
(2009) 01 AHC CK 0030
In the Allahabad High Court

Smt. Naseem Hafeez

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2009) 2 AWC 1539

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shashi Kant Gupta, J.—By this writ petition the petitioner has prayed for a direction to the respondents to permit the petitioner to join forthwith as a Lecturer in the Government Girls Intermediate College, Shahjahanpur and to permit the petitioner to work till 30.6.2001 and further prayed for a direction to grant all the benefits of continuity of service from 1.7.1999 to 30.6.2001.

2. The background facts in a nutshell essentially are as follows:

The petitioner was initially appointed as Assistant Teacher in Government Girls Intermediate College, Shahjahanpur (in short "College") and according to the Government policy the petitioner was due to retire on 30.6.1999. On 6.5.1982 the State Government issued a G.O. providing that the teachers who have been awarded National or State Awards meant for the teacher will be entitled to get an extension of two years service after the retirement if they are found to be physically and mentally fit.

3. On 1.9.1998 office of the respondent No. 2 telegraphically intimated the petitioner and 12 other teachers of the State that they have been awarded national award for teaching. On 5.9.1998 national award was conferred upon the petitioner by the Government of India.

4. Although the petitioner was to retire on 30.6.1999 after attaining the age of superannuation but by that time no formal order for extension of her service in

pursuance of the Government order dated 6.5.1982 was received.

5. Petitioner on 1.7.1999 gave an undertaking that if she is permitted to work after 30.6.1999 then she would not claim any salary or other allowances etc., till formal orders in this regard are received.

6. On 14.7.1999, the respondent No. 4 issued a certificate stating that the petitioner worked after 1.7.1999 in terms of her undertaking. The Additional Director of Education directed the Joint Director of Education to send more papers and on 3.8.1999 those papers were sent to him. When no further progress was made, petitioner on 11.3.2000 made a representation to the State Government for extension of her service and on 26.4.2000 petitioner requested the respondent No. 4 to forward her pension papers etc., as she was in dire necessity of money.

7. On 5.5.2001, the State Government (respondent No. 1) intimated the respondent No. 2 that services of the petitioner has been extended from 1.7.1999 to 30.6.2001 as such the petitioner on 14.5.2001 made a representation to the respondent No. 3 and respondent No. 4 requesting them to permit her to work till 30.6.2001. On 14.5.2001, the District Inspector of Schools (D.I.O.S.) respondent No. 3 directed the Principal to comply with the direction of the State Government as contained in the aforesaid letter dated 5.5.2001 and direction was also given to submit the compliance report. Again on 17.5.2001 petitioner made a representation to the Principal to permit her to join and grant her all the benefits of continuity of service. On 24.5.2001, D.I.O.S. again directed the Principal of the college to extend the services of the petitioner for two years but the petitioner was not permitted to join. Hence, the present writ petition.

8. It was submitted by the learned Counsel for the petitioner that long before her retirement, petitioner on 5.9.1998 was awarded national award for teaching by the Government of India but still the respondents showed no sense of urgency and did not grant the extension of two years service after the retirement viz., 30.6.1999. Although the petitioner on 1.7.1999 had given an undertaking that if she is permitted to work after 30.6.1999 she would not claim any salary or other allowances and also did actually work for a short period after her retirement. It was further submitted that she kept on making one representation after another to the authorities concerned to grant extension of her service in the light of the Government order dated 6.5.1982. It was only after the lapse of 22 months from the date of her retirement that the petitioner was intimated by the State Government that her services have been extended from 1.7.1999 to 30.6.2001 but still the petitioner was not permitted to work till 30.6.2001 by the respondent No. 4 merely on the ground that she was already given the post retiral benefits. It was further submitted that the respondents were duty bound to comply with the Government order dated 6.5.1982 and the petitioner was entitled to be in service beyond the age of superannuation as she was a recipient of national award recognizing her services as best teacher.

