
(2015) 11 AHC CK 0140
In the Allahabad High Court
Case No : Writ - A No. 54150 of 2013

S.K. Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 11 ADJ 722

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Praveen Kumar and Pradeep Kumar, for the Appellant; A.D. Saunders, for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Shri Pradeep Kumar assisted by Shri Praveen Kumar, learned counsel for the petitioner, Shri H.C. Pathak, learned Standing Counsel appearing for the State-Respondent Nos. 1 to 3 and Shri A.D. Saunders, learned counsel for the respondent No. 4.

2. The petitioner who retired on 30.6.2012 from the post of Lecturer (English) in the respondent No. 4 institution, has filed this writ petition seeking writ, order of direction in the nature of mandamus commanding the respondent No. 4-college to forward the pension documents and No Objection Certificate of the petitioner to the respondent No. 3-D.I.O.S., Agra. The relief has also been sought that the respondent Nos. 2 and 3 to be directed to release the pension as well as retiral dues of the petitioner.

3. Counter affidavit has been filed by the State-Respondent in which it is stated that since the pension papers of the petitioner has not been forwarded by the respondent No. 4 institution, and as such, the payment of retiral dues could not be made to him.

4. Shri Pradeep Kumar, learned counsel for the petitioner submits that pension

papers and No Objection Certificate of the petitioner are not being forwarded by the respondent No. 4 on the pretext that the petitioner is occupying a residential quarter allotted to him as a teacher of the institution. He submits that the petitioner is residing in the quarter, which neither belongs to the respondent No. 4 nor it was allotted by the respondent No. 4 to the petitioner. He further submits that the residential quarter belongs to Lucknow Diocese Trust Association and Agra Diocese Trust Association and he is regularly paying the rent to the said trusts. He further submits that there is no mention in the counter affidavit that out of 10 residential quarters meant for teachers, which quarter was given by the respondent No. 4 to the petitioner. The accommodation, which was earlier allotted by the respondent No. 4 to the petitioner was vacated by him in the year 1996, and thus, the petitioner is not in occupation of any quarter belonging to the respondent No. 4. He submits that action of the respondents to withhold the pension papers and post retiral dues is violative of Article 14 of the Constitution of India. In support of his submission he has relied upon a decision of Hon''ble Apex Court in the case of U.P. Raghavendra Acharya and Others Vs. State of Karnataka and Others, .

5. Shri A.D. Saunders, learned counsel for the respondent No. 4 submits that the residential quarter in which the petitioner is residing, is within the college compound and was allotted to him as a teacher of the college on a very nominal license fee, which was part of the condition of service and unless the petitioner vacates the aforesaid residential accommodation, "No Objection Certificate" can not be issued to him. He further submits that the petitioner has neither impleaded the Lucknow Diocese Trust Association and Agra Diocese Trust Association nor has filed any paper of allotment of residential accommodation by the aforesaid two trusts nor has filed rent receipt except one undated receipt of Rs. 360/- for the period July, 1999 to June, 2000, which is manipulated one and even in this receipt the designation of issuing authority is printed as "Principal". He submits that clear statement of facts mentioned in paragraphs 6, 9, 13, 15, 17, 19 and 44 of the counter affidavit have not been demonstrated to be untrue or incorrect by the petitioner in the rejoinder affidavit. He submits that Writ-A No. 11981 of 2014 (C/M Stewart Ward Memorial Higher Secondary School & another vs. State of U.P. and 8 others) was filed in the matter of another similar institution in which an order dated 25.2.2014 was passed providing that pension shall not be released till the premises is actually vacated. He also refers another order of this Court dated 12.2.2009 passed in Writ Petition No. 7436 of 2009 (Committee of Management, Prentiss Girls Inter College, City and District Etah and another vs. State of U.P. and others) in which it was observed that prima facie the respondent No. 3 therein cannot hold on the accommodation and the petitioner is entitled to withhold the No Dues Certificate. It was further provided that in the said order that it would be open to the Management and the District Inspector of Schools to release the retiral dues of respondent No. 3 therein, in case, she hands over vacant possession of the house before the next date fixed. He submits that principle of law laid down in the judgment of relied by the

petitioner is not disputed but it shall not apply on facts of the present case as the petitioner has to vacate the residential accommodation provided by the respondent No. 4 institution, which is situated in the college compound and is meant only for the serving teachers of the institution.

