

(2011) 01 AHC CK 0135
In the Allahabad High Court
Case No : Special Appeal No. 2024 of 2010

Smt. Mithlesh Kumari

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 01 AHC CK 0135

Hon'ble Judges : R.K. Agrawal, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present Special Appeal has been filed against the judgment and order dated 18.11.2010 passed by the learned Single Judge whereby the writ petition preferred by the Appellant has been dismissed with cost quantified at Rs. 10,000/-.

2. We have heard Sri V.K. Agnihotry, learned Counsel for the Appellant and perused the impugned judgment and order dated 18.11.2010 passed by the learned Single Judge giving rise to the present appeal and also the grounds taken in memorandum of appeal and the documents filed along with it.

3. The case has a chequered history. The Appellant was working as an attendant at District Women Hospital, Etawah. Vide transfer order dated 27th June, 2006 she was shifted to the District Hospital in the same city. She did not join at the new place and continued to mark her attendance at District Women Hospital, Etawah i.e. the earlier hospital, which was objected by the Chief Medical Superintendent and she was directed to submit her joining at District Hospital, Etawah. Feeling aggrieved, the Appellant approached this Court by means of Writ Petition No. 14771 of 2007 seeking cancellation of the transfer order dated 1.12.2007 and directing the Respondents not to compel the Appellant to join at the transferred place. The writ petition was dismissed vide order dated 28th March, 2007 on the ground that she has not filed the original order of transfer.

However, liberty was given to the Appellant to challenge the main order of transfer by filing a fresh writ petition. The Appellant challenged the transfer order dated 27th June, 2006 by means of Writ Petition No. 17680 of 2007 which was dismissed by this Court vide judgment and order dated 7th May, 2008 with cost of Rs. 5,000/- It appears that when the writ petition was going to be dismissed the Appellant stated that the writ petition be dismissed as withdrawn. However, the Court directed the Appellant to deposit a sum of Rs. 5,000/- towards cost. In the order dated 7th May, 2008, this Court had recorded its prima facie opinion that the writ petition preferred by the present Appellant was an abuse of the process of this Court. After getting the writ petition dismissed as withdrawn and depositing cost of Rs. 5,000/- the Appellant moved a representation on 8th July, 2008 before the Director (Medical Care), Lucknow seeking cancellation of the transfer order, on which the Director (Medical Care), Lucknow passed an order on 14th August, 2008 recording therein that in compliance of the order dated 7th May, 2008 passed by this Court the transfer order dated 27th June, 2006 is being cancelled. After the aforesaid order, the Appellant approached this Court by means of a writ petition (giving rise to the present appeal) seeking a writ of mandamus commanding the Respondent No. 2 therein i.e. the present Chief Medical Superintendent, Etawah to pay the entire arrears of salary for the period of 27th June, 2006 to 14th August, 2008 on the ground that the Appellant's order of transfer having been held to be without jurisdiction and due to which she was not allowed to work in the District Women Hospital, she is entitled of payment of salary for the entire period. When the writ petition came up for consideration before the learned Single Judge an order was passed on 27th October, 2010 whereby the Director (Medical Care), who had passed the order dated 14th August, 2008, was directed to appear personally and to explain as to how he has passed the order dated 14th August, 2010 giving colour under the Court's order dated 7th May, 2008. This order was passed on prima facie being satisfied that the order appears to be a collusive order under the garb of directions of this Court, though, no such directions have been issued and apparently it is not only a case of misleading the Court but also amounts to abuse of Court's order wherein the authorities pass whimsical order giving colour under the order of the Court.

4. Sri P.N. Srivastava, Director (Medical Care), appeared before the Court and admitted that he had not seen the order dated 7th May, 2008 and had passed the order for cancelling the transfer order on the basis of the office notes made by the subordinate officials in his office wherein it has been mentioned that the writ petition is pending. The Court after considering the entire facts and circumstances of the case came to the conclusion that the order cancelling the transfer order which has been passed by the Director (Medical Care) on 14th August, 2008 has been obtained in colourable exercise of power by misrepresentation and fraud committed by the Appellant. The learned Single Judge has dismissed the writ petition with cost quantified at Rs. 10,000/-

5. The order dated 18.11.2010 passed by the learned Single Judge is under

challenge in the present appeal.

6. Sri V.K. Agnihotry, learned Counsel for the Appellant submitted that the Appellant is not liable to be blamed for the order dated 14th August, 2008 passed by the Director (Medical Care), Lucknow wherein her transfer order has been cancelled, inasmuch as the order passed by the Chief Medical Superintendent transferring her was wholly without jurisdiction and merely because in the order reference has been made to this Court's order dated 7th May, 2008 would not make any difference. He, therefore, submitted that the learned Single Judge was not justified in dismissing the writ petition and also imposing cost quantified at Rs. 10,000/- upon the Appellant. He further submitted that during the course of argument before the learned Single Judge, the learned Single Judge had observed that a cost of Rs. 50,000/- shall be imposed upon Sri P.N. Srivastava, Director (Medical Care) and there was no mention or indication of cost to be imposed upon the Appellant and therefore, the learned Single Judge was not justified in imposing the cost upon the Appellant. So far as this submissions regarding oral observations made by the learned Single Judge imposing of cost of Rs. 50,000/- on the Director (Medical Care) is concerned, we may mention here that there is nothing on record to establish this fact. If the observations has been made orally and it is not reflected in the order, the Court cannot take any cognizance. Coming to the merits of the case, we find that the learned Single Judge had come to the conclusion that the order passed by the Director (Medical Care) had been obtained by misrepresentation under the garb of a direction issued by this Court on 7th May, 2008, which order, in fact, permits the Appellant to withdraw the writ petition upon payment of cost of Rs. 5,000/- and no directions were issued either to the Appellant to make any representation or the authority to cancel the order of transfer. That being the position, we are of the considered opinion that the learned Single Judge had rightly dismissed the writ petition. The impugned order does not suffers from any illegality or infirmity. The appeal is devoid of merits and is hereby dismissed. As the Appellant had already been made to pay Rs. 5,000/- as cost in the earlier proceedings and also Rs. 10,000/- as cost in the writ petition giving rise to the present appeal, even though the conduct of the Appellant is liable to condemned, we are not imposing any cost in this appeal.