9. Learned Counsel for the petitioner has cited the following decisions in support of his contentions:

- (i) Union of India and others Vs. Major General Madan Lal Yadav (Retd.),
- (ii) State Bank of India etc., Vs. Kashinath Kher and others, etc., and
- (iii) Ashok Kapil Vs. Sana Ullah (Dead) and Others,

10. Learned standing counsel appearing on behalf of respondents on the other hand has contended that the petitioner retired on 30.6.1999 and thereafter in 2001 was given the post retiral benefits. Therefore, she cannot claim the benefit of the Government order dated 6.5.1982. Learned standing counsel has placed reliance upon the judgment dated 22.8.2005, passed by this Court in Writ Petition No. 24108 of 2001, Hamiduddin v. State of U.P. and Anr. 2006 (1) ESC 36 (All) : 2006 (5) AWC 4514, which has been observed as follows:

The petitioner had retired before the award was declared. His application for extension in service was recommended and forwarded almost nine months after his superannuation. The petitioner's services as such could not be extended as he was not in service when he received the Award. The State Government as such did not commit any illegality in turning down his representation.

11. In the light of the aforesaid judgments learned standing counsel has argued that the petitioner is not entitled to any relief.

12. Heard Sri Ramendra Asthana learned Counsel for the petitioner, learned standing counsel and perused the impugned order and considered the facts and circumstances of the case.

13. The Government order dated 6.5.1982 provides that all those teachers who have been conferred upon State award for teaching and are physically and mentally fit shall be given two years extension of service. Although the petitioner was to retire on 30.6.1999 but much prior to that, i.e., 5.9.1998, national award was conferred upon the petitioner as such according to Government order dated 6.5.1982 she was entitled to be given two years extension of service. Despite the fact that the national award for teaching was given on 5.9.1998 around 10 months prior to her retirement, i.e., 30.6.1999 but still the respondents did not show any sense of urgency and slept over the matter despite several representations and requests were made by the petitioner and moreover, also on 1.7.1999 petitioner gave an undertaking that if she is permitted to work after 30.6.1999 then she would not claim any salary or other allowances etc., till formal orders in this regard are received and the petitioner was permitted by the Principal to work for sometime after her retirement but when no formal order for extension was received from the higher authority, she was not permitted to continue although she was entitled to work by virtue of being an awardee of national award for teaching. This fact has even been affirmed by the respondent No. 3 in his letter dated 24.5.2001 (Annexure-12 to the writ petition) wherein it has been stated that Joint Director of Education, Bareilly Division, Bareilly had

directed the Principal to permit the petitioner to work on the basis of the aforesaid undertaking but no salary be given till the receipt of the formal order for extension. Respondent No. 1 merely after the lapse of 22 months after the retirement of the petitioner, issued a formal order of extension of the services of the petitioner from 1.7.1999 to 30.6.2001 but still the respondent No. 4, despite the direction of the D.I.O.S. did not permit the petitioner to join the college and consequently the order dated 5.5.2001 issued by the State Government extending the service of the petitioner from 1.1.1999 to 30.6.2001 was neither given any effect to nor complied with.

14. The decision of this Court in Special Appeal No. 670 of 2005, *Hamiduddin v. State of U.P. and Anr.* (supra), has no bearing in the facts of the present case. In *Hamiduddin v. State of U.P. and Anr.* case (supra), the award was conferred upon Hamiduddin (petitioner of that case) on 18.9.2000 and he attained the age of superannuation viz., 31.3.2000 but in the present case the award was conferred upon the petitioner on 5.9.1998, around 10 months prior to her retirement, i.e., 30.6.1999. Since the petitioner in *Hamiduddin v. State of U.P. and Anr.* case (supra) had retired before the award was conferred upon him and his application for extension of service was recommended and forwarded almost 9 months after his superannuation, therefore, the services of Hamiduddin was not extended as he was not in service when he received the award but in the present case when the national award was given to the petitioner she was very much in the job and attained the age of superannuation after 10 months of the receipt of the award. Moreover in that case no formal order of extension of his services was passed but in the present case formal order dated 5.5.2001 was passed by the State Government (respondent No. 1) intimating that the services of the petitioner had been extended from 1.7.1999 to 30.6.2001 but the respondent No. 4 did not comply with the order of extension dated 5.5.2001 despite the specific directions issued by the D.I.O.S. to the respondent No. 4 to permit the petitioner to work till 30.6.2001 in pursuance of the order of extension dated 5.5.2001 issued by the State Government.

