
(2010) 11 AHC CK 0257
In the Allahabad High Court
Case No : Special Appeal No. 303 of 2007

State of U.P. and Others

APPELLANT

Vs

Daya Sagar and Others

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Citation : (2011) 3 ADJ 686 : (2011) 3 UPLBEC 1872

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—The Special Appeal No. 303 of 2007 arises out of a short Judgment of learned Single Judge dated 2.2.2000, by which he allowed the Writ Petition No. 16944 of 1994 for payment of salary to Shri Daya Sagar Das and Shri Ram Sewak, Assistant Teachers, teaching in the primary section of Ram Adhar Kanya Junior High School, Gaushala, Maharajganj, with half the arrears from the date other teachers were paid their salary.

2. In Special Appeal No. 1198/2008 learned Single Judge has, by his Judgment dated 4.8.2004 in Writ Petition No. 1478/2000, found that the controversy involved is covered by the decision of this Court dated 2.2.2000 in Writ Petition No. 16944/1994, and gave the same relief of payment of salary and half of the arrears to three teachers namely Shri Ram Niwas Patel; Shri Rajesh Kumar Sahi and Shri Ganga Prasad teaching as Assistant Teachers in the primary school of the same Junior High School.

3. The facts, as given by learned Single Judge in his Judgment in Writ Petition No. 16944/1994, are that the petitioners claim to have put in 18 years of service as basic teachers in Primary School of the Ram Adhar Kanya Junior High School, Gaushala, Maharajganj (in short the Junior High School). The Assistant Director of Education (Basic), VIIth Region, Gorakhpur exempted Shri Daya Sagar Das petitioner No. 1, and Shri Ram Sewak petitioner No. 2, from training, by his

orders dated 11.12.1995, and 24.9.1996 respectively. The primary school was attached with the Junior High School prior to 25.3.1975. By the Government Order dated 21.5.1979 the Junior High School was recognised for grant-in-aid, but the primary section was not so recognised. Learned Single Judge thereafter observed that the primary section, in which the petitioners started teaching, was affiliated to the Junior High School on 8.3.1973, and therefore, the petitioners were entitled for payment of salary according to the provisions of Payment of Salaries Act.

4. Shri J.K. Tiwari, learned Standing Counsel submits that learned Single Judge has not correctly appreciated the facts. He did not even look into the counter affidavit, and has not given good and sufficient reasons to allow the writ petitions. Shri Tiwari submits that Ram Adhar Kanya Junior High School, Gaushala is a recognised and aided institution. It was taken in grant-in-aid by the Director of Education (Basic) on 13.1.1992 only for Classes VI to VIII. The grant-in-aid was not given to run Classes I to V. The claim of the management of the Junior High School is based on fabricated documents.

5. It is stated by learned Standing Counsel, that the Government Order dated 13.1.1992, provided for upgradation of 240 boys and 60 girls schools to be included in the grant-in-aid list with effect from 1.3.1991. The State Government found that some of the schools included in the list do not fulfil the conditions of eligibility for their inclusion under the Government Order dated 27.3.1991, as four of the schools were found to be ineligible on the ground of incorrect date of recognition and 22 others for want of certain eligibility conditions. These 26 schools were thus deleted from the list. Para-8 of the Government Order dated 13.1.1992 clarified that the schools included in the grant-in-aid list were eligible for salary of the teachers for Classes VI to VIII, and not to Classes-I to V. Ram Adhar Kanya Junior High School was recognised only for grant-in-aid for Classes VI to VIII on 24.9.1985. He submits that the letters dated 2.2.1978 and 27.3.1979 provide for renewal of temporary recognition to Junior High School for Classes VI to VIII and further the renewal orders dated 28.3.1980 and 21.6.1982 refer only to the recognition of Junior High School for Classes VI to VIII.

6. The ground Nos. 8 to 18, of Special Appeal No. 303 of 2007 relate to certain facts, which according to the Standing Counsel, clearly establish that the claim of the management of temporary recognition to Classes I-V dated 8.3.1973, is based upon fabricated and forged documents. In order to correctly appreciate the facts, it is necessary to quote the grounds as follows:

8. Because the learned Single Judge has failed to take notice that three renewal orders i.e. 27.11.1973, 25.9.1974 and 28.3.1976 relied upon by the management to establish that Ram Adhar Kanya Junior High School Gaushala, Maharajganj is recognised for Class-I to VIII, are doubtful documents for the following reasons:

(A) In the letter dated 27.11.1973 entire order is a typed order whereas after

word "Kachha Ka I Star one se Eight" has been written in the handwriting and the addition itself demonstrate that it has been fabricated subsequently. It may be added here that this document is not traceable in the records of the department.

(B) The alleged renewal order dated 25.9.1974 as well as 28.3.1976 produced by the petitioners bears no signature of any authority. Moreover in the order dated 28th March, 1976 father's name has been typed whereas the name of the petitioners' institution has been mentioned in handwriting.

