
(2011) 09 AHC CK 0397

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 50515 of 2011

Smt. Vandana Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Law (Amendment) Act, 1932 — Section 7
Penal Code, 1860 (IPC) — Section 120(B), 147, 332, 353

Citation : (2011) 09 AHC CK 0397

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The Petitioner-Vandana Upadhyay is the wife of Anand Kumar Upadhyay, who is an Assistant Teacher in Primary Vidhyalaya Arajee Taufir, Block-Pardaha, district Mau (hereinafter referred to as the "Institution"). This petition has been filed by her for a direction upon the Respondents to complete the departmental and administrative inquiry pending against Respondent No. 5, who is the District Basic Education Officer at Mau and to cease the working of Respondent No. 5 as the District Basic Education Officer till the inquiry is concluded.

2. It is stated that after inspection of Primary Schools the Petitioner submitted a complaint dated 7th January, 2011 against the District Basic Education Officer before the Secretary of the U.P. Basic Education, Government of U.P. Lucknow and this complaint filed by the Petitioner was clubbed with certain other complaints filed against the said Officer. The Special Secretary, Government of U.P. sent a communication dated 9th March, 2011 to the District Magistrate, Mau with the direction to get an inquiry conducted in respect of the allegations made against Respondent No. 5 District Basic Education Officer. A departmental inquiry against Respondent No. 5-District Basic Education Officer is proceeding but as no

action is being taken, this petition has been filed for the reliefs stated above.

3. Learned Counsel for the Petitioner has submitted that since various complaints have been filed against Respondent No. 5-District Basic Education Officer the enquiry should have been done particularly when a direction had been issued to conclude the inquiry but still the enquiry has not been concluded.

4. Sri V.K. Kushwaha, learned Counsel appearing for the Respondents has, however, submitted that this petition at the instance of the Petitioner, who is not a teacher in any of the Primary Schools under the control of Respondent No. 5-District Basic Education Officer, cannot be entertained. He has pointed out that this petition has been filed by Vandana Upadhyay (wife of Anand Kumar Upadhyay) for the reason that Anand Kumar Upadhyay was suspended while working as an Assistant Teacher in a Primary School in district Mau by the order dated 27th December, 2010 passed by the District Basic Education Officer. He has also pointed out that Sri Anand Prakash Pandey-Advocate had earlier also filed Writ Petition in this Court being Writ Petition No. 41753 of 2011 for a direction upon the State Government to remove Respondent No. 5-District Basic Education Officer, which petition was dismissed by a Division Bench of this Court by the judgment and order dated 2nd August, 2011. It is his submission that Sri Anand Prakash Pandey Advocate has as a counsel for the Petitioner Vandana Upadhyay now filed this petition after the dismissal of the said petition for the same reliefs. He had also filed a complaint against the District Basic Education Officer, Mau as is clear from the communication dated 2nd April, 2011 sent by the In-Charge Officer on behalf of the District Magistrate, Mau to the Petitioner as also to Anand Prakash Pandey for producing evidence against Respondent No. 5-District Basic Education Officer on 15th April, 2011.

5. He has also pointed out that Criminal Misc. Writ Petition No. 559 of 2011 was also filed by Satish Singh and Anand Kumar Upadhyay (husband of the Petitioner) for quashing the First Information Report dated 22nd December, 2010 filed by Respondent No. 5-District Basic Education Officer against the Petitioner and one Satish Singh who is also an Assistant Teacher in the Institution which was registered as Case Crime No. 3937 of 2010 under Sections 147, 332/353, 120-B of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act. This Criminal Misc. Writ Petition was dismissed by the judgment and order dated 12th January, 2011.

6. Learned Counsel for the Respondents has submitted that this petition has been filed by the wife of Anand Kumar Upadhyay without disclosing the aforesaid material and relevant facts as not only her husband had been suspended by the District Basic Education Officer but a First Information Report was also lodged by him against the husband of the Petitioner. Learned Counsel for the Respondents has, therefore, submitted that this petition should be dismissed with exemplary costs.

