

(2016) 04 AHC CK 0230

In the Allahabad High Court

Case No : Special Appeal Defective No. 54 of 2016 and Civil Misc. Delay
Condonation Application No. 22932 of 2016 in Special Appeal
Defective No. 54 of 2016

State of U.P. and Others

APPELLANT

Vs

Satya Deo Pandey and Others

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 14, Article 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers
and Other Staff) Act, 1971 — Section 12

Citation : (2016) 4 ADJ 675 : (2016) 4 AILLJ 136 : (2016) 2 UPLBEC 1598

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Rama Nand Pandey, for the Appellant; Lallan Prasad Singh, for the
Respondent

Final Decision : Dismissed

Judgement

Yashwant Varma, J.—1. A writ petition preferred by the first, second and third respondents (hereinafter for the sake of convenience to be referred to as "the original petitioners") has come to be allowed by a learned Single Judge on 10 March 2015. The writ petition as originally framed sought quashing of a chart drawn up by the second appellant, which amongst others included the names of the original petitioners as teachers not being entitled to the payment of salary. A further direction was sought for the payment of salary to the original petitioners from February 2003. During the pendency of the writ petition and pursuant to directions issued in two separate proceedings, the second appellant passed an order on 7 July 2005 and turned down the claim of the original petitioners for the grant of salary and other benefits. This order was challenged by way of an amendment application which was duly allowed by the learned Single Judge. The learned Single Judge in terms of the judgment assailed before us has allowed the

writ petition, quashed the order of 7 July 2005 and has further issued a direction calling upon the appellants to pay the entire arrears of salary of the original petitioners along with 8% simple interest from the date it fell due till the date of actual disbursement. A further direction has been issued providing that in the case of such of the petitioners, who may have retired during the pendency of the writ proceedings, apart from the payment of arrears of salary, payment of retiral dues along with interest at the same rate will also be ensured. The State is in appeal.

2. The litigation between the original petitioners and the appellants has a history. The learned Single Judge has referred to the same in great detail. We will however, briefly note the salient facts which would be relevant for the disposal of the instant appeal.

3. The original petitioners are stated to have been appointed as Assistant Teachers in the Adarsh Uchchatar Madhyamik Vidyalaya, Sewan Kala, District Ballia against sanctioned posts pursuant to an approval granted by the District Inspector of Schools (DIOS) on 1 October 1981. By an order dated 26 March 1982, the DIOS cancelled the order of approval and directed the management to terminate the services of the original petitioners. Challenging the said order of the DIOS, the original petitioners instituted a suit in the Court of the Munsif Ballia for a declaration that the order dated 26 March 1982 be declared as null and void as also for a permanent prohibitory injunction restraining the State respondents therein from interfering in their services. The DIOS as well as the State of U.P. were arrayed as the defendant Nos. 2 and 3 while the committee of management was the first defendant. This suit was decreed partly vide judgment dated 5 May 1983 and the order of the DIOS was declared null and void. The relief of permanent injunction was however refused. The judgment rendered by the trial court was taken in appeal by the committee of management alone by filing a civil appeal. Cross objections were filed by the original petitioners in this appeal insofar as the relief for permanent injunction was declined. The lower appellate Court by its judgment dated 25 July 1986 dismissed the appeal filed by the committee of management. The cross objections however, were allowed and the suit of the original petitioners was decreed in toto. A permanent injunction was issued restraining the defendants therein from dispensing with the services of the original petitioners or from withholding their salary on the basis of the order dated 26 March 1982. The judgment and order of the lower appellate Court was assailed by the committee of management by preferring a second appeal in this Court. The application seeking stay of the judgment and decree of the lower appellate Court was refused on 22 September 1998. The second appeal, as the learned single Judge has recorded, was dismissed for want of prosecution on 17 February 2014 and no application for restoration was filed. Significantly neither the State nor the DIOS preferred any appeals. Consequently the judgment and decree insofar as they were concerned attained finality.

4. On the strength of the judgment and decree obtained, the original petitioners

continuously worked as Assistant Teachers and on completion of ten years satisfactory service were also granted selection grade on 1 January 1992. Based on the continuous ad hoc services rendered by them, their appointments were also regularized on 9 October 2002 in terms of the provisions of Section 33-A of the U.P. Secondary Education Services Selection Board Act, 19821.