6. I have carefully considered the submissions of the learned counsel for the parties, and perused the record.

7. From the perusal of the writ petition, it is evident that the petitioner has not filed any paper to demonstrate that which authority allotted to him the residential accommodation in question. Although allegations have been made in para 10 of the writ petition that the petitioner is residing in a house, which belongs to the Lucknow Diocese Trust Association and Agra Diocese Trust Association but the aforesaid two trusts have not been even impleaded as respondents in the present writ petition. The letter of Principal of respondent No. 4 institution dated 10.9.2012 relied by the petitioner in support of his submission that his name does not find mention in the list of teachers occupying the residential accommodation in the college compound, was sent by the Principal of the respondent No. 4 institution on 10.9.2012 in reply to the letter of respondent No. 3 dated 18.8.2012 whereas the petitioner has retired on 30.6.2012. The list contains the names of the teachers currently serving in the institution. Undisputedly, the petitioner has retired much before the quarry was made by the D.I.O.S. Agra vide aforesaid letter dated 18.8.2012 and a reply thereof given by the respondent No. 4 vide letter dated 10.9.2012.

8. Shri A.D. Saunders, learned counsel for the respondent No. 4 has drawn attention of this Court to the averments made in paragraph Nos. 6 to 9, 13, 15, 17, 19 and 44 of the counter affidavit and reply thereof given in the rejoinder affidavit. In paragraph Nos. 6, 7, 8, 9 and 44 to the respondent No. 4 has stated as under:

6. That the Agra Diocese was carved out from a part of the Lucknow Diocese, defining the territorial limits. The Agra Diocese was created in the year 1976. The Agra Diocesan Trust Association was registered on 12.08.88 through it had come into existence on 02/04 February 1986.

7. That so far as the properties within the campus of the college/institution are concerned they continued to remain with the respective college/institution.

8. That in the institution of the respondent No. 4 there are several buildings within its campus and the addresses of all these buildings is the address of the college/institution and do not bear separate addresses.

9. That in the campus of the answering institution there are 10 teacher quarters apart from other buildings and these teacher quarters are given out to teachers of the answering institution at a very nominal rent and is part of their service condition. After a teacher, who has been given accommodation in either of these 10 quarters is required to vacate immediately after his/her retirement so as to

enable the answering institution to accommodate another serving teacher and in this manner the allotments are made by rotation subject to the retirement of such teacher who had been provided with accommodation within the campus.

44. That the contents of paragraph 20 of the Writ Petition are false, incorrect and are denied. There is no rent charge nor is the quarter given on rent but a very nominal amount is taken as house license fee and is a benefit given to teachers of the college. As demonstrated above neither the Lucknow Diocesan Trust Association nor the Agra Diocesan Trust Association has any concern to the quarter in question which is within the control and management of the college. The receipt does not indicate the year in which it has been issued further the said receipt has been signed by the Principal, the answering respondent submits that even assuming without conceding the correctness of the said receipt, the deposit has to be made to the Principal of the college. Agra Diocesan Trust Association does not deal with college properties and the receipt appears to have been fabricated by the petitioner.

9. The petitioner has submitted reply of the aforesaid paragraphs of counter affidavit in paragraph Nos. 7, 8, 9, 10 and 44 of the rejoinder affidavit as under:

7. That contents of paragraph No. 6 of the Counter Affidavit are denied for want of documentary evidence in support of the averments. However it is submitted that the Agra Diocese was set up to Manage certain properties of the Lucknow Diocese and no transfer of property has taken place in favour of the Agra Diocese. It is further submitted that the Agra Diocesan Trust Association and the Diocese of Agra have filed a Civil Suit being Suit No. 918 of 2005 against the Lucknow Diocesan Trust Association alongwith the other bodies, claiming ownership of properties within the territorial jurisdiction of the Diocese of Agra. The aforesaid suit is pending before the Civil Judge (S.D.) Agra and the next date in the aforesaid suit is fixed for 24.12.2013. For kind perusal of this Hon'ble Court a true copy of plaint filed by the Agra Diocesan Trust Association is being filed herewith and marked as Annexure R.A.2 to this affidavit.

8. That contents of paragraph No. 7 of the counter affidavit are not admitted as stated for want of documentary evidence.

9. That contents of paragraph No. 8 of the Counter Affidavit are wholly misconceived, hence emphatically denied. Other than the educational permission of the college, there are only 6-8 small quarters which has already been provided to the Class-3 & 4 employees of the institution free of cost. No other building exists on the same address. Further it is submitted that the address of the college campus is 14/325 Madan Mohan Gate, hospital road Agra. However, the address of the petitioner is 14/306 Madan Mohan Gate Agra.

