
(2008) 06 AHC CK 0016
In the Allahabad High Court

Smt. Sudha Kumari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-06-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 06 AHC CK 0016

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—This special appeal is directed against the judgment and order of the Learned Single Judge dated 15th December, 2004, passed in Civil Misc. Writ Petition No. 8199 of 2002 filed by the present appellant. The writ petition has been dismissed after recording that the petitioner had submitted a forged B.T.C. Certificate and had withdrawn salary in the trained grade for decades together. The learned Single Judge, having noticed that the certificate was admittedly forged, has upheld the order terminating the services of the petitioner.

2. The order so passed by the learned Single Judge is being questioned before us on behalf of the petitioner-appellant on the ground that the B. T.C. Certificate, which has been found to be forged, was never filed or produced by the petitioner. It is further stated that no proceedings for conducting a departmental enquiry in respect of the submission of the said forged B.T.C. Certificate were ever initiated as per the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "Rules, 1978"). Lastly it is pointed out that the B.T.C. Certificate is stated to have been filed by the petitioner in the year 2001, when as a matter of fact there was no occasion for the petitioner to produce such a certificate inasmuch as she had completed ten years of regular service as untrained teacher and would have been entitled for salary in the trained grade irrespective of the

B.T.C. Certificate in the year 1994 in terms of the Government Orders applicable.

3. Standing Counsel in reply disputes the contentions raised by the appellant and reiterates the reasons and finding recorded by the learned Single Judge.

4. For the purposes of examining the merits of the appeal, it would be appropriate to state the facts in brief.

5. Petitioner-appellant was appointed as an untrained teacher on 02nd July, 1973 in Gopal Girls Junior High School, Premपुरi, Kankarkhera, District Meerut. The institution at the relevant time was a recognized Junior High School. It is admitted to the parties that no statutory service rules/regulations had been framed providing for the recruitment of teachers in such institutions under the Basic Education Act, 1972 till that date. The petitioner was only High School on the date she was offered appointment. A copy of the service-book of the petitioner has been brought on record as Annexure-6 to the writ petition. The relevant portion of the service book (at page 90 of the present appeal) specifically records that the petitioner has passed B.T.C. Examination in the year, 1976. On the next page of the paper-book there is endorsement revising the salary of the petitioner from Rs. 100/- to Rs. 245/- w.e.f. 01.07.1974 as per the order of the Basic Shiksha Adhikari dated 12th October, 1977. Further there is on record a Shikshak Vivaran, which was filed along with counter affidavit on behalf of the Basic Shiksha Adhikari bearing signatures of the petitioner with her photograph affixed thereto. This form amongst other discloses that the petitioner has passed her B.T.C. Examination in the year, 1975 from Dayawati Modi Rajkiya Mahila Prashikshan Mahavidyalaya, Modinagar with the Roll No. 25079.

6. It is with reference to the aforesaid document that an enquiry was conducted by the Basic Shiksha Adhikari and it was found that the said B.T.C. Certificate referred to by the petitioner for availing the benefit of trained grade was a forged document and as a consequence thereto petitioner was served with a show cause notice dated 14.09.2001 (Annexure-2 to the writ petition), which amongst other specifically stated that, although the petitioner is not trained, she has been drawing salary in trained grade since 1973-74. It has noticed that the B.T.C. Certificate produced by the petitioner bearing Roll No. 25079 of 1975 issued by Dayawati Modi Rajkiya Mahila Prashikshan Mahavidyalaya, Modinagar is a forged certificate. The petitioner was called upon to show cause as to why appropriate action be not taken for producing such a forged document for monetary benefit.

7. The petitioner is stated to have submitted her reply to the said show cause notice vide reply dated 26.09.2001, copy whereof has been enclosed as Annexure-2 to the special appeal. The fact that the petitioner had obtained trained grade since year 1973-74 was not disputed nor any other explanation was submitted. However, reference was made to an earlier reply submitted by the petitioner dated 03rd June, 2001 wherein she is alleged to have stated that she is not aware of the grade in which she was being paid her salary by the Manager/Institution.

8. The explanation so furnished by the petitioner did not find favour with the Basic Shiksha Adhikari, he therefore vide his letter dated 28th December, 2001 required the Manager of the Institution to take appropriate action for terminating the employment of the petitioner and for lodging a first information report for filing a forged certificate. It was further provided that the salary illegally drawn by the petitioner in the trained grade be recovered and deposited in the Government Account. The Basic Shiksha Adhikari also withdrew the approval earlier granted for payment of salary to the petitioner, after the institution was brought under the provisions of U.P. Recognized Junior High School (Teachers and Other Employees)(Payment of Salaries) Act, 1978.