15. In *State Bank of India etc. v. Kashinath Kher and Ors. etc.* case (supra), Apex Court has observed as follows:

Consequently, officers, who are otherwise eligible and entitled to be considered were made ineligible for no fault of theirs...

They cannot be made to suffer injustice, denial of their legitimate expectation to consider their cases for promotion would be unjust and unfair."

It would thus be seen that it is not a case of ineligible persons made eligible, but a case of giving opportunities to those officers, who for no fault of theirs, were not made eligible to be considered and given opportunity to be considered for promotion and after consideration, on fulfilment of the service of line assignment and rural/semi-urban service for a minimum of two years were promoted to the M.M.G.S. -III....

A clear demarcation be drawn between the officers who either due to vilitious refusal to serve and those on account of inaction or deliberate omission on the part of the controlling authority did not have an opportunity as the case may be, to get the required service qualifications.

16. In Union of India and Ors. v. Major General Madan Lal Yadav (Retd.) case (supra), Apex Court has applied the maxim "nullus commodum capere potest de injuria sua propria"-meaning no man can take advantage of his own wrong" and observed as follows:

It is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. At p. 195, it is further stated that a wrong doer ought not to be permitted to make a profit out of his own wrong.

17. In Ashok Kapil v. Sana Ullah dead and Ors. case (supra), the Apex Court has observed as follows:

If the crucial date is the date of allotment order, the structure was not a building as defined in the act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "Nullus commodum capere potest de injuria sua propria" (no man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a Court of law for enjoying the fruit of his own wrong.

18. The aforesaid decisions of the Apex Court clearly underline that no man can take advantage of his own wrong and in the present case, on account of the inaction and deliberate omission on the part of the respondents the extension order was not passed immediately after the grant of national award to the petitioner and the extension order was passed almost 22 months after her retirement. The petitioner was not at all at fault, it was the respondents who slept over the matter and showed no sense of urgency in passing the order of extension. National award was given to her in September, 1998 and the formal extension order was passed on 5.5.2001, but still the petitioner was not permitted to join the institution as such she was forced to file the present writ petition before this Hon'ble Court and by interim order dated 13.6.2001 this Court directed the petitioner to apply to the appropriate respondents for the payment of salary but the same was not paid.

19. As far as receipt of post retiral benefits are concerned, it will not in any way deprive the petitioner from getting the benefits of the Government order dated 6.5.1982. The petitioner attained the age of superannuation on 30.6.1999 and gave an undertaking that she may be permitted to work after 30.6.1999 and will not claim any salary or other allowances etc., till the formal order in this regard are received. She did work for sometime thereafter, but for long since no formal extension order was passed till May, 2001, the petitioner being an old lady under dire need of money cannot be expected to wait till eternity. It was only under

compulsion, she accepted the post retiral benefit when she was not given any heed and response by the authorities concerned. Thus the plea of the respondents that since she received her post retiral benefits, as such she cannot be granted any relief, cannot be sustained in view of the above discussion.

20. No man can take advantage of his own wrong and the petitioner was deliberately deprived of the benefit of Government order dated 6.5.1982 for no fault of her own therefore, the law as well as equity leans in favour of the petitioner.

21. In view of the above, writ petition is allowed and the respondents are directed to grant all the benefits of continuity of service to the petitioner forthwith, treating her to be in service from 1.7.1999 to 30.6.2001.