
(2000) 12 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 35037 of 1997

Smt. Kusumanjali Agarwal	Vs	APPELLANT
Director of Education (Basic), Allahabad and others		RESPONDENT

Date of Decision : 01-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 22

Hon'ble Judges : A. K. Yog, J

Bench : Single Bench

Advocate : Ashok Khare and K.C. Vishwakarma, for the Appellant; C.D. Misra, S.G. Hasnan, S.C., for the Respondent

Judgement

A. K. Yog, J.—Heard, Sri K. C. Vishwakarma, advocate, counsel for the petitioner, learned standing counsel for respondent Nos. 1 to 5, Mr. C. D. Misra, advocate, counsel for respondent No. 6/Committee of Management. Perused the record. Writ Petition is finally disposed at this stage as the parties are served and also have exchanged their pleadings as contemplated under Chapter XXII, Rule 20 II Proviso, Rules of Court, 1952 (as amended up to date).

2. Smt. Kusumanjali Agrawal, petitioner, approached this Court through this writ petition under Article 226, Constitution of India and prayed for a writ of mandamus commanding the respondents, (including Director of Education, (Basic) U. P. Allahabad, Basic Shiksha Adhikari, Mirzapur, Account Officer, office of Basic Shiksha Adhikari, Mirzapur and Committee of Management, Smt. Kshirad Kumari Balika Vidyalaya, Junior High School, City and district Mirzapur called the "School" not to interfere in the functioning of the petitioner as Assistant Teacher in the School, and to pay her arrears (w.e.f. 1.4.1996 to till date) and monthly salary as such as contemplated under U. P. Junior High School (Payment of Salary to Teachers and other Employees) Act, 1978.

3. Brief facts, under which the petitioner was constrained to file the present writ petition, are as herein-under :

4. Petitioner was admittedly appointed on one year probation as Assistant Teacher by the School, on the basis of the approval order dated 5.10.1991 passed by the District Basic Shiksha Adhikari, Mirzapur (Annexure-3 to the writ petition).

When the petitioner was appointed, the school was not on "grant-in-aid" list of the State Government.

5. The petitioner, according to her, had to go for medical treatment to Allahabad. She submitted an application for leave dated 5.5.1995 (Annexure-4 to the writ petition). The petitioner, on recovering from illness, came back to join the School but she was not allowed to sign the attendance register by the Head Mistress and the Manager of the School (paragraph 11, 12 and 13 read with Annexures-5 and 6 to the writ petition).

6. It is contended that the petitioner approached all concerned authorities by submitting representations (Writ Paras 14 to 17 read with Annexure-7 to 12 to the writ petition) during 11.9.1995 to 9.6.1997 addressed to Shiksha Adhikashak, Mirzapur, District Basic Shiksha Adhikari, Mirzapur, Up Shiksha Nideshak, (Basic) Vth region, Varanasi, Basic Shiksha Adhikari, Mirzapur, Up Shiksha Nideshak, Arth and Sahayak Shiksha Nideshak, Vth Region, Varanasi). In paragraph 18 of the writ petition, it is asserted that the Education Superintendent of Nagar Kshettra, Mirzapur, with reference to petitioner's representations dated 4.7.1997, 5.7.1997, 7.7.1997 and 7.8.1997 addressed to District Basic Education Officer, directed for an enquiry to be conducted by the Assistant Education Superintendent, Nagar Kshettra, Mirzapur in the matter. In pursuance of the above order, the Enquiry Officer/the Assistant Education Officer after affording opportunity to the Committee of Management and Head Mistress submitted report dated 13.8.1997 (Annexure-16 to the writ petition). The Deputy Director of Education (Arth), with reference to Director's order dated 26.6.1997 upon the subject in question, vide letter dated 20.8.1997 addressed to the District Basic Education Officer (Para 17 to the writ petition) also directed that an enquiry be made in view of the complaint/representations of the petitioner to ascertain correct facts and take appropriate action. Copy of this order is endorsed to District Basic Education Officer.

7. Since the petitioner did not get relief from the concerned authority, she resorted to file present writ petition.

8. The crucial question to be decided in the case is as to whether the petitioner or the Management and its Head Mistress had acted arbitrarily, illegally and played "hide and seek" with the petitioner, i.e., whether Head Mistress and Manager illegally prevented the petitioner from joining with mala fide intention to accommodate the daughter of the Manager or whether the petitioner's grievance "that she has been deprived of her job-illegally with ulterior motive on the part of the Manager (Dr. Rama Shanker Tripathi) who had already inducted his two daughters as clerk and Head Mistress) wanted to appoint his other third daughter

on the post held by the petitioner" - is correct. This question can be decided by appreciating "attending circumstances" in the case.

