
(2004) 08 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 30536 of 2004

Shree Bhagwan Kushwaha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 5132

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Avinash Swaroop, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri. Avinash Swaroop, learned Counsel for the Petitioner and learned standing counsel for the State-Respondent.

2. Petitioner, Shree Bhagwan Kushwaha, who claims to be demonstrator in Chaharwati Intermediate College, Akola, Agra has filed this writ petition against an order dated 30th April, 2004 passed by the Deputy Director of Education, Agra Region, Agra. By means of the said order dated 30.4.2004 the Deputy Director of Education has rejected the objections raised by the Petitioner with regard to fixation of pension of one Shri Bhagwan Goel, who has since retired as lecturer from the same institution on 30th June, 2003. The Deputy Director of Education under the order dated 30.4.2004, has specifically noticed that the District Inspector of Schools, Agra, had passed an order on 14th January, 2004, directing that a sum of Rs. 37,841 was liable to be recovered and therefore deducted, from the pension of Sri. Bhagwan Goel because of incorrect fixation of his salary between 1971-80. The said order of District Inspector of Schools had been challenged by Sri. Bhagwan Goel before this Court by means of the Writ Petition No. 940 of 2004. In the said writ petition an interim order has been granted in favour of Sri. Bhagwan Goel. In such circumstances the Deputy Director of Education has held that the fixation of pension of Sri. Bhagwan Goel

shall abide, the final decision of the said writ petition filed by Sri. Bhagwan Goel.

3. The Petitioner has no concern with the fixation of the pension of Sri. Bhagwan Goel nor he is to make the payment. His claim of seniority on the basis of wrongful payment of salary to Sri. Bhagwan Goel, does not survive inasmuch as Sri. Bhagwan Goel has already retired. The writ petition at the behest of the present Petitioner has only been filed to harass Sri. Bhagwan Goel and for settling the old score which must have arisen when Sri. Goel was promoted in preference to the Petitioner. The present writ petition is vexatious in nature and this Court cannot become a party to such kind of litigation, nor can it permit persons like the Petitioner to abuse the process of this Court for settling private grudges.

4. No legal rights of the Petitioner have been affected by the impugned order dated 30.4.2004 and as such writ petition on his behalf is legally not maintainable. The legal position with regard to right of person to approach this Court under Article 226 of the Constitution of India has been explained by the Hon"ble Supreme Court in the judgment in State of Kerala v.A. Lakshmikutty and Ors. AIR 1987 SC 331, Para 33, whereunder it has been held as follows:

In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance.... It is elementary though it is to be restated that no one can ask for a mandamus without a legal right.

5. Writ petition is accordingly dismissed with cost of Rs. 3,000. The amount of costs shall be recovered from the Petitioner by the District Magistrate, Agra, as arrears of land revenue and shall also be transmitted to this Court within one month. The said amount of cost shall be deposited in legal aid society of the High Court.