9. Because on the basis of alleged renewal order of 1973, 1974 and 1976 the petitioners have claimed that temporary recognition was for Class I to VIII. The language used in these three orders are not the official languages and it appears that these documents have been fabricated by the petitioner just to get benefit from the Hon'ble Court in collusion with the Government staffs posted at the relevant time.

10. Because in order to get recognition for Junior High School following buildings requirements are there:

3 rooms of 20 x 25 ft., one Laboratory for science of 10 x 25 ft., one room for Principal, one for office, one for store and one extra room for misc. purposes.

Whereas even today during the inspection it has been noticed that in the entire institution only five rooms are available, three class rooms for accommodating class VI, VII & VIII, one Science room and remaining one room for Principal as well as office. There is no store room, even staff used to sit in the tin shed varandah and there is only one tin shed varanadah of 12 x 35 ft & 12"x25" which is claimed to be used by the primary section of the institution, meaning thereby that even till date the institution is not having the minimum building requirements as per rules.

11. Because there is no scope of any primary school due to lack of building or class room or furniture etc. the primary section of the institution. The claim of the petitioners is that primary classes are being run in 12 ft x 35 ft & 12"x25" varandah having no pucca floor and is having only tin shed and the same is being used for staff purpose as well as storage of the Junior High School. This position itself negate the claim of the petitioner that there are 11 sections running for the primary classes, whereas for running 11 sections of primary classes there should be at least 11 rooms. Neither there is class rooms nor furniture to run the primary section.

12. Because the management has illegally claimed that 11 sections of primary classes are running and 12 teachers are teaching. The alleged permission has been obtained by the management from the then District Basic Education Officer, Maharajganj Mr. Ganga Prasad Pathak, whereas at the relevant time the Basic Education Officer was not having any power to grant such permission. The power was conferred on Director of Education (Basic) vide order dated 34d July, 1991.

13. Because the heavily relied documents by the petitioner is the letter dated 23.8.1995 having No. 2766/95-96 and 2765/1995-96 speaks for itself. On the basis of these documents it is being claimed that 12 posts were sanctioned and on the same date the approval has been granted for appointment of 10 teachers. By no stretch of imagination the same is possible particularly when a post is sanctioned then naturally the date of approval will be subsequent to the date of creation of posts and it must have some time gap.

14. Because as per established norm, after the creation of the posts appointments were to be done by the selection committee etc. but as per its own documents the management is said to have made appointment two months prior to the posts creation which itself established that entire proceeding is forged and fabricated.

15. Because the 12 teachers allegedly working in the Primary Section are still untrained teachers whereas there is no provisions for appointment of untrained teachers in the primary institution. The approval order dated 23.8.95 has been cancelled vide order dated 10.9.2004.

16. Because the petitioners/respondents has relied upon the letter dated 31.5.1994 which is based on wrong facts. Whereas it is very much clear that the institution was given temporary/permanent recognition for class VI to VIII only.

17. Because neither the petitioner nor the management have any answering to the point that the petitioners were working from 1977 itself and they have been granted alleged regularisation vide order dated 5th June, 1993 i.e. after a gap of 16 years particularly when the institution was taken on grant in aid w.e.f. 1st March, 1991 vide letter dated 13.1.92. Moreover, the alleged order dated 5.6.93 is not available on the official records. It appears that the same has not been issued from the office of the answering respondents. The alleged order dated 5.6.93 has been cancelled vide order dated 14.9.04.

18. Because the entire exercise is outcome of collusion between the management and the former B.S.A. Mr. Ganga Prasad Pathak to share wrongful gain from the fraudulent exercise. This fact is corroborated from the alleged approval order dt. 23.8.95 wherein at serial No. 1 name of Sri Maya Patel is appearing who is real sister of Manager and at serial No. 9 name of Smt. Suman Lata Pathak is appearing who is daughter of the then District B.S.A. Mr. Ganga Prasad Pathak and all the documents relied upon by the petitioner and management with regard to the approval, creation of section, regularisation, approval and affiliation of primary section to the Junior High School has been done allegedly under the signatures of Sri Ganga Prasad Pathak. The learned Single Judge has also failed to notice that Ram Adhar Kanya Junior High School is an independent Junior High School and having recognition for Class VI to VIII and one Principal, 4 Assistant Teachers, 1 Clerk and 3 Peons are getting their regular salary w.e. From 1st March, 1991 i.e. from the date the institution has been taken in the grant in aid list.

7. Learned Standing Counsel has relied upon the judgments in *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions v. Pindiga Sridhar and Ors. (2007) 13 SCC 352; *Ganpatbhai Mahijibhai Solanki v. State of Gujarat and Ors.* (2008) 12 SCC 353; and *Regional Manager, Central Bank of India v. Madhulika Guruprasad Dahir and Ors.* (2008) 13 SCC 170 in support of his submissions that an act of deliberate deception, with a design to secure something which is otherwise not due, tantamounts to fraud. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former, either by words or letter. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine. In *Dalip Singh Vs. State of U.P. and Others*, and *Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others*, the Supreme Court held that the concealment of material facts does not give any right to a person to claim relief from the Court. In para 20 of the judgment in *Oswal Fats and Oils Limited's* case (*supra*) it was held as follows:

20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person.