9. The record shows that respondent No. 2 has not contested the case with clean hands. Mr. C. D. Misra, advocate filed his vakalatnamas in the writ petition (on behalf of respondent No. 6 Committee of Management of the School signed by Dr. Rama Shanker Tripathi as Manager. It is dated 15.2.1998. The counter-affidavit was got typed in March, 1999 (i.e. about one year after filing vakalatnama) and the date of its swearing is 9.4.2000 (i.e. again after one year and that too because case was listed on 8.4.1999 (See order sheet). Again the copy was not served for about 1-1/2 year. Counter-affidavit with delay condonation application dated 9.11.2000 again filed when respondent No. 6 feared that case may be taken up in Court (See order sheet). The pages 12, 13, 14, 15 and 21-part of Annexure-1 of the counter-affidavit of respondent No. 6 do not bear signature of the deponent. Placement of signature on the pages (on which counter-affidavit is typed) clearly show deponent had signed blank papers and matter has been typed subsequently. Swearing the affidavit before Oath Commissioner is "farzi". No credence can be placed on the averments made therein.

10. The counter-affidavit was kept and not served on the petitioner at the earliest. Why? It is a matter to be guessed. The said counter-affidavit has been filed along with an application for condoning the delay dated November 9, 2000. This clearly shows that the counter-affidavit was ; withheld deliberately for delaying the proceedings of this Court.

11. However, in the interest of justice I shall refer to the averments made in the counter-affidavit while dealing with the case on merit.

12. Another counter-affidavit purporting to be on behalf of respondent No. 4, has been filed titling it as "short counter-affidavit". The contents of the said short counter-affidavit shows that the officer concerned swearing this counter-affidavit had only one point in mind and that is to support the Management-respondent No. 6. Deponent of the said counter-affidavit (Ram Krishna Mishra) conveniently ignored and took no case to submit parawise reply to the specific averments-contained in the writ petition. There is no plausible explanation as to why the respondent No. 4 did not file counter-affidavit dealing with each paragraph of the writ petition separately. Evidently, the deponent of the counter-affidavit (Ram Krishna Misra, the Deputy Basic Shiksha Adhikari) was interested only to support the cause of the respondent No. 6, i.e., Dr. Rama Shanker Tripathi. He has not even cared to file copies of the documents allegedly received from the Management in the context of alleged proposal of termination of services of the petitioner. I am also not inclined to give time to respondent Nos. 1 to 5 for filing supplementary counter-affidavit inasmuch as it will amount to grant premium to the respondent for causing delay by not acting diligently and other hand by acting carelessly or otherwise deliberately to delay the case. In my opinion, however, respondent Nos. 1 to 5, deliberately avoided to file parawise reply as it

was inconvenient for them to rebut the correctness of the averments contained in the writ petition.

13. It will be noted that Sri C. D. Misra, advocate counsel for respondent No. 6 has made a categorical statement before the Court that in the instant case, the Management did not frame charge-sheet nor appointed Enquiry Officer and no enquiry was ever held before the services of the petitioner were resolved to be terminated by the Management which passed resolution simpliciter as has been referred by the Manager in his letter for approval to the District Basic Education Officer vide letter dated 18.2.1996, Annexure-CA 4 to the counter-affidavit. Sri C. D. Misra, advocate has also admitted that neither approval has been granted nor any other action taken till date by the District Basic Education Officer see paragraph 6 of counter-affidavit of respondent No. 6.

14. Perusal letter dated 19.6.1997 (Annexure-13 to the writ petition) written by the Assistant Director of Education (Basic), Region Vth, Varanasi addressed to the District Basic Shiksha Adhikari, Mirzapur shows that the District Basic Shiksha Adhikari has failed to submit his comments with reference to the representation received from the petitioner (copy of which has been filed from Annexures-7 to 12 to the writ petition). The said letter further mentions that the petitioner (Assistant Teacher) as well as one Shanti, (Attendant) were not allowed to work in the School and their salaries were withheld even though these persons were duly approved members of the staff of the school. The said authority had also directed for initiating enquiry against the Management for resorting to illegal means including appointments of daughters of the Manager (Dr. Rama Shanker Tripathi) in his own institution.

