
(1996) 04 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 16720 of 1994

Surendra Kumar Misra, Principal, Shri Ramraj Pandey Higher
Secondary School, Rohda Basti

APPELLANT

Vs

D.I.O.S., Basti and Others

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Citation : (1996) 04 AHC CK 0082

Hon'ble Judges : O.P.Jain, J

Final Decision : Dismissed

Judgement

O. P. Jain, J.—This writ petition has been filed by the petitioner with a prayer that the order of D. I. O S., Basti dated 751994 (Annexure "17") a should be quashed. By the impugned order the D. I. O. S. has ordered that the salary may be paid to respondent Ram Lautan Verma as ad hoc HeadMaster of the institution. It "has also been ordered that payment of salary will be subject to the result of the second appeal filed by respondent No. 3.

2. The brief facts of the case according to petitioner are that there is a Higher Secondary School at Rohra in district Basti, which is known as ?Ram Raj Pandey Higher Secondary School?. On 551980 the post of Principal was created by the Dy. Director of Education and on 1161980 services of 8 teachers were regularised. By the same order permission was granted to advertise the post of HeadMaster and two teachers. Advertisement was published in the newspaper accordingly. It is alleged in para 5 of the petition that respondent No. 3 R. L. Verma had resigned on 1551980 and the registration was accepted by the Managing Committee.

3. On 18th August, 1980 respondent No. 3 filed a suit for permanent injunction and also filed an application for temporary injunction restraining the Committee of Management from making appointment on the post of HeadMaster. Temporary injunction was granted by the Munsif's court but on an appeal being filed by the Committee of Management the appellate court set aside the order of temporary

injunction, vide Annexure "2" Respondent No. 3 filed a Writ Petition No. 7280 of 1981 which was dismissed by this Court on 10th August, 1981.

4. The civil suit, filed by respondent No. 3, was decreed by the Munsif Court but the judgment was set aside by the Additional District Judge and a Second Appeal was filed by respondent No. 3 which has been allowed by this Court by separate order. The Second Appeal was heard along with the present writ petition. On the basis of temporary injunction passed by the Munsif's Court and which was set aside by the First Appellate Court, different orders were passed by the D. I. O. S. from time to time. The D. I. O. S. also passed orders as a consequence of the decreeing of the suit and again as a consequence of the dismissal of the suit by the court of Additional District Judge. Every time the D. I. O. S. passed one order or the other, petitioner or respondent No. 3 filed writ petitions in this Court. It is not necessary to go into the details of those writ petitions and it is sufficient to say that a history of this litigation has been given in paras 5 to 31 of the present writ petition.

5. The present petitioner has not disclosed the facts before 551990. This institution was originally a Junior High School till 1977 and was upgraded to a High School in that year. Respondent No. 3 R. L. Verma was the HeadMaster of the Junior High School and after its upgradation he continued to work as ad hoc HeadMaster of the High School. It is pointed out by the respondent No. 3, in his counteraffidavit, that the present petitioner filed writ petition No. 4309 of 1983 which was dismissed by this Court on 24th March, 1983, vide Annexure C. Al.

6. A perusal of various orders passed by the D. I. O. S. and some orders passed by this Court on the writ petitions filed by the petitioner or respondent No. 3 shows that in almost every case it was stated that the order is subject to the result of the Second Appeal. In the impugned order, Annexure"17" also it is clearly stated that the order is subject to the result of the Second Appeal filed by R. L. Verma.

7. The judgment