

(2016) 03 AHC CK 0184

In the Allahabad High Court

Case No : Special Appeal Defective No. 224 of 2016

State of U.P. and 6 Others

APPELLANT

Vs

Smt. Archana Devi and 8 Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 19

Citation : (2016) 4 AILLJ 103

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Ashok Kumar Goyal, Advocate, for the Appellant; Vimal Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. A writ petition preferred by the first to eighth respondents has come to be allowed by a learned Single Judge in terms of the judgment and order dated 4 August 2015. The learned Single Judge in terms of the judgment impugned before us has proceeded to quash the order passed by the Basic Education Officer on 11 October 2007 refusing to accord approval to the appointment of the first to eighth respondents. The learned Single Judge has remanded the proceedings to the District Inspector of Schools (DIOS) with directions to pass consequential orders for release of salary of the first to eighth respondents within a period of three months. The State is in appeal.

2. As we read the judgment rendered by the learned Single Judge, we find that the writ petition came to be allowed following the judgment rendered by the Court in Ashok Kumar Gupta and Others v. State of U.P. and Others (Writ Petition No. 41838 of 2007). The learned Single Judge proceeded in the matter after taking on record a statement of the Additional Chief Standing Counsel made upon instructions to the effect that the first to eighth respondents were still working in the institution and that their claim was liable to be considered in light

of the judgment rendered by the Court in Ashok Kumar Gupta. It is in the aforesaid background that it was vehemently contended initially by the learned counsel for the respondents that the instant appeal would not be maintainable being directed against a judgment rendered on concession. The above submission has been countered by the learned Standing Counsel who would submit that no concession could have formed the basis of the learned Single Judge proceeding to allow the writ petition without referring to the specific stand of the State as evidenced from the averments made in the counter affidavit filed in the writ proceedings. It has been submitted that in the counter affidavit, it was the specific stand of the appellants that the orders of approval dated 30 March 1990 was a forged and fabricated document and that no record of it having ever been dispatched from the office of the District Basic Education Officer existed. The learned Standing Counsel submits therefore that there was no evidence of the first to eighth respondents having been validly appointed in the institution prior to it being taken on the grant-in-aid list and its up-gradation. It was further submitted that the statement made by the Additional Chief Standing Counsel before the learned Single Judge has been clearly misinterpreted inasmuch as the concession, if at all it could be described as one, was only to the extent that the absence of a dispatch number could not form the basis for presuming that the order of approval was forged. It was further submitted that a concession made contrary to law or the pleadings of parties would not bind the appellants.

3. We find that the counter affidavit filed before the learned Single Judge carried specific averments to the effect that the order of approval dated 30 March 1990 was a forged and fabricated document. The order impugned in the writ proceedings dated 26 July 2012 also noted that there was no evidence of the approval order having been dispatched from the office of the District Basic Education Officer. We are constrained to observe that the statement made by the Additional Chief Standing Counsel before the learned Single Judge was therefore not only inaccurate but also at variance with the stand of the appellants as evidenced from the pleadings placed before the learned Single Judge. We may further note that the judgment in Ashok Kumar Gupta proceeded on the basis of a significant distinguishing feature. In the said case, the approval letter existed on the record of the authorities. What was however contended before the Court in the said case, was that the said order did not carry a dispatch number. It was in the above light that the Court proceeded to hold that the absence of a dispatch number on an order of approval which admittedly existed on record could not give rise to a presumption that it was forged. The statement of the Additional Chief Standing Counsel as taken on record by the learned Single Judge was therefore not only contrary to the pleas taken in the counter affidavit but also perhaps made without the degree of circumspection and responsibility which should have preceded the statement so being made before the learned Single Judge. This, additionally because the distinguishing factual backdrop in which Ashok Kumar Gupta came to be rendered was not borne in mind. We, however and since the statement itself came to be made upon instructions, refrain from

observing anything further leaving the appellants only with a note of caution that a Court generally looks no further when a solemn statement is made before it by counsel and proceeds in the matter reposing its trust upon the position of the counsel as being first and foremost an officer of the Court. It therefore necessarily follows that such statements must be made with a great degree of responsibility and upon due circumspection.