9. The Manager of the Institution accordingly by means of the order dated 12.01.2002 informed the petitioner that since approval earlier granted to payment of salary to petitioner under the U.P. Recognized Junior High School (Teachers and Other Employees)(Payment of Salaries) Act, 1978 (herein after referred to as "Payment of Salaries Act, 1978) has been withdrawn by the Basic Shiksha Adhikari, her services are being terminated.

10. Against the aforesaid two orders dated 28th December, 2001 passed by the Basic Shiksha Adhikari and the order of the Manager dated 02.01.2002 the petitioner filed the aforesaid writ petition, which has been dismissed under the impugned judgment and order of the learned Single Judge.

11. We have heard counsel for the parties and have examined the records. Following facts emerge:

Appointment of the petitioner in the year 1973, when she was only High School, is admitted, what is further admitted is that till date the petitioner has not obtained any training certificate (Reference-paragraph 8 of the writ petition). Counsel for the petitioner-appellant has specifically stated that prior to the institution being brought within the purview of the Payment of Salaries Act, 1978, petitioner's salary was being paid by the management in cash. The exact date on which the institution was brought within the purview of the Payment of Salaries Act, 1978 has not been disclosed either in the writ petition or otherwise by the counsel. It is not disputed by the counsel for the petitioner-appellant that for payment of salary under the Payment of Salaries Act, 1978 through public exchequer, the basic document is the Shikshak Vivran. It is on the basis of the said document that the salary of an employee of the institution, which is taken within the purview of Payment of Salaries Act, 1978, is prepared and released through the office of Basic Shiksha Adhikari. The endorsement in the service-book of the petitioner that she had passed B.T.C. Examination in the year 1975 and fixation of salary in the trained grade under the order of the Basic Shiksha Adhikari dated 22nd October, 1977, referred to above, as well as signature of the petitioner on the Shikshak Vivran enclosed as annexure to the counter affidavit of Basic Shiksha Adhikari have not been disputed by the petitioner-appellant.

12. The petitioner continued to draw salary in the trained grade up to the year

2001 i.e. for more than 26 years on the basis of her being trained, although she had not obtained any B.T.C. Certificate and is untrained even today. Therefore the B.T.C. Certificate, which stands in the name of the petitioner, is a proven forged document. The signatures appended to the Shikshak Vivran, which bears the photograph of the petitioner and records that she has passed B.T.C. Examination in 1975 have not been disputed by the petitioner before the learned Single Judge. For the purpose the Court may notice the contents of paragraphs 9 and 10 of the counter affidavit filed on behalf of the Basic Shiksha Adhikari, and the reply submitted thereto by the petitioner through rejoinder affidavit (para 10 and 11), which read as follows:

Counter Affidavit

9- ;g fd ;kfpd ds izLrj la0&8 dk dFku Lohdkj ugha gS A D;ksafd ;kph }kjk tkap ds le; v;/kid QksVks fooj.k i= ds lkFk Lo gLrk{kfjr ch0Vh0lh0 izek.ki= o"kZ 1975 vuq0 25079] n;korh eksnh jktdh; izf"k{k.k egkfo[ky;] eksnhuxj AesjBA dk fnukad 17&4&2000 esa izLrqr fd;k Fkk A v;/kid fooj.k QksVks izi= ij ;kph ds gLrk{kj gSa] ftls iz/kkuk;/kid ,oa izcU/kd] xksiky xYIZ tw0 gk0 Ldwy dadj[ksM~k] esjB }kjk izekf.kr fd;k x;k gS A ch0Vh0lh0 ds izek.k ,oa v;/kid fooj.k QksVks izi= dh Nk;k izfr layXud lh0,0&2 ds :i esa layXu dh tk jgh gS A

10- ;g fd ;kfpdk ds izLrj la0&9 dk dFku Lohdkj ugha gS] D;ksafd ;kph }kjk izLrqr v;/kid fooj.k QksVks izi= esa ch0Vh0lh0 o"kZ 1975 vuq0 25079 vafdr gS ftls fo[ky; ds izcU/kd@iz/kkuk;/kfidk }kjk Hkh izekf.kr fd;k x;k gS rFkk ;kph ds ch0Vh0lh0 izek.k i= dh Lo gLrk{kfjr izfr izLrqr dh xbZ gS A tks tkap esa vfHkys[k ls fHkUu ikbZ xbZ gS A vr% bl dk;kZy; ds i=kad fnukad 30-5-2001 ,oa fnukad 14&9&2001 ds }kjk dh xbZ i`PNk dk mRrj ;kph }kjk izLrqr ugha fd;k x;k A ;kph }kjk izLrqr ch0Vh0lh0 izek.k dh tkap jftLV~zkj foHkkxh; ijh{kk;sa] m0iz0 bykgkckn ls dh xbZ] tks tkap esa vfHkys[k ls fHkUu AQthZA ik;k x;k gS ftldh izfr layXud lh0,0&3 ds :i esa layXu dh tk jgh gS A

Rejoinder Affidavit.

