
(2016) 11 AHC CK 0068
In the Allahabad High Court
Case No : Service Single No. 1275 of 2013

Smt. Kalawati

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Citation : (2017) 1 ADJ 450 : (2017) 1 ESC 184

Hon'ble Judges : Pradeep Kumar Singh Baghel, J.

Bench : Single Bench

Advocate : C.S.C, for the Respondent; S.K. Verma, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Pradeep Kumar Singh Baghel, J. - The petitioner is working as Mukhya Sevika in Integrated Child Development Services-III (for short, "ICDS") on contract basis. She is seeking her promotion from the post of Anganwadi worker to Mukhya Sevika, ICDS (General). Her claim has been rejected by the second respondent vide order dated 11.10.2012. She has instituted this writ proceeding challenging the said order.

2. The salient and necessary facts of the case are that the petitioner was initially appointed as an Anganwadi Karyakatri (Worker). She continued to work up to 27.9.2002 and thereafter she was appointed as Mukhya Sevika in ICDS-III in the month of August 2002. Since then she has been regularly discharging her duties.

3. An advertisement was issued on 23.01.2006 inviting applications for the appointment to the posts of Mukhya Sevika. The petitioner, who was working as a Mukhya Sevika on contract basis in ICDS-III, made an application for her promotion on the post of Mukhya Sevika but her case was not considered on the ground that at the time of her initial appointment in the year 1985 she was less than 18 years and hence her experience will be counted from the date when she attained 18 years in age and in view of the said fact her case was not considered. The said decision was communicated to the petitioner vide communication dated

13.04.2007.

4. Aggrieved by the aforesaid order the petitioner preferred a writ petition being Writ Petition No. 5940 (S/S) of 2007, wherein a direction was issued for consideration of her claim. Accordingly, the petitioner moved a representation which were rejected vide order dated 25.01.2008.

5. The petitioner challenged the said order by means of Writ Petition No. 1128 (S/S) of 2008. The said writ petition was allowed by this Court on 15.01.2009 quashing the impugned order dated 25.01.2008. This Court issued a direction for fresh consideration of the petitioner.

6. The second respondent again rejected the claim of the petitioner vide order dated 30.04.2010 reiterating the same ground that at the time of his initial appointment, the petitioner was less than 18 years hence she was not entitled for appointment. The petitioner was compelled to file a third writ petition i.e. Service Single No. 6480 (S/S) of 2010. The said writ petition was allowed by this Court on 31.07.2012.

7. Relevant would it be to mention that the reasons mentioned in the impugned order dated 11.10.2012 that since the petitioner was less than 18 years and she was not entitled for the promotion, were considered by the learned Single Judge and the said plea was rejected by the Court following a judgment of a Division Bench in the case of Smt. Ram Devi v. Director Bal Vikas Pustahar, U.P., Lucknow & others, 2005 (23) LCD 1511. This Court, on third time, passed the order dated 31.07.2012 and again remitted the matter back to the authority concerned to consider it in the light of the judgment in Smt. Ram Devi (supra). However, in compliance of the said order, the impugned order dated 11.10.2012 has been passed again reiterating the same stand, which the authority had repeatedly taken on three previous occasions.

8. A counter affidavit has been filed. In the counter affidavit the stand taken in the impugned order in the present writ petition and the earlier impugned orders which were passed from time to time, as mentioned above, has been reiterated.

9. I have heard learned counsel for the petitioner Sri S.K. Verma and the learned Standing Counsel.

10. It is submitted by the learned counsel for the petitioner that the petitioner's claim has been rejected three times by the authority concerned on the ground that at the time of her initial appointment she was underage. The Division Bench had an occasion to consider the said issue in Smt. Ram Devi (supra) and has held that the view taken by the authority concerned is contrary to the law laid down by this Court in Ram Devi (supra).

11. Next, he submitted that the petitioner has been discriminated as another Karyakatri Smt. Sushma Verma was also appointed on the post of Mukhya Sevika, ICDS-III likewise the petitioner and thereafter she was appointed as a Mukhya Sevika, ICDS (General).

12. The learned counsel for the petitioner has also drawn the attention of the Court to the averments made in paragraph-17 of the writ petition, wherein names of some of the similarly placed persons, who were earlier appointed as Mukhya Sevika in ICDS-III were promoted as Mukhya Sevika (General). He has also invited the attention of the Court to the reply of the said averments in the counter affidavit where no specific reply was given. Only a general and vague statement of fact has been stated.

13. Lastly, he submitted that the State Government in a communication dated 13.04.2007 addressed to the second respondent has clearly directed that the issue in respect of the underage of the petitioner cannot be considered in view of the facts that her services were not terminated and later, she was promoted on the post of Mukhya Sevika, ICDS-III. Thus, the second respondent was directed to consider the matter in the light of the aforesaid facts positively.