15. The counter-affidavit filed on behalf of respondent No. 4 does not indicate as to what action was taken in pursuance of the said instructions received from his superior officer. There is denial of the averments contained in paragraph 17 of the writ petition wherein there is reference of the aforesaid letter dated June 19, 1997 (Annexure-13 to the writ petition). Even paragraph 5 of the counter-affidavit filed on behalf of respondent No. 4 does not indicate as to whether the concerned competent authority had taken any initiative or even cared to find out truth before blindly relying upon the alleged communication (Annexure-CA 4 to counter-affidavit of the respondent No. 6). The District Basic Shiksha Adhikari (or Ram Krishna Misra, Deputy Basic Shiksha Adhikari the deponent of the counter-affidavit of respondent No. 4) would have taken due care, before swearing the counter-affidavit, to ascertain as to what was the result of the enquiry, if any, held on the basis of the representation of the petitioner and persistently directed by Higher/Superior authorities to hold an enquiry as is evident from perusal of Annexures-12 and 13 to the writ petition letters dated 6.6.1997 and 19.6.1997 from Assistant Director of Education (Basic) to the District Basic Education Officer and Annexure-17 dated 20.8.1997 letter of Deputy Director of Education addressed to the District Basic Education Officer for taking immediate action. Officer filing counter-affidavit has said nothing regarding report dated 13.8.1997

(Annexures-16 and 17 to the writ petition) which fully support the case of the petitioner. The alleged chapter of termination and Committee of Management proclaiming to have passed resolution vide Annexure-CA 4 to the counter-affidavit of respondent No. 6 are evidently based on cooked up theory on facts and documents evidently forged to support the alleged fabricated charge of petitioner's absconding from service. Termination proposal got superseded by subsequent orders of higher authorities in favour of the petitioner (namely Annexures-12 to 17 to the writ petition). Manager manipulations are writ large as he admittedly got appointed as clerk and teacher his daughters in his own School. Dr. Rama Shanker Tripathi has not disputed this fact in his counter-affidavit vide paragraph 8 even though specifically stated in paragraphs 30 and 31 of the writ petition.

16. The apathy of the concerned officers in the Department of Education in such matters clearly reflect upon his integrity and cannot be overlooked by the Court.

17. For the reasons indicated above, I find myself unable to place reliance upon the short counter-affidavit filed on behalf of the respondent No. 4, as its deponent apparently acted in collusion with respondent No. 6 and not as an independent authority/officer.

18. The contents of paragraph 13 of the counter-affidavit (filed on behalf of respondent No. 6) reveal altogether an interesting story. It is alleged that one Mr. Jaiswal on taking over charge as Education Superintendent for about four days (due to transfer of one Mr. Tripathi) acted in collusion with the petitioner and directed for inquiry by the Assistant Education Superintendent in the matter.

19. The other side of the coin cannot be ignored, i.e., why one should not, on the basis of the record of the case, infer that said Mr. Tripathi, Education Superintendent was in collusion with the Manager of the institution (Dr. Rama Shanker Tripathi), the other Tripathi who had personal vested interest and hence no action was taken by said person (Education Superintendent) on petitioner's representations. Whether Mr. Tripathi was in collusion with the Manager is not as material as but as to find out what transpired on enquiry being held under direction of the superior authorities (i.e., Assistant Director of Education (Basic) Vth Region, Varanasi and Director of Education (Annexure-13 to the writ petition).

20. Respondent Nos. 1 to 5 do not care to inform the Court as to what happened on the order passed by the Deputy Director of Education (Basic) vide letter dated 20.8.1997 addressed to District Basic Education Officer (Annexure-17 to the writ petition). There is no explanation by said officer (respondent No. 4) for not complying with directions of superior officer (See writ Annexure-17). Correspondence/letters of Committee of Management lose their significance/efficiency in view of subsequent order bias at or etc. after inquiring petitioner to be reinstated and to be paid her salary, etc.

21. The enquiry report dated 13.8.1997 shows that it is submitted by one Gyatri Prasad Pathak, an officer of Basic Education Department itself. The said report

has not been disputed by the respondents. Paragraphs 6 and 7 of the said report squarely support the version of the petitioner contained in the writ petition as well as in the representations (Annexures-4 to 12 to the writ petition). Categorical finding to the above effect in the said enquiry report appears at page 73 of the writ paper book.

22. The allegation that petitioner was occupied in various vacation and not interested in the job in question have been made for the first time in the counter-affidavit. Petitioner has never been made aware or given opportunity to explain as no enquiry is being held. The respondent has not filed any document of alleged termination of services of the petitioner. The management/ respondent No. 6 has not ever cared to file copy of documents allegedly annexed with Annexure-CA1 to the counter-affidavit of respondent No. 6 for perusal of the Court to appreciate the nature of the charges alleged against the petitioner. Why notice was published in "Allahabad Kesari" is a mystery when matter related to district Mirzapur. Even it is not alleged that this paper had circulation at Mirzapur. There is nothing to ascertain that letters/notice was sent on correct address of the petitioner.