10. That the contents of paragraph 9 of the counter affidavit are not correct and are denied, for the reasons stated above. The petitioner never submitted B.T.C. Qualification certificate at any stage nor any opportunity of hearing or any notice to participate in enquiry was ever given to the deponent. It is absolutely incorrect to allege that the petitioner submitted self signed B.T.C. Certificate along with any declaration, nor the petitioner at any stage submitted that she possessed B.T.C. Qualification. It appears that some body has committed illegal addition and alteration and illegally manufactured false and forged documents, if it is at all there and the petitioner has no knowledge about the same.

11. That the contents of paragraph 10 of the counter affidavit are not correct and are denied for the reasons stated above. The respondents themselves have not followed the rules and the service of the deponent was terminated without following the provisions of the said rules. It is submitted that when the petitioner did not submit any B.T.C. Examination certificate then there was no question of

being it genuine or otherwise. The allegations are false and incorrect.

13. From the aforesaid facts it is apparent that the petitioner did not have the courage to deny her signature appended on the Shikshak Vivran, copy whereof was also enclosed along with counter affidavit. The said Shikshak Vivran, which has been signed by the petitioner, specifically records under her signature that she had passed B.T.C. Examination in the year,1975.

14. Although an attempt was made by the counsel for the petitioner to dispute the signature appended on the Shikshak Vivran for the first time before us with reference to the supplementary rejoinder affidavit, wherein a report of the Deputy Director of Education has been enclosed, which records that the initial appointment of the petitioner was valid and she was entitled to salary.

15. We may clarify that the Deputy Director of Education has no role to play in payment of salary to a Junior High School Teacher. Even otherwise there is no controversy with regard to initial appointment of the petitioner. The controversy has arisen only after the petitioner has started claiming that she has obtained training certificate and was therefore paid salary in trained grade since the year 1974 onward. The report of the Deputy Director of Education is of no consequence so far as the issue of payment of salary in trained grade is concerned.

16. The contention raised on behalf of the petitioner to the effect that there was no occasion for the petitioner to file the B.T.C. Certificate in the year 2001 as she became entitled for trained grade in terms of the Government Order application w.e.f. 1994 is neither here nor there, inasmuch as petitioner has drawn salary in trained grade for the earlier period between 1974 to 1994 also, which fact is not in dispute and for which there is no explanation. Even otherwise a teacher, who drew monetary benefit of trained grade on the basis of the material which is apparently forged, is totally unfit to be retained as a teacher.

17. In the totality of the facts and circumstances of this case and in view of the admitted position that the B.T.C. Certificate which bears the name of the petitioner is a forged certificate and further that petitioner has drawn salary in the trained grade for more than 26 years despite being aware that she has no training certificate, itself dis-entitles the petitioner-appellant to any relief under Article 226 of the Constitution of India.

18. We may further clarify that issues raised by the petitioner to the effect that such certificate of training was not filed by her may not detain the court inasmuch as she alone was the beneficiary of such forged document.

19. The counsel for the petitioner has placed reliance upon the judgments of the of the Hon''ble Supreme Court reported in 2002(2) LBESR 920 (SC) ; Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, Inspector Prem Chand v. Govt. of N.C.T. Of Delhi and Ors. (Para- 5, 12 and 15).

20. So far as the first judgment relied upon by the counsel for the petitioner is

concerned, the same deal with an issue between sufficiency of evidence and a case of no evidence. In the facts of the case in hand B.T.C. Certificate being forged, Shikshak Vivran being signed by the petitioner and her having withdrawn salary in trained grade since 1974-75 despite being fully aware that she was not entitled for such trained grade are proved beyond doubt.

21. So far as the judgment in the case of Inspector Prem Chand v. Govt. of N.C.T. Of Delhi is concerned, we may record that in the aforesaid judgment the Hon''ble Supreme Court has recorded that since there was no finding of fact that appellant was guilty of an unlawful behaviour in relation to discharge of official duties, he cannot be punished. The facts of the case are clearly distinguishable. Therefore, the law laid down is not applicable in the facts of this case.

22. In view of the above, we find no error in the judgment and order of the learned Single Judge, which may warrant any interference. Special Appeal is dismissed.