14. Learned Standing Counsel submits that this direction was binding on the second respondent and he has conveniently ignored the direction of the State Government while passing the impugned order. He also submits that in the counter affidavit a stand has been taken that the petitioner has been awarded 26 marks only on the basis of experience. No other submission has been made.

15. I have considered the submissions of the learned counsel for the parties and perused the record.

16. This case is an illustration that how an adamant attitude of a bureaucrat can generate litigation. The petitioner's case was not considered on the ground that at the time of her initial appointment in the year 1985 she was underage. The experience was counted in terms of the Government Order dated 20.04.2005 from the age of 18 years. This issue was considered by a Division Bench of this Court in the case of Smt. Ram Devi (supra), wherein the Court has held as under:

"9...For promotion to a post candidate has to fulfil the criteria as applicable on the date when he is being considered for promotion or on any other relevant date as required by Rules. It is not the case of the respondent that the appellant lacks any qualification for promotion. The appellant has gained experience on the post of Angan Bari Karyakatri of more than 18 years. At the time when the appellant is being considered for promotion she cannot be non suited on the ground that at the time of her initial engagement as Angan Bari Karyakatri she was less than eighteen years of age when no action was taken against her for the last eighteen years and she was working on the post without any objection. It is not the case of the respondents that due to her being less than eighteen years of age at the time of engagement her services were terminated or any other action was taken. We are of the view that at time of consideration of promotion in the year 1998 i.e. More than 18 years after her initial engagement it is not open for the respondents to non suit her on the ground that she was less than eighteen years of age at the time of her initial engagement in the year 1980. The view which we are taking finds support from the observations of the Apex Court while

considering the question of confirmation in AIR 1990 Supreme Court 371, Bhagwati Prasad v. Delhi State Mineral Development Corporation."

17. In the earlier impugned order dated 25.01.2008 when petitioner's claim was rejected, her Writ Petition No. 1128 (S/S) of 2008 was allowed by this Court on ground that her case is squarely covered by the judgment in Smt. Ram Devi (supra). It is significant to mention that this Court has recorded the statement of learned Standing Counsel that he does not dispute the fact that the petitioner's case was squarely covered by the Ram Devi's case. By the said order, this Court setting aside the order impugned in that writ petition dated 25.01.2008 remitted the matter back to the Director to consider the petitioner's case.

18. In compliance of the said order the second respondent vide his order dated 30.04.2010 again, reiterating the same stands, rejected the claim of the petitioner that since her experience would be counted only from the date of she became 18 years in terms of the Government Order dated 20.04.2005 and she got only 22 marks, hence, she is not entitled for promotion.

19. The petitioner challenged the said order and this Court in Writ Petition No. 6480 in 2010, wherein this Court has specifically dealt with the provisions of the Government Order dated 20.04.2005 and set aside the impugned order following the judgment in Smt. Ram Devi (supra). The order of the learned Single Judge was not challenged by this Court in special appeal and in compliance of the said order a fresh impugned order dated 11.10.2012 has been passed reiterating the same reasons.

20. Once learned Standing Counsel has made a submission in this Court in writ petition No. 1128 (S/S) of 2008 that the case of petitioner is squarely covered by the judgement in Smt. Ram Devi (supra), it was not open to the Director to reiterate the same stand. If he was satisfied that the petitioner's case was not covered by Smt. Ram Devi (supra) and the learned Single Judge has wrongly applied the law, it was open to the Director to file a review application against the said order or to file special appeal, however, the Director neither filed special appeal nor review application and has reiterated the same stand which was set aside by this Court. Not only this on the third occasion when the learned Single Judge has considered the Government Order 20.04.2005 and set aside the order impugned therein, the Director again did not file special appeal but he opted to stick to his stand which has been repeatedly set aside by this Court. In fact, in my view, the conduct of the Director is contemptuous.

21. The experience reveals that when an order of the authority is set aside and a direction is issued to decide the matter afresh in the light of the observations made in the order, after the remand the authority concerned ignoring the observations of the Court, takes a fresh ground for rejection of the claim of the petitioner. There are several examples when again the order is challenged and the matter is remitted back, the authority finds out some other ground to reject the claim.

22. Once a direction has been issued to decide the matter afresh in the light of the observations made in the order, the said observation cannot be ignored by the authority concerned. It has to confine its order in terms of the observations of the Court. It is not open to it to reject the claim on a fresh ground which was not mentioned in the earlier impugned order, and ignore the observations of the Court. This type of attitude of the authorities not only wastes the invaluable public time but also cause loss to the public exchequer. If any authority or person finds that the observation of the Court is contrary to the law and is improper, it is always open to the State/ its functionaries/ aggrieved person to challenge the order/ observation of the Court taking recourse to such proceeding which is available to him but the direction of the Court must be obeyed. It cannot be ignored. The Supreme Court in the case of Commissioner, Karnataka Housing Board v. C. Muddaiah, (2007) 7 SCC 689 has observed thus:

"32. We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged."