5. It transpires that an issue with regard to various fake and fictitious ad hoc appointments of teachers in educational institutions in district Ballia came to be raked up. An order was passed by the DIOS calling for details from various educational institutions and the payment of salary to ad hoc teachers was stayed. Details with regard to the appointment of the original petitioners is stated to have been forwarded to the DIOS in the course of this enquiry. It ultimately transpires that the State Government by an order dated 3 February 1996 constituted a seven member committee to scrutinize all ad hoc appointments of teachers made in the district. The report of the seven member committee is stated to have accepted the case of the original petitioners having been validly appointed and accordingly directed for release of their salary. Pursuant to the said report, the Deputy Director of Education by his communication dated 22 December 1996 and the DIOS by his letter dated 30 May 1997 passed orders for the release of the salary of the original petitioners. They accordingly started receiving salary from April 1997. However, arrears for the period July 1995 to March 1997 were not paid. Aggrieved thereby the original petitioners preferred Writ Petition No. 47108 of 1999 before this Court, which was disposed of with a direction calling upon the second appellant to take a decision for release of arrears of salary as claimed by the original petitioners. On 14 June 2000, the Assistant Deputy Director of Education (Accounts) acting on behalf of the second appellant passed orders for the release of arrears of salary. A consequential order was passed by the DIOS on 22 February 2001 whereafter the arrears of salary was released in favor of the original petitioners. As noted above, on 9 October 2002, the services of the original petitioners were regularized.

6. The payment of salary of teachers and employees in district Ballia again came to be stopped pursuant to an enquiry instituted by the District Inspector of Schools. The first appellant passed an order requiring an enquiry being undertaken in respect of the appointment of as many as 104 teachers in the district in which list the names of the original petitioners also stood included. In the meanwhile the U.P. Madhyamik Shikshak Sangh on behalf of various teachers and employees also instituted a writ petition which was disposed of by this Court on 25 February 2004. The Court taking note of the report submitted by the CBCID permitted the second appellant to undertake an enquiry into each individual case and to order release of salary if the appointment was found to be valid. Since the payment of salary to the appellants had also been stayed, they also approached this Court by filing Writ Petition No. 55910 of 2003 which came to be disposed of on 12.4.2004 with the following operative directions:

"Having regard to the facts and circumstances of the case, the writ petition is disposed of with the direction to the Director of Education (Secondary) Directorate, U.P., Allahabad to examine the case of the petitioners having to the civil litigation and the enquiry report of seven members Committee for purpose of deciding the validity of their appointment and for release of their salary as expeditiously as possible within a period of eight weeks from the date of production of a certified copy of this order before him."

7. Since the appellants failed to take a decision pursuant to the directions issued by this Court, contempt proceedings were initiated in which the State filed a short counter affidavit bringing on record its objections to the validity of the appointments made in the district and including the names of the original petitioners in a list of tainted appointments filed alongwith the said affidavit. This affidavit indicated that the appointment of the original petitioners was in violation of Regulation 20 falling in Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. This led to the filing of the writ petition from which the present appeal emanates.

8. Two primary submissions have been urged for our consideration in this appeal. It has been contended firstly that the appointment of the original petitioners was in clear violation of the provisions of Regulation 20. Regulation 20 comprised in Chapter II of the Regulations framed under the 1921 Act provides that in case the management fails to advertise a vacancy which has arisen against a sanctioned post within a period of three months from the creation of such vacancy, the post itself shall be deemed to have lapsed and no appointment thereon shall be made unless an order is passed by the Director of Education reviving the same. Referring to the details recorded in the order dated 7 July 2005, it was contended that the original petitioners had been appointed against vacancies arising in respect of duly sanctioned posts more than a year after they fell vacant. The order notes that in the case of Satya Deo Pandey, the vacancy had arisen on 26 September 1980 whereas he came to be appointed in 1981. In the case of Amar Nath, the order notes that the vacancy arose on 21 July 1980 whereas the appointment was made on 1 October 1981. It becomes pertinent to note here that this objection is not taken in respect of Harendra Prasad Gupta in light of the fact that he came to be appointed against a post which was sanctioned only on 21 July 1980 and hence did not fall foul of Regulation 20 as understood and interpreted by the appellants.