8. In the supplementary affidavit of Shri Bhupendra Kumar Singh, Basic Shiksha Adhikari, Maharajganj filed on behalf of the respondent-appellant, the letter of temporary recognition of the Junior High School by Shri Ayodhya Prasad, the then District Basic Education Officer, Gorakhpur dated 8.3.1973, and the letter dated 29.11.1973 of renewal of the recognition from July 1973 to June 1974 have been annexed as Annexure-SC-1 and 2. The photocopy of the letter dated 23.5.1983 of the District Basic Education Officer, Gorakhpur on the subject of the recognition for primary school in the year 1982-83 has also been annexed. In this letter, it is stated that with reference to the application of the institution, the temporary affiliation of the Junior High School was given, upto 30.6.1983 with the condition, that until the permanent recognition is given, the application for renewals may be filed every year upto 31st July, otherwise it will not be possible to consider the application for renewal. The supplementary affidavit encloses a photocopy of the letter dated 29.6.1995 issued by the then Basic Shiksha Adhikari, Maharajganj, and the extract of the advertisement published in newspapers "Swatantra Chetna" dated 2.7.1995, which shows that the advertisement for appointment of teachers was made for the first time in 1995. These letters have been annexed to demonstrate that the Primary Section of the

Junior High School was given temporary recognition for the first time on 23.5.1983, subject to certain conditions. The approval order dated 23.8.1995 was cancelled vide order dated 10.9.2004 vide ground No. 15.

9. There is nothing on record to show that the petitioners were working with effect from 1977, and were regularized on 5.7.1993 after a gap of 16 years, particularly when the institution was taken on grant-in-aid w.e.f. 1.3.1991, vide letter dated 13.1.1992. There is no denial to the statement of fact in ground No. 17 that the order dated 5.6.1993, is not available in the official record, and in any case it was cancelled vide order dated 14.9.2004.

10. From these facts we find that though Junior High School was brought on grant-in-aid w.e.f. 1.3.1991, the primary section was not entitled to the grant-in-aid as it was not recognised and that the school did not have the class room and teachers for running primary section. The management, in order to give benefit to some persons close to them, including the sister of the Manager and the daughter of the then Basic Shiksha Adhikari, started making a claim of grant-in-aid to the teachers of Classes-I to V, on the basis of a fraudulent document of temporary recognition. These teachers were neither teaching in the institution, nor there is any proof of their appointment and work prior to 1992. The order of the Director of Education (Basic) dated 3.7.1992, was not applicable to primary sections. The primary section was not running nor there was any infrastructure or provision for running such sections.

11. Learned Standing Counsel has pointed out that the list of teachers claimed to be teaching in Class-I to V, purportedly approved by Shri Ganga Prasad Pathak, the then District Basic Education officer, Maharajganj alleged to be in collusion with the management of the Junior High School, includes the name of Smt. Maya Patel, the sister of the Manager of the School; and Smt. Sumanlata Pathak, the daughter of Shri Ganga Prasad Pathak, the District Basic Education Officer. He was in league with the management for manufacturing documents to give arrears of salary to the 11 teachers alleged to be teaching in Class-I to VIII.

12. A review petition was filed by the State of UP to review the judgment of Hon"ble P.C. Verma, J dated 2.2.2000, challenged in this writ petition. Hon"ble P.C. Verma, J dismissed the review petition on the ground that firstly, it was filed by Shri B.P. Singh, who was not the counsel, who had pleaded the case on behalf of the respondents; and secondly, the review petition was highly belated and no reason was given much less sufficient reason for condonation of delay.

13. We are of the opinion that learned Single Judge did not care to examine the facts of the case, and proceeded to rely upon fraudulent documents of temporary recognition of Primary Section of the Junior High School, in giving benefit of the grant-in-aid to the Primary Section w.e.f. 1.4.1991. The Manager and the then Basic Education Officer, in order to give benefit to their sister and daughter respectively, approved their appointment. In fact, they were neither appointed nor were teaching in the Junior High School and in which there was no

infrastructure whatsoever for running Class-I to V. The eleven sections in the school could not be run in five class rooms out of which one room was used by the Principal for his office. The entire claim put up for primary section, was fraudulent based upon forged and fabricated documents for benefiting certain individuals.

14. Both the Special Appeals are allowed. The judgment dated 2.2.2000 in Writ Petition No. 16944 of 1994 and judgment in review petition No. 4854/2000 dated 27.5.2004, as well as the judgment dated 4.8.2004 in Writ Petition No. 1478 of 2000, are set aside. Any benefit drawn under these judgments shall be withdrawn from the petitioners.