
(2010) 07 UK CK 0047
In the Uttarakhand High Court

State of Uttarakhand and Others

APPELLANT

Vs

Dr. Smt. Pushp Lata Bisht

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2010) 07 UK CK 0047

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—This Review Petition has been filed by the respondent for a review of judgment and order dated 17.5.2010 passed by this Court in Special Appeal No. 53 of 2010 allowing the Special Appeal of the State of Uttarakhand.

2. Initially the Special Appeal was argued on behalf of the respondent i.e. the present Review Petitioner by Sri Manoj Tiwari, learned Senior Advocate. The case was argued at length on a few occasions. However, when Sri Manoj Tiwari was apprised with the Full Bench and a Division Bench of the Allahabad High Court (Smt. Pramila Mishra v. Deputy Director of Education 1997 (2) ESC 1284 (All) (FB) and Surendra Kumar Srivastava v. State of U.P. and Ors. 2007 (1) ESC 118 (All) (DB)) the two case whereby the present controversy was squarely covered, he rested his arguments, as apparently the law was against him. The Special Appeal was consequently allowed vide an order dated 17.5.2010. Now a new counsel i.e. Sri Chakra Dhar Bahuguna has been engaged to argue the Review Petition. Although this practice of engaging a new counsel in a review petition, in a case which has already been decided, is not a very healthy practice, yet in the interest of justice, we are inclined to hear the Review Petitioner.

3. Although by now it is trite, it must be said that inspite of the inherent powers of this Court to review its order, there are extreme limitations on these powers. Principally a review petition has to be examined under the parameters laid down

u/s 114 read with Order 47 Rule 1, C.P.C. In short, unless and until there is an error apparent on the face of record or there are other sufficient reason, an order should never be reviewed. Apart from this, an order may be reviewed if the review petitioner could not present before this Court even after due diligence the necessary documents at the relevant time. Since the present Review Petition has been filed on the ground that this Court has not only appreciated certain facts wrongly but the application of law has also been wrongly made, we have re-examined the whole factual as well as the legal issues and have come to the conclusion that there is no justifiable reason for this Court to review its order dated 17.5.2010. The reasons are as follows:

The Special Appeal of the State was allowed on a pure question of law, which went against the private respondent (i.e. the respondent in Special Appeal No. 53 of 2010 who is the present review petitioner). In a private institution, which is under grant in aid of the Government, there is a procedure prescribed for selection and appointment of teachers. This procedure, inter alia, includes wide publicity of the vacant posts, selection by a duly constituted Selection Committee, prescribed eligibility of the candidates and the consequent approval by the competent authority of the Government. First and foremost is that a post must be widely publicised so that all eligible candidates must apply to the post and the net should be wide enough to catch the best possible talent. However, since all vacancies do not come up initially as permanent vacancies but some are initially "short term vacancies", (they may ultimately become permanent vacancies) and these vacancies arise due to either suspension or promotion or any such contingency of the earlier incumbent, the Management Committees of such private schools used to adopt a procedure which was far from transparent, while filling these short term vacancies, and thereafter the incumbent continued on the post even though the vacancy became permanent. In order to curb this nepotism, favouritism and corruption, relevant laws were amended from time to time in the erstwhile State of Uttar Pradesh and with the passage of time the grey areas on such appointments have been clarified by a catena of decisions of Allahabad High Court which include a Division Bench as well as Full Bench decisions of the Allahabad High Court, which lay down the present law on the subject. [All these judgments have been cited and discussed in detail in the judgment presently called for a review which are (A) Smt. Pramila Mishra v. Deputy Director of Education 1997 (2) ESC 1284 (All) (FB) (B) Surendra Kumar Srivastava v. State of U.P. and Ors. 2007 (1) ESC 118 (All) (DB). What these judgments, and decisions, necessarily state is that the right of a person who has been appointed on a short term vacancy automatically comes to an end once that short term vacancy becomes a permanent vacancy. It was on this settled position of law that the case of review petitioner had been examined and adjudicated. This Court had come to a conclusion that since the review petitioner was initially appointed on a short term vacancy in the year 1992 which had become a permanent vacancy in the year 1995, the review petitioner had no legitimate right to continue on that post after 1995 when the post had become

permanent. The Review Petitioner has submitted nothing new to convince us that the position of law as applicable in the present case in view of the judgment cited above is different or that the above cases are not applicable to the facts of the present case.