9. The second submission which has been urged in support of this appeal was that the judgment and decree rendered in favor of the original petitioners would be of no avail and is liable to be ignored in light of the provisions of Section 12 of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. It was sought to be contended that Section 12 clearly bars and ousts the jurisdiction of the Civil Court and therefore, any decree or order passed would be a nullity and not binding upon the appellants.

10. Having considered the submissions as advanced before us and having

perused the material on record, we now proceed to deal with the submissions on merits. The consideration of the issues, which fall for determination, may be broadly categorized under the following heads:

"A. Impact of the civil litigation and earlier reports.

B. The objection based on the provisions of the Chapter II Regulation 20.

C. The impact of Section 12 of the 1971 Act on the decree dated 5 May 1983 and 25 July 1986."

A. Impact of the civil litigation and earlier reports:

As we have noted above, the State as well as the DIOS were both parties to the suit instituted by the original petitioners. The suit came to be decreed on 5 May 1983 and the order of the DIOS dated 26 March 1982 declared null and void. Except for the committee of management no appeal was preferred either by the State or by the DIOS. In appeal, while the committee of management lost, the cross objections preferred by the original petitioners came to be allowed. Consequently the suit came to be decreed in toto. The injunction restrained the defendants, which included the State as well as the DIOS, from dispensing with the services of the original petitioners or from withholding their salary on the basis of the order dated 26 March 1982. The judgment and order passed by the lower appellate Court was also not subjected to challenge either by the State or by the DIOS. The second appeal preferred by the committee of management has since come to be dismissed for want of prosecution. The appellants also do not deny the report submitted by the seven member committee or the consequential directions for payment of salary as issued by the Deputy Director of Education and DIOS. In fact it was pursuant to the inquiries conducted by the appellants themselves that not only did the original petitioners proceed to receive salary but also arrears for the period July 1995 to March 1997. On 9 October 2002, the services of the original petitioners were regularized in terms of the provisions contained in Section 33-A of the 1982 Act. The above facts establish that the appointment of the original petitioners were duly scrutinized by the appellants and upon them being satisfied that they had been validly appointed as Assistant Teachers in the institution, directed the payment of salary. The objections based upon the provisions of Regulation 20 falling in Chapter II of the Regulations framed under the 1921 Act, were available to be taken even then. It is not the case of the appellants that the fact as to when the vacancies against which the original petitioners came to be appointed came into existence was not known. More importantly, and as the learned Single Judge himself records, the order of approval dated 1 October 1981 has not been denied by the appellants. In fact the learned Single Judge records that it has never been the case of the appellants that the order of approval dated 1 October 1981 was a forged or fabricated document. The order of 26 March 1982 which cancelled the order of approval stood declared as null and void by the civil Court as far back as in 1983. The appellant chose not to assail the judgment and decree of the civil Court and

permitted it to attain finality. Subsequent thereto, and this must be noted, the order dated 1 October 1981 has not been recalled or set aside. Bearing in mind the long history of litigation which ensued inter partes, the decree of the Civil Court which attained finality, the reports of the enquiry committees, we are of the opinion, that it was not open to the appellants to raise an objection with regard to the appointment and continuance of the original petitioners or seek to reopen issues which had attained a quietus. In fact, the conduct of the appellants verges on acquiescence and waiver of all objections that could have possibly been taken to the appointment of the original petitioners.

11. Similarly it becomes worthy of mention that on 9 October 2002, the appellants themselves proceeded to regularize the services of the original petitioners. This they did by exercising statutory powers conferred by Section 33-A of the 1982 Act. The order of regularization also has not been rescinded or cancelled by the appellants at any point of time.

12. While on this aspect, it may also be noted that the appointment of the original petitioners on ad hoc basis came to be made by virtue of the powers conferred on the management by the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981¹⁴. The original petitioners had been appointed on an ad hoc basis prior to the commencement of the U.P. Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985 against substantive vacancies. The issue as to whether the provisions of Chapter II Regulation 20 would apply to such an appointment is an aspect which we shall dwell upon a little later."