23. To cut the matter short, reference made to the enquiry report dated 13.8.1997 (Annexure-16 to the writ petition particular page 73 of the writ paper book) wherein it is categorically mentioned that the Manager failed to show even a single paper regarding alleged administrative action purported to have been initiated against the petitioner as early as in 1995 and mentioned in Annexure-CA 1 to the counter-affidavit of respondent No. 4. The said report clearly shows that the Committee of Management had taken no action nor initiated any disciplinary enquiry with effect from 4.5.1995 till 13.8.1997.

24. In the opinion of this Court, the papers relied upon by the respondent No. 6 in its counter-affidavit (Annexure-4) have been forged and fabricated or they are the product of the unilateral action without sincere effort to inform the petitioner to join the alleged contemplated enquiry.

25. There is another aspect of the matter. Whenever an institution is expected to come on grant-in-aid list, it is a matter of common experience that there is dispute between the management and members of teaching staff of the institution for inclusion/exclusion of their names in the list of teaching staff. It is a matter of common knowledge that "Management" want to exploit unemployed youth who agree to work for little or very little wages (see paragraph 6 to the counter-affidavit of respondent No. 6). When an institution is expected to come on "grant in aid list", a "Manager" wants to extract premium for including name of old continuing teachers and otherwise to threaten to exclude old name and include fresh name by interpolations in record some time by charging premium.

26. In normal circumstances, I would have directed the concerned authority to decide the representation and record its own finding but considering the fact that an enquiry undisputedly after hearing all concerned has already been held

(Annexure-16 to the writ petition) there is no justification to cause further delay which has already adversely affected the school and in its turn the students.

27. The District Basic Shiksha Adhikari has not approved the Management's proposal to dispense with petitioner's services shows that the District Basic Education Officer been reluctant or/and afraid to take any positive action and, therefore impliedly disapproved the termination proposal. Be that as it may be, the alleged termination resolution not having been approved, the same cannot be said to have taken effect and said matter be treated as "dead". The District Basic Education Officer shall accordingly not take cognizance of the papers, including the resolution of the Management - referred to in the letter dated 18.2.1996 allegedly written by Manager to the District Basic Education Officer (Annexure-4 to counter-affidavit of respondent No. 6).

28. Learned counsel for the respondent No. 6, however, has placed reliance on the case of State of Punjab and Others Vs. Dr Harbhajan Singh Greasy, , wherein the Apex Court held that in case of enquiry being faulty, the Court should not direct for reinstatement and payment of back wages as an automatic corollary and that proper course was not that the Court should remit the matter for fresh inquiry.

29. The proposition of law laid down by the Apex Court in the aforesaid case, shall apply only where an "enquiry" is held. In my concluded opinion, the said proposition has no relevance where petitioner is being harassed by the Manager, education authorities who are accused of abusing their respective official position and guilty of deliberately failing to discharge their duties and obligations under law.

30. In view of the above, the petitioner is entitled to continue in service and consequently payment of her salary emoluments treating her in continuous service without break.

31. Consequently, a writ of mandamus is issued directing the respondent Nos. 1 to 6 not to interfere with the working of the petitioner as Assistant Teacher, submit all requisite papers as may be required in law to enable the authorities to pay to the petitioner all arrears and future salary, other allowances, etc. which may have become admissible under law giving benefit of annual increments along with 12% per annum simple interest within six weeks of the receipt of a certified copy of this judgment, treat the petitioner in continuous service in the school without break, and extend all consequential benefits/ privileges contemplated under law.

32. A copy of this judgment shall be sent to the Chief Secretary to the Government of Uttar Pradesh, Secretary (Basic Education) and Director of Education, (Basic) Education to ensure necessary action against the Management and erring official/s. In case the allegation of manipulation against Dr. Ram Shanker Tripathi for appointment of his daughters is found correct, then action contemplated under law be taken forthwith.

33. The writ petition stands allowed with costs which I quantify to be Rs. 10,000 to be paid by respondent No. 4 (on behalf of respondent Nos. 1 to 5) to be paid within one month of the receipt of certified copy of this judgment. Out of the above sum, Rs. 5,000 can "be realised" by respondent No. 4 subsequently on making above payment from respondent No. 6.