
(2000) 04 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 337 of 2000

Shesh Nath Ram

APPELLANT

Vs

The Joint Director of Education and Others

RESPONDENT

Date of Decision : 04-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 UPLBEC 2453

Hon'ble Judges : R.K. Agarwal, J

Bench : Single Bench

Advocate : A.N. Tripathi, for the Appellant; S.C. for the respondent Nos. 1, 2 and 4 and K.J. Khare, for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

R.K. Agarwal, J.—The petitioner Shesh Nath Ram had earlier approached this Court by filing Civil Misc. Writ Petition No. 11556 of 1999 in which he had challenged the order dated 4-3-99 passed by the Joint Director of Education, Varanasi Region, Varanasi.

2. In the aforesaid Writ Petition Abdul Basher Abbasi was array as respondent No. 5. After hearing the Counsel for the petitioner and the respondent No. 5, this Court by the judgment and order dated 23-3-1999 disposed of the Writ Petition with the direction to the Joint Director of Education, Varanasi Region, Varanasi to dispose of the proceeding in accordance with law within a period of four weeks from the date of production of a certified copy of this order, taking into consideration all objections to be raised by the parties granting them opportunity in accordance with law. This Court while disposing of the aforesaid Writ Petition had observed that petition is entitled to take all objections taken in the present Writ Petition including want of jurisdiction on the ground of want of power of review before the said authority.

3. Pursuant to the aforesaid directions the petitioner had filed his objections on

31-3-99 before the Joint Director of Education, Varanasi Region, Varanasi, a copy of which has been filed as Annexure-16 to the Writ Petition. In the said objections the petitioner has specifically raised the jurisdiction of the authority on the ground that he has no power to review his earlier order. The petitioner also raised an objection that Abdul Basher Abbasi had already declined to teach Education in place of Lalji Tiwari by the letter dated 22-7-81 and also gave up his right to claim promotion on the post held by Lalji Tiwari after his retirement on 1-7-98 and, therefore, he is estopped from claiming promotion on the post of Lecturer in Education. The Joint Director of Education by the order dated 15-12-99 filed as Annexure-18 to the Writ Petition had not considered any of the aforementioned objections raised by the petitioner.

4. I have heard Shri A.N. Tripathi learned Counsel for the petitioner, the learned Standing Counsel who represents respondent Nos. 1, 2 and 4 and Shri K. Khare who represents respondent No. 5. Since respondent No. 5 has filed his counter-affidavit to which the petitioner has also filed the rejoinder affidavit. With the consent of the learned Counsel for the parties the Writ Petition is disposed of finally at the admission stage itself in accordance with the Rules of the Court.

5. Shri A.N. Tripathi, learned Counsel for the petitioner submitted that the Jt. Director of Education, Varanasi Region, Varanasi while during the seniority of respondent No. 5 and his claim for promotion on the post of Lecturer in Education had not considered the various objections raised by him.

6. Regarding the power of review as also the principle of estoppel raised by him. He further submitted that in any event the respondent No. 5 having declined to accept the duty of teaching education in the year 1981 and further having written that he would not claim any promotion on the post of Lecturer when it falls vacant in the year 1998, he is estopped from claiming promotion on the said post.

7. He further submitted that the Joint Director of Education of Varanasi Region, Varanasi having granted the lecturers pay scale to him cannot review his own order. On the other hand Shri K.J. Khare who represents respondent No. 5 submitted that the order granting Lecturer grade to the petitioner was obtained by the petitioner by playing fraud as full facts were not brought to the knowledge of the Joint Director of Education. He further, submitted that the letter written by the petitioner in the year 1981 by no stretch of imagination can be held to operate as estoppel even though the respondent No. 5 in the supplementary affidavit has denied the writing of the said letter.

8. Having heard the learned Counsel for the parties I find that this Court by the judgment and order dated 23-3-99 had directed the Jt. Director of Education to dispose of the proceedings in accountancy with law after taking into consideration all objections to be raised by the parties. Specific objections was raised to the jurisdiction of the Joint Director of Education. The impugned order does not deal with any objection raised by the petitioner and, therefore, the said

order cannot be sustained. It is not necessary to go into the merits of the contention raised by the respective parties at this stage as Jt. Director Education is yet to apply his mind on the merits of the matter.

9. In the result the impugned order dated 15-12-99 passed by Jt. Director of Education, Varanasi Region, Varanasi is set aside and he directed to decided the matter afresh after granting opportunity to the petitioner and also the Committee of Management, Gandhi Memorial Intermediate College and Abdul Basher Abbasi, respondent No. 5. Since the matter is an old one, the Jt. Director of Education, Varanasi Region Varanasi is directed to decide the matter within two months from the date of filing of this order. Till, the decision the Jt. Director of Education decide the matter, the parties are directed to maintain status quo so far as the teaching is concerned.

10. Subject to the aforesaid observation the Writ Petition is allowed.