4. Having arrived at the conclusion that the statement would not bind the appellants, the learned counsel for the parties proceeded to address us on the merits of the appeal.

5. The first to eighth respondents are stated to have been appointed between 1982 to 1988 in the Adarsh Balika Purva Madhyamik Vidyalaya against the post of Head Mistress, four posts of Assistant Teacher, one post of clerk and peon. The papers of their appointments are stated to have been forwarded for the grant of approval to the District Basic Education Officer who in turn is stated to have accorded approval on 30 March 1990. It becomes pertinent to note here that the institution itself was accorded temporary recognition in 1983 and permanent recognition subsequently on 23 June 1992. At the time of grant of permanent recognition the administrative control over the institution came to be transferred from Ballia district to the Basic Education Officer posted in the newly created district of Mau. The institution was thereafter invited to apply for being taken on the grant-in-aid list and the management consequently called upon to furnish the relevant records in respect of its existing staff. The first to eighth respondents contended that after due verification, the second appellant passed an order on 1 June 2007 directing the release of salary in their favour. The institution itself was taken on the grant-in-aid list in terms of a Government Order dated 2 December 2006. It appears that thereafter taking cognizance of a complaint the appellants initiated an enquiry with regard to the veracity of the approval order dated 30 March 1990. Upon culmination of the said enquiry, the Basic Education officer proceeded to pass an order on 11 October 2007 holding the order of approval to be forged and consequently passing directions for recovery of the payments made to the first to eighth respondents as also initiation of criminal proceedings. This order came to be assailed by the first to eighth respondents by preferring a writ petition Writ A. No. 56647 of 2007 (Smt. Archana Devi And Ors v. State of U.P. And Ors) before this Court which came to be disposed of on 24 April 2012. While disposing of the said petition, the learned Single Judge noted that the order of 11 October 2007 had come to be passed without affording an opportunity of hearing to the first to eighth respondents who were stated to have been working in the institution right from 1982. The learned Single Judge, at the same time, also took note of the stand of the appellants that the order of approval upon which the appointment of the first to eighth respondents rested was alleged to be a forged and fabricated document. Noting that an enquiry into the genuineness of the order would give rise to various disputed questions of fact, the learned Single Judge proceeded to remit the matter to the Basic Education Officer leaving it open to him to proceed afresh after providing an

opportunity of hearing to the first to eighth respondents as well as the committee of management. For enabling the appellants to undertake the enquiry upon remit and as an interim measure, it was provided that for a period of three months or till the disposal of the claim of the first to eighth respondents, the order dated 11 October 2007 would remain suspended and that the first to eighth respondents would be permitted to discharge duties and also be paid their salaries. The enquiry so directed to be completed by the learned Single Judge has culminated in the passing of the order dated 26 July 2012 which was impugned in the writ proceedings.

6. On behalf of the appellants, it was contended that the counter affidavit clearly and in unequivocal terms averred that the order dated 30 March 1990 was a forgery and a fabricated document. Reliance was placed upon the fact that the said order was sent for verification and upon a report of the concerned District Basic Education Officer, it was found that the said order appeared to have been fabricated and that no evidence of its dispatch existed on the record. On the other hand, the learned Senior Counsel appearing for the first to eighth respondents has drawn our attention to the managerial reports which were furnished for consideration of the appellants before taking over of the institution on the grant-in-aid list to contend that the said reports carried the names of the first to eighth respondents as duly appointed staff members of the institution and therefore, it was submitted that there existed no justification for the stand taken by the appellants today. Reference in this connection was made to the order dated 1 June 2007 passed by the third appellant according approval to the grant of salary to the first to eighth respondents. Reliance was also placed on extracts of the dispatch register furnished by the appellants in the earlier round of proceedings before this Court to contend that the same was replete with cuttings and overwriting and that consequently no credence could be placed upon the same. Reference was also made to the reply furnished by the appellants on 7 October 2010 in response to a query made under the Right to Information Act, 2005 in which the appellants admitted, as per the submission of the learned counsel for the respondents, that records for 198283 were not present and therefore no details could be provided. On the basis of this response, it was contended that in the absence of any record, the appellants could not be permitted to contend that the order dated 30 March 1990 was a forgery or that the initial appointment of the first to eighth respondents in 1982 was invalid.