10. That contents of paragraph No. 9 of the Counter Affidavit are misconceived, hence denied. In reply thereto, it is submitted that a perusal of the list given to the Respondent No. 4-College to the District Inspector of Schools Agra alongwith the letter dated 10.9.2012 clearly mentioned that only six persons stay within

the campus of the institution and all the teachers stay outside the campus, some of whom have been allotted accommodation on rent by the Agra Diocesan Trust Association.

44. That contents of paragraph No. 44 of the Counter Affidavit are very vague. On one hand the answering respondent states that the receipt is a fabricated one and on the other hand he says that the deposit is being made to the Principal of the College as per the receipt. In reply to the contents of para 44, the contents of para 40 of the writ petition as the preceding paragraph of the present writ petition are reiterated and reaffirmed. It is specifically submitted that the petitioner is residing in a accommodation provided by the Lucknow Diocesan Trust Association and is regularly paying the same to the trust. No evidence has brought on record by the Respondent No.-4 College to show that after 1995 the petitioner has been allotted any accommodation by the Respondent No. 4-College any rent has been paid to the Respondent No. 4-College.

10. From the perusal of the pleadings as aforementioned, it is clear that the respondent No. 4 has clearly stated in paragraph 9 of the counter affidavit that in the campus of the respondent No. 4 institution, there are 10 teacher quarters apart from other building and these teacher quarters are given to the teachers of the answering institution at a "very nominal rent and is part of their service condition", which is required to be vacated immediately after his/her retirement so as to enable the answering institution to accommodate another serving teacher and in this manner the allotment is made by rotation subject to the retirement of such teacher, who had been provided with accommodation within the campus. In paragraph No. 10 of the rejoinder affidavit, the petitioner has not denied this statement of fact. He has not stated that the accommodation is being provided as a part of service condition, which is required to be vacated on retirement.

11. In paragraph No. 15 of the counter affidavit, a resolution of allotment of quarter to the petitioner has been quoted. In paragraph No. 13 of the counter affidavit, a resolution considering the application of the petitioner and another teachers, has been quoted. In paragraph No. 17 of the counter affidavit, a reference of the application of the petitioner for allotment of residential quarter has been given. In paragraph No. 44 of the counter affidavit as aforementioned, the averments made in paragraph 20 of the writ petition with reference to the alleged receipt of the license fee filed by the petitioner has been denied.

12. Pleadings made by the parties as well as the arguments advanced before this Court, clearly demonstrate that the petitioner is disputing the fact of the residential accommodation being occupied by him, belongs to the respondent No. 4. However, neither any allotment order nor lease-deed for occupying the residential quarter in question by the petitioner has been filed alongwith writ petition nor the alleged owners have been impleaded as respondents in the writ petition. In absence of any documentary evidence and impleadment of necessary parties, the petitioner cannot dispute that the residential quarters are being

provided to the serving teachers within the college compound as a part of service condition. He has also not disputed that the residential quarter, which is being occupied by him is within the college compound. Under the circumstances, no mandamus can be issued to the respondents to issue "No Objection Certificate" to the petitioner unless the residential accommodation provided to him as serving teacher within the college compound, is vacated by him.

13. There is another aspect of the matter. The petitioner has disputed the rights and title of the respondent No. 4 over the residential quarter in question. The respondent No. 4 has clearly stated that the residential accommodation being occupied by him belongs to the institution. Thus, there is serious factual dispute, which cannot be decided in writ jurisdiction under Article 226 of the Constitution of India.

14. From the letter dated 18.8.2012 sent by the D.I.O.S. Agra to the respondent No. 4, it is evident that the respondent No. 4 has facilitated the teachers to receive excess payment from the state exchequer in the form of house rent allowance. Under the circumstances, the respondent No. 3 should have deeply enquired into the matter and should have taken appropriate action in accordance with law to stop the illegal payments as well as for recovery of payments illegally disbursed with the help of the respondent No. 4. Under the circumstances, I leave it open to the respondent No. 3 to make an inquiry into the matter and to take appropriate action in accordance with law.

15. It is clarified that this Court has not adjudicated on the issue of right or title of the respondent No. 4 or any other person or the institution over the residential quarters in question.

16. With these observations, the writ petition fails and is hereby dismissed.