4. Apart from this also there is no dispute regarding the fact that the services of the review petitioner was terminated vide order dated 1.1.1993. The review petitioner had filed a writ petition before the High Court of Judicature at Allahabad being Writ Petition No. 1606 of 1993 in which that impugned order i.e. order dated 1.1.1993 was never stayed. However, the review petitioner contends that since the impugned order dated 1.1.1993 was a composite order terminating the services of the review petitioner as well as of one Sri Govind Singh and regarding Govind Singh the impugned order was stayed by the High Court of Judicature at Allahabad vide order dated 12.1.1993, it would also mean that there is a stay order in favour of the review petitioner and, therefore, the review petitioner continued on the strength of the interim order till the writ petition was disposed of finally by this Court by a learned Single Judge of this Court on 16.6.2006 with the direction to the Education Authorities to consider the regularisation of the review petitioner. These assertions which have been repeated by the review petitioner are again not borne from the record. There is no interim order in favour of the review petitioner granted by the High Court of Judicature at Allahabad in Writ Petition No. 1606/1993 or by this Court. The interim order granted in favour of Govind Singh would not ipso facto work in favour of the review petitioner, as it was a separate order in a separate writ petition. Moreover, that writ petition on which an interim order was passed, was dismissed as withdrawn vide order dated 18.5.1995. Therefore, in any case, there was no interim order in favour of the review petitioner. As such, the claim of the review petitioner that she was continuing on the strength of an interim order is baseless and incorrect. There is no order either staying the termination order dated 1.1.1993 of the review petitioner nor any order of the Education Authorities further approving the "appointment" of the review petitioner, as is being repeatedly asserted. Though the review petitioner has referred to an order by the District Education Authority for payment of salary to the petitioner, the fact is that the petitioner was never given any salary out of the "State Exchequer" after 1.1.1993 i.e. after the termination of her services. Review petition is also full of unnecessary details which are not relevant for the present purposes, particularly in a review petition. The first order of this Court passed in Writ Petition (S/S) No. 6974/2001 dated 16.6.2006 in favour of the review petitioner was only for consideration of the review petitioner for regularisation. The Education Authorities have considered the case of the review petitioner but rejected her case on the sole ground that the appointment of the review petitioner was not properly made and she is therefore not working as an Assistant Teacher in the School. There is no order available on record which shows that the review petitioner was properly appointed as an Assistant Teacher and, therefore, the Education Authorities has rightly rejected the claim of the

review petitioner.

5. Having said this we must also note that the Counsel for the review petitioner Sri C.D. Bahuguna, pointed out certain typographical errors as well in the order dated 17.5.2010. At paragraph 4 Writ Petition No. 1606 of 1993 is written as 1606 of 2003. This mistake is therefore being corrected and it should be read as Writ Petition No. 1603 of 1993 (Registry is directed to make necessary corrections). In the same paragraph it has been stated as follows: ...Now, after a period of eight years the petitioner moved a Writ Petition No. 6974 (S/S) of 2001 before this Court which was decided by a learned Single Judge on 16.6.2006 whereby the Education Authorities were directed by the learned Single Judge to consider the regularisation of the petitioner in accordance with Act No. 4 of 2005 which is [Uttaranchal Non-Government Education (Amendment & Repeal) Act, 2005]. Now it is true that a new petition was not filed by the petitioner in the year 2001, but the petition which was filed in the year 1993 (1603 of 1993) stood transferred to this Court after the reorganisation of the erstwhile State of Uttar Pradesh, since the subject matter pertains to Uttarakhand. It was renumbered as Writ Petition No. 6974 (S/S) of 2001. However, it is therefore true that no new petition was filed in the year 2001, but that is not important, what is important is what is reflected in the said sentence which is that the petitioner was silent between 1993-2001 and did not move any application or amendment before this Court between 1993-2001. However, nothing much revolves on it.

6. This Court finds no justifiable reason for interfering with the order dated 17.5.2010 passed by this Court in Special Appeal No. 53 of 2010. Review Petition lacks merit and is liable to be dismissed and is hereby dismissed.

7. No order as to costs.