B. Objection based on Chapter II Regulation 22:

13. Regulation 20 falling under Chapter II of the Regulations framed under the 1921 Act reads as follows:

14. On a plain reading of the said provision, it is apparent that the obligation placed upon the management is to "advertise" a substantive vacancy within three months of its coming into existence. Regulation 20 does not place an obligation on the management to effect or make an appointment within three months. The order dated 7 July 2005 faults the appointment of the original petitioners on the ground that they were made almost a year after the creation of the vacancy. This is not the mandate, command or interdict comprised in Regulation 20. Evidently therefore the ground which weighed with the appellants while proceeding to annul the claim of the original petitioners is unsustainable.

15. Additionally, it may be noted that it is not the case of the appellants that the procedure prescribed under the 1981 Order was not followed by the management. Moreover, it may be noted that in terms of clause 5 of the 1981 Order, the duty and obligation cast on the management is to inform the District Inspector of Schools about the details of the vacancy. It is thereafter the obligation of the District Inspector of Schools to invite applications from the local employment exchange and to issue a public advertisement. The onus to

advertise the vacancy is not placed upon the management. More importantly, the provisions of the 1981 Order lay down a special procedure, distinct from the provisions of the 1921 Act, for the management to follow while making ad hoc appointments in certain contingencies. We are therefore, of the view that the provisions of Regulation 20 falling in Chapter II can even otherwise have no bearing on an appointment made by the management under the 1981 Order.

C. The impact of Section 12 of the 1971 Act on the decree dated 5 May 1983 and 25 July 1986:

16. "This then takes us to the submission that the decree of the civil Court would not bind the appellant by virtue of the provisions of Section 12 of the 1971 Act. Section 12 of the 1971 Act reads as under:

"12. No order made direction given by the State Government, the Director, the Regional Deputy Director, Education, or the Inspector or other officer in exercise of any power conferred by or under this Act shall be called in question in any Court."

17. A plain reading of the provision indicate that it is in the nature of a finality clause which shields any order or direction made by the State Government, the Director, the Regional Deputy Director of Education or the Inspector from scrutiny by any Court. While it cannot be disputed that Section 12 would not oust the constitutional jurisdiction of this Court conferred by Article 226, the issue which arises for determination is whether this provision would also oust the jurisdiction of the Civil Court and if so to what extent.

18. The jurisdiction of the civil Court conferred by Section 9 of the Code of Civil Procedure is, as has been consistently held, liable to be construed based upon the maxim *ubi jus ibi remedium*. Every grievance of a civil nature is liable to be placed by a litigant for redressal before a civil Court unless its cognizance is either expressly or impliedly barred. The language of Section 9 confers upon the civil Court an expansive jurisdiction over all causes of a civil nature unless the cognizance thereof is barred by statute either expressly or by necessary implication. The second principle which must be borne in mind while dealing with the submission is that an exclusion of the jurisdiction of the Civil Court is not to be readily inferred. In *Dhulabhai v. State of M.P.*, AIR 1969 SC 78 a Constitution Bench of the Supreme Court considering the impact of a finality clause held that where a statute confers finality to orders, the jurisdiction of the civil courts must be held to be excluded. This statement of the law, however, was made subject to the rider that the statute creating the authority or the tribunal whose orders had been conferred finality providing sufficient and adequate remedies of redressal. The more significant principle which was laid down was the test of whether the claim was based upon a right or obligation created and conferred by the statute itself or whether it was based upon a common law right. Such a provision, the Constitution Bench held, would not oust the jurisdiction of the civil Court in cases where the provisions of the particular Act have not been complied with or where

the order which is ordained to have attained finality has come to be made in violation of "fundamental principles of judicial procedure". It would be relevant to recall that the civil Court in the present case proceeded to declare the order dated 26 March 1982 a nullity on the ground that the order of approval had been revoked by the DIOS in violation of the principles of natural justice and without affording an opportunity of hearing to the original petitioners. The learned Single Judge while holding against the appellants has held that no case of fraud or misrepresentation stood established against the original petitioners. These findings have not been questioned before us in this appeal. The question which therefore, arises is whether in this background whether the jurisdiction of the civil Court was barred when it proceeded to consider a challenge to the order dated 26 March 1982.