7. I have considered the submissions advanced by learned Counsel for the

parties.

8. It is seen that Anand Kumar Upadhyay (husband of the Petitioner) had earlier filed Writ Petition No. 47159 of 2011 for quashing the suspension order dated 27th December, 2010 passed by the District Basic Education Officer. The Court noticed that a First Information Report had been lodged against the Petitioner who had also been arrested and detained in prison and if any of the charges, if proved, would result in imposing a major penalty. The Court, however, directed that the departmental proceedings against the Petitioner may be concluded expeditiously, preferably within a period of three months.

The judgment and order dated 30th August, 2011 is quoted below:

Heard learned Counsel for the Petitioner and learned Standing Counsel for the State-respondents.

Petitioner before this Court was placed under suspension pending enquiry into the charges as noticed in the order of suspension itself dated 27th December, 2010 (Annexure-7 to the writ petition).

From paragraph-21 of the present writ petition, it is apparently clear that the Petitioner has been served with a charge-sheet to which he has already submitted reply. The enquiry proceedings are in progress. This Court further finds that a First Information Report was also lodged in respect of incident, which took place on the particular date. The Petitioner arrested and was detained in prison. Charges, if found proved, are serious enough to result in major penalty. Therefore, at this stage of the proceedings, this Court finds no good ground to interfere with the order of suspension.

However, in the facts of the present case, it is provided that the departmental proceedings initiated against the Petitioner must be brought to its logical end, preferably within three months from the date a certified copy of this order is filed before the disciplinary authority.

If the Petitioner has any grievance in the matter of change of enquiry officer appointed, he may approach the District Basic Education Officer, who shall pass a reasoned speaking order, preferably within two weeks from the date certified copy of this order is filed before him.

The present writ petition is disposed of subject to the observations made above.

9. It was, therefore, necessary for the Petitioner to disclose in this petition that the District Basic Education Officer had passed the suspension order against her husband who is working as an Assistant Teacher in a Primary School but that has not been done.

10. It is also seen from the records that Anand Prakash Pandey (Advocate of the Petitioner) had also filed Writ Petition No. 41753 of 2011 for a direction upon the State to remove Respondent No. 5-District Basic Education Officer from his post. This petition was dismissed by a Division Bench of this Court by the judgment

and order dated 2nd August, 2011 which is as follows:

Heard learned Counsel for the Petitioner and also learned Standing Counsel appearing for the State.

The prayer made in this petition is for issuing a writ in the nature of mandamus directing the Respondent No. 1 to remove the Respondent No. 5 from the post. Respondent No. 5 is posted as Basic Education Officer in District Mau.

The Petitioner has alternative remedy. No interference is required in the writ petition. Accordingly, the writ petition is dismissed.

11. Anand Prakash Pandey-Advocate, as pointed out by learned Counsel appearing for the Respondent, had also filed a complaint against the District Basic Education Officer as is clear from the communication dated 2nd April, 2011 issued from the office of the District Magistrate, Mau to the Petitioner, Anand Prakash Pandey, Surendra Kumar and Anr. regarding the complaints filed by them against the District Basic Education Officer. It is, therefore, clear that when the said writ petition was dismissed by a Division Bench of this Court on 2nd August, the Petitioner has been set up to file this petition for the same grievance.

12. It is also seen that against the First Information Report lodged against Anand Kumar Upadhyay (husband of the Petitioner), Criminal Misc. Writ Petition No. 559 of 2011 was filed by Anand Kumar Upadhyay with Satish Singh, which petition was dismissed by a detailed judgment and order dated 12th January, 2011 by a Division Bench of this Court, which is as follows:

Heard counsel for the Petitioners and counsel for the complainant.

