition also being writ petition No. 50391 of 2002. Both the writ petitions were dismissed on 26.9.2005. The writ petition of 2002 had been filed against the appointment orders of the petitioner dated 25.10.2002 and 11.11.2002 (supra).

3. In the judgment dated 26.9.2005 passed in the aforesaid writ petition of 1999 it was mentioned that Sheo Kumar petitioner of the said writ petition was a terminated employee of another Institution and his services had been terminated on the ground of embezzlement. In the said judgment it was also held that petitioner had not come with clean hands hence cost of Rs. 5,000/ was also imposed. The said writ petition of 1999 was filed against order dated 16.11.1998 through which services of petitioner of the said writ petition i.e. Sheo Kumar in the institution in question had been terminated.

4. It has also been stated in para 10 of the writ petition that Sheo Kumar had filed third writ petition also being writ petition No. 31672 of 2000 for payment of salary and as it was not maintainable due to pendency of writ petition of 1999 hence Sheo Kumar himself got the said writ petition dismissed as withdrawn on 17.7.2002.

5. Against order dated 26.9.2005 through which writ petitions of Sheo Kumar were dismissed, he filed review petition which was dismissed thereafter special appeal No. 727 of 2007 was filed which was also dismissed on 17.7.2007.

6. Thereafter on 30.12.2005 from the office of Director of Education (Basic), Allahabad an order was issued directing District Basic Shiksha Adhikari, Bijnore to pay salary to the petitioner, copy of the said order is Annexure12 to the writ petition. In the said order it is mentioned that Sheo Kumar in his writ petition No. 50391 of 2002 had obtained stay order against the appointment order of the petitioner Smt. Shashi Bala on 3.12.2002. Thereafter District Basic Shiksha Adhikari on 24.1.2006 directed the Head Master of the school to take steps for payment of salary to the petitioner. As Authorised Controller and Head Master did not comply with the said order hence District Basic Shiksha Adhikari directed Finance and Accounts Officer of the office of District B.S.A., Bijnore to take steps for payment of salary to the petitioner through letter dated 27.4.2006 (School in question at present is being managed by Authorised Controller under order of single operation. In para18 of the writ petition it is mentioned that by order of Joint Director of Education dated 16.10.2003, Principal Government Navratna Intermediate College Rehad, District Bijnore was appointed as Prabandh Sanchalak of the School in question). Thereafter Head Master wrote a letter on 31.5.2006 to Accounts Officer and District Basic Shiksha Adhikari stating therein that salary could not be paid to the petitioner. Thereafter District B.S.A. wrote a letter on 6.9.2006 to the Headmaster copy of which is Annexure15 to the writ petition reprimanding the headmaster and directing that steps for payment of salary of the petitioner must be taken. Thereafter another representation was made by the petitioner to Prabandh Sanchalak who passed an order on 11.9.2006 directing the Headmaster to submit salary bill. It was also mentioned

in the said letter that petitioner had filed an affidavit stating therein that in case review of Sheo Kumar was allowed then she would return the salary. However, inspite of the said letter, copy of which is Annexure16 to the writ petition, Headmaster did not send the salary bill of the petitioner and the allegation is that he did not permit the petitioner to work. Thereafter, on 31.5.2007 Prabandh Sanchalak and Headmaster sent the representation of the petitioner to the District B.S.A. for clear direction. District B.S.A on 9.5.2007 directed that order of the High Court dated 12.4.2007 through which review of Sheo Kumar was dismissed should be complied with.

7. The above narration of the facts clearly establishes the high handedness of the Headmaster and his collusion with Sheo Kumar. The unwarranted instance of Headmaster was further compounded by the counter affidavit filed by him on 15.1.2008 in this writ petition (Krishna Pal Singh is the Headmaster who has filed the counter affidavit). In para 6 of the counter affidavit the Headmaster clearly held the brief for Sheo Kumar. In the said paragraph the Headmaster has severely criticised the orders of the Joint Director and Director appointing the petitioner in the Institution in question. He has also stated that there was no clear vacancy as writ petition of Sheo Kumar was pending hence appointment was wrongly given to the petitioner. In para 7 it has been stated that order of District B.S.A. dated 11.11.2002 passed in pursuance of order of Director was clearly illegal. In para8 it has been stated that appointment letter by Manager was illegal, null and void.

8. The Headmaster has got no business to criticise the order of appointment of ClassIII employees passed by District B.S.A. and Director. What the Headmaster has done is highly condemnable and utterly beyond his authority.

9. Accordingly, writ petition is allowed. Petitioner should at once be permitted to join and she shall be paid her salary with effect from 30.12.2005 when order of Director was passed. Not a single days delay be made in permitting the petitioner to join. Authorised Controller must at once be changed and disciplinary proceedings must be initiated at once against the present authorised controller.

10. As Headmaster Shri Krishan Pal Singh has behaved in a most unjust, unauthorised and illegal manner in this matter hence disciplinary proceedings against him should also be initiated and the charge of Headmaster be at once given to the next senior most teacher. The salary of the petitioner to be paid from 30.12.2005 till date shall be recovered from the Headmaster. It may be recovered even from his future salary.

11. Any laxity shown in compliance of this order by respondents will not be appreciated by this Court.

12. Office is directed to supply a copy of this order free of cost to Shri M.C. Chaturvedi, learned Chief Standing Counsel within a week.