
(1990) 03 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous writ Petition No. 24691 of 1988

Sri. Ram Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-1990

Acts Referred:

Contract Act, 1872 — Section 78

Citation : (1990) 1 AWC 590

Hon'ble Judges : S.K. Dhaon, J;B.P. Singh, J

Bench : Division Bench

Advocate : H.C. Kharbanda, for the Appellant;

Final Decision : Disposed Of

Judgement

1. The prayer is that the Respondents may be commanded to pay to the Petitioner the salary which was payable to him from 1st August 1987 to 20th February 1988 and also to pay him pension, gratuity and provident fund as admissible. Hence this petition.

2. On or before 30th June 1987 the Petitioner was working as Principal of Netaji Inter College, Barky P.O. Sakalpura, district Varanasi. According to the Respondents the Petitioner attained the age of superannuation on 30th June 1987. He preferred a writ petition No. 1103 of 1987 in this Court on 29th June 1987. This Court passed the interim order to the following effect:

Issue notice. Until further orders of this Court or till 30th April 1988, which ever is earlier, the Petitioner shall not be retired from services.

The writ petition was dismissed on 9th December 1987. On 20th February 1988 the District Inspector of Schools wrote to the management of the institution concerned that the writ petition of the Petitioner had been dismissed and charge from the Petitioner should be taken, it not already taken.

3. A counter affidavit has been filed on behalf of the District Inspector of Schools

and the stand taken is that in view of the dismissal of the writ petition the Petitioner worked illegally with effect from 1st July 1987 and, therefore, he is not entitled to be paid any salary.

4. Having heard learned Counsel for the parties we are satisfied that this is a fit case where the Petitioner should be paid his salary with effect from 1st July 1987 to 9th December 1987. Under the interim order of this Court the Petitioner was allowed to work as principal either until further orders or till 30th April 1988, whichever event occurred earlier. On 9th December 1987 the writ petition was dismissed and that order, therefore, should be construed as an order contemplated by this Court in the interim order. We are not impressed with the argument of learned Standing Counsel that the Petitioner is not entitled to any salary at all. The Petitioner worked with a reasonable expectations of being paid. Infact, the District Inspector of Schools did pay him salary for the month of July 1987. In these circumstances, the principle contained in Section 78 of the Contract Act would be applicable.

5. The writ petition succeeds in part. The Respondents, in particular, the District Inspector of Schools, is directed to pay to the petitioner whatever salary is payable to him within a period of four months, beginning from the month of 1st August 1987 to 9th December 1987. The Management and the District Inspector of Schools shall take appropriate steps as expeditiously as possible in preparing the bill so that the payment of pension, gratuity and Provident Fund may be made to the Petitioner. The District Inspector of Schools shall submit the papers of the Petitioner to the Deputy Director of Education for the said payment within a period of four months from the date of presentation of certified copy of this order before him. We however, make it clear that the pension of the Petitioner shall be computed on the basis that the Petitioner worked in the institution till 9th December 1987.

6. With the above direction the writ petition is disposed of finally.

7. There shall be no order as to costs.