The relief sought in this petition is for quashing of the F.I.R. registered at case crime No. 3937 of 2010 under Sections 147, 332/353, 120-B I.P.C. and 7 Criminal Law Amendment Act, P.S. Sarai Lakhansi, District Mau.

The Full Bench of this Court in Ajit Singh @ Muraha v. State of U.P. and Ors. (LVI 2006 ACC 433) reiterated the view taken by the earlier Full Bench in Satya Pal and Others Vs. State of U.P. and Others, that there can be no interference with the investigation or order staying arrest unless cognizable offence is not ex-facie discernible from the allegations contained in the F.I.R. or there is any statutory restriction operating on the power of the Police to investigate a case as laid down by the Apex Court in various decisions including State of Haryana and others Vs. Ch. Bhajan Lal and others, attended with further elaboration that observations and directions contained in Joginder Kumar's case (Joginder Kumar Vs. State of U.P. and others, contradict extension to the power of the High Court to stay arrest or to quash an F.I.R. under article 226 and the same are intended to be observed in compliance by the Police, the breach whereof, it has been further elaborated, may entail action by way of departmental proceeding or action under the contempt of Court Act. The Full Bench has further held that it is not permissible to appropriate the writ jurisdiction under Article 226 of the constitution as an alternative to anticipatory bail which is not invocable in the

State of U.P. attended with further observation that what is not permissible to do directly cannot be done indirectly.

The learned Counsel for the Petitioners has not brought forth anything cogent or convincing to manifest that no cognizable offence is disclosed prima facie on the allegations contained in the F.I.R. or that there was any statutory restriction operating on the police to investigate the case.

Having scanned the allegations contained in the F.I.R. the Court is of the view that the allegations in the F.I.R. do disclose commission of cognizable offence and/ therefore no ground is made out warranting interference by this Court. The petition is accordingly dismissed.

13. The Petitioner has concealed all these material and relevant facts from the Court. It was obligatory on the part of the Petitioner to have pointed out that the District Basic Education Officer had not only suspended Anand Kumar Upadhyay (husband of the Petitioner) who is working as an Assistant Teacher but the District Basic Education Officer had also filed a First Information Report against her husband. The Petitioner should have also disclosed that earlier Sri Anand Prakash Pandey had also filed Writ Petition No. 41753 of 2011 for the same relief as claimed in the present petition but this fact has also not been disclosed even though the said Anand Prakash Pandey has filed this petition as a counsel for Vandana Upadhyay. These material facts have been deliberately concealed from this Court.

14. The Supreme Court in K.K. Modi Vs. K.N. Modi and Others, observed:

43. ...This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. and for this purpose considerations of public policy and the interests of justice may be very material.

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata.

15. This decision was followed by the Supreme Court in M. Nagabhushana Vs. State of Karnataka and Others,

16. In Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, the Supreme Court observed:

16. A writ remedy is an equitable one. A person approaching a superior court

must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.

17. The Supreme Court in Raj Kumar Soni and Another Vs. State of U.P. and Another, observed:

It is a fundamental principle of law that a person invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India must come with clean hands and must make a full and complete disclosure of facts to the Court. Parties are not entitled to choose their own facts to put forward before the Court. The foundational facts are required to be pleaded enabling the Court to scrutinise the nature and content of the right alleged to have been violated by the authority.

18. The Supreme Court in S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, also observed:

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

19. The Petitioner is, therefore, not only guilty of concealment of material and relevant facts but has also abused the process of law and the petition deserves to be dismissed for these grounds. The Courts have also, in such matters, imposed exemplary costs upon the Petitioners.

20. The writ petition is, accordingly, dismissed with costs of Rs. 10,000/ which shall be deposited by s before the Registrar General of the Court within a period of one month, failing which the Registrar General shall inform the District Magistrate, Mau who shall recover it as arrears of land revenue and transfer it to the Registrar General of the Court. The costs so deposited shall be transmitted to the High Court Mediation and Conciliation Centre.