23. In the case in hand the petitioner who comes from the weaker section of the

society has been compelled to file one after another writ petition, as mentioned above, however the second respondent has taken an adamant attitude and has rejected again the claim of the petitioner by a skeletal order.

24. The Supreme Court had occasion to consider such tendency of the authorities in the case of Central Cooperative Consumers' Store Ltd. Through its General Manager v. Labour Court, H.P. at Shimla and another, (1993) 3 SCC 214, wherein the Court has held as under:

"5. Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority. They have literally persecuted her. Despite unequal strength the opposite-party has managed to survive. We are informed that the opposite-party has been reinstated. This was put forward as bona fide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite-party has been lost in this tortuous and painful litigation of more than twenty years. That for such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable..."

25. Insofar as the submission of the learned counsel for the petitioner that the petitioner has been discriminated, I find sufficient force in his submission. In paragraph-17 of the writ petition the petitioner has mentioned names of the Smt. Krishna Kumari, Smt. Saroj Pal and Smt. Sushma Verma, who were similarly placed and were appointed as Mukhya Sevika, ICDS-III on contract basis like the petitioner. Later, they were appointed as Mukhya Sewika, ICDS (General) vide order dated 21.01.2007. He has also brought on record the said order of Sushma Verma as annexure- 13 to the writ petition. The said statement has not been specifically denied in paragraph-12 of the counter affidavit, which is extracted herein below:

"12. That in reply to the contents of Paragraph No. 12, 13, 14, 15, 16 and 17 of the writ petition, it is submitted that the full facts have already been given in the preceding paragraph which is reiterated and reaffirmed."

26. Learned Standing Counsel has failed to find out that in which paragraph the reply in regard to the discrimination has been made in the counter affidavit. Thus, it is established that the petitioner's averment regarding discrimination has not been denied in the counter affidavit, as such, on this ground also the impugned order is liable to be set aside.

27. Relevant it would be to mention that the Principal Secretary of the Department vide his communication dated 13.04.2007 addressed to the Director, the second respondent, has pointed out that her appointment was made when she was underage, is not correct as her appointment was not cancelled on that ground. He has also pointed out that she was also given promotion, therefore, the said issue cannot be raised at this stage, and has issued a direction for

considering her case positively. This letter of the State Government has also been ignored by the Director.

28. After careful consideration of the matter, I am of the view that for the reasons stated herein above the impugned order dated 11.10.2012 needs to be set aside. It is, accordingly, set aside. The matter has earlier been remitted to the authority concerned three times. Ordinarily, this Court does not pass the order itself and remit the matter back to the authority concerned but it is a trite law that in the peculiar circumstances the Court under Article 226 of the Constitution can pass the order itself without sending the matter back to the authority concerned. Reference may be made to the judgments in the cases of Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another v. K.S. Jagannathan and another, (1986) 2 SCC 679 and State of Bihar v. Dr Braj Kumar Mishra and others, (1999) 9 SCC 546. Paragraph-20 of the judgment in K.S. Jagannathan (supra) reads thus:

"20. ?In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

Relevant part of the judgment in Paragraph-7 of the judgment in Dr. Braj Kumar Mishra (supra) is extracted below:

"7. It is true that normally the court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the authority concerned particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases as the instant case, nothing prevented the Court from issuing directions when all the facts were admitted regarding the eligibility of Respondent 1 and his possessing the requisite qualifications. Remand to the authorities would have been merely a ritual and ceremonial..."

29. Having regard to the aforesaid law, I issue a direction to the second respondent to pass appropriate order for promotion of the petitioner within two weeks from the date of communication of this order.

30. The petitioner a class-III employee has been harassed as she was compelled to file four writ petitions in this Court. The public time and money has been wasted due to the adamant attitude of the Director, hence, in my view the petitioner is entitled for the cost. Recently, the Supreme Court in the case of Subrata Roy Sahara v. Union of India and others, (2014) 8 SCC 470 has considered the principles of "Code of Compulsory Cost" to avail senseless

litigation. The relevant part of the said judgement is extracted below:

"191. ...One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault? The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues a litigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs".

193. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility to take decisions. So much so that we have started to entertain the impression that all administrative and executive decision making are being left to courts just for that reason. In private litigation as well, the litigant concerned would continue to approach the higher Court, despite the fact that he had lost in every court hither-to-before. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise."

31. Applying the said principle, in my view, the ends of justice requires that the petitioner shall be paid a cost of Rs. 25,000/-. The State shall pay the cost with liberty to recover it from the officer concerned.

32. The writ petition is, accordingly, allowed.