19. It is by now well settled that the principles of natural justice are an integral part of the constitutional scheme of a just and fair procedure as envisaged under Article 14. This was so held by a Constitution Bench of the Supreme Court in *Sarojini Ramaswami v. Union of India & others*, (1992) 4 SCC 506. Considering this very aspect namely a challenge to an order made in violation of constitutional or statutory provisions and the jurisdiction of the civil court in respect thereof fell for consideration before the Supreme Court in *Rajasthan State Road Transport Corporation and another v. Bal Mukund Bairwa*, (2009) 4 SCC 299. Three learned Judges of the Supreme Court while reiterating the principles laid down in *Dhulabhai* as well as *Premier Automobile Ltd.* held that violation of the principles of natural justice and actions which are unreasonable and arbitrary would fall within the ambit of Article 14. Their Lordships proceeded to hold that where the action instituted before the civil Court relates to the enforcement of constitutional rights or a right flowing from the common law, the civil Court would necessarily have jurisdiction regardless of the finality clause that may stand engrafted in the statute. We may usefully refer to what the Supreme Court held in this respect in *Rajasthan State Road Transport Corporation*.

"36. If an employee intends to enforce his constitutional rights or a right under a statutory Regulation, the civil court will have the necessary jurisdiction to try a suit. If, however, he claims his right and corresponding obligations only in terms of the provisions of the Industrial Disputes Act or the sister laws so called, the civil court will have none. In this view of the matter, in our considered opinion, it would not be correct to contend that only because the employee concerned is also a workman within the meaning of the provisions of the 1947 Act or the conditions of his service are otherwise governed by the Standing Order certified under the 1946 Act ipso facto the Civil Court will have no jurisdiction. This aspect of the matter has recently been considered by this Court in *Rajasthan State Road Transport Corporation & ors. v. Mohar Singh* [, (2008) 5 SCC 542]. The question as to whether the civil court's jurisdiction is barred or not must be determined having regard to the facts of each case.

37. If the infringement of Standing Order or other provisions of the Industrial Disputes Act are alleged, the civil court's jurisdiction may be held to be barred but if the suit is based on the violation of principles of common law or constitutional provisions or on other grounds, the civil court's jurisdiction may not be held to be barred. If no right is claimed under a special statute in terms whereof the jurisdiction of the civil court is barred, the civil court will have jurisdiction.

48. In a case where no enquiry has been conducted, there would be violation of the statutory Regulation as also the right of equality as contained in Article 14 of the Constitution of India. In such situation, a civil suit will be maintainable for the purpose of declaration that the termination of service was illegal and the consequences flowing therefrom. However, we may hasten to add if a suit is filed alleging violation of a right by a workman and a corresponding obligation on the part of the employer under the Industrial Disputes Act or the Certified Standing Orders, a civil suit may not lie. However, if no procedure has been followed as laid down by the statutory Regulation or is otherwise imperative even under the common law or the principles of natural justice which right having arisen under the existing law, sub-para (2) of paragraph 23 of the law laid down in Premier Automobiles Ltd. shall prevail."

20. The assertion of the original petitioners before the civil Court that the order of approval could not have been recalled by the District Inspector of Schools without complying with the principles of natural justice was not an assertion based, dependent upon or flowing from any right, obligation or liability placed by the 1971 Act. The right of hearing and a prior opportunity was an assertion of a constitutional right and based upon their right to a fair and just procedure being followed before the appointment was cancelled. It was not a right which flowed to them by virtue of the provisions of the 1971 Act. In this view of the matter, it cannot be said that the jurisdiction of the civil Court stood ousted in the facts of the present case. In light of the above, we find ourselves unable to accept the submissions of the appellants advanced on this score. The submission urged by the learned counsel for the appellants that the decree of the civil Court was without jurisdiction and therefore, a nullity cannot, therefore, be accepted.

21. For all the aforesaid reasons, we find no error in the judgment rendered by the learned Single Judge. The special appeal shall accordingly stand dismissed.

22. The delay of 287 days in filing the special appeal is condoned since sufficient cause has been shown in the Affidavit filed in support of the application for condonation of delay.

23. The application stands disposed of. There shall be no order as to costs.

11982 Act

21921 Act

31971 Act

41981 Order