7. Having considered the rival submissions, we find that the appellants did aver before the learned Single Judge that the order of approval dated 30 March 1990 was a forged and fabricated document. This plea was duly taken and pressed not just in the counter affidavit filed in the writ proceedings but also as a submission which was duly taken note of by the learned Single Judge who disposed of the earlier writ petition on 24 April 2012. The order of 26 July 2012 however proceeded to record that while the first to eighth respondents appear to have been working in the institution right from the time of its establishment no approval of their appointment appears to have been obtained. Dealing with the

veracity of the order of approval dated 30 March 1990, the order proceeds to record that the same does not find mention in the dispatch register. Additionally, the order proceeds to hold that the appointment of the first to eighth respondents was not made in accordance with the provisions of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978.

8. We may only note that while on the one hand the District Basic Education Officer admits the fact that the first to eighth respondents were appointed in the institution from its very inception, he proceeds to doubt the fact as to whether approval was accorded to their appointments. The District Basic Education Officer placed reliance upon a report submitted by the District Basic Education Officer, Ballia to return a finding that the order of approval is not evidenced from the dispatch register maintained. This however, in our opinion, would not be sufficient to characterise the order dated 30 March 1990 as a fabrication or a forgery. The plea taken in the counter affidavit filed by the appellants before the learned Single Judge also does not elaborate as to why the order dated 30 March 1990 is alleged to be a fabrication. Similarly the finding returned by the District Basic Education officer to the effect that the appointment of the first to eighth respondents was in violation of the 1978 Rules is devoid of reasons. The order does not proceed to elaborate which provision or procedure prescribed by the 1978 Rules was violated in the appointment process of the first to eighth respondents. In this sense the order impugned is non speaking and fails to disclose cogent reasons for denial of the claim of the respondents.

9. Since we have found that the said order is clearly nonspeaking and fails to disclose valid reasons in evidence of the objection taken to the appointment of the first to eighth respondents, we are of the view that no useful purpose would be served in remitting the proceedings back to the learned Single Judge. The ends of justice, in our opinion, would clearly warrant the remand of proceedings to the District Basic Education Officer, Mau, the fifth appellant herein, who may proceed to consider and pass appropriate orders on the claim of the first to eighth respondents after affording due opportunity of hearing to all concerned parties and bearing in mind the observations made by us above.

For the aforesaid reasons, we allow the present special appeal and set aside the judgment and order of the learned Single Judge dated 4 August 2015 and substitute it with the following directions. We for the reasons set out above, allow the writ petition and set aside the order dated 26 July 2012. With the consent of parties we dispose of the writ petition itself with a direction that the fifth appellant shall now proceed to adjudicate upon the claim of the first to eighth respondents in light of the observations made herein above.

10. We were further informed that during the pendency of the enquiry before the fifth appellant and pursuant to the directions issued in the earlier round of litigation, the first to eighth respondents had continued to discharge duties in the institution and had also been paid salary. We accordingly direct that the said

arrangement shall continue till a decision is taken afresh by the fifth appellant. This subject of course to the condition that the payments which may be made to the first to eighth respondents in the interregnum shall abide by the ultimate decision which the fifth appellant may take pursuant to the directions made herein.

11. The Special Appeal shall stand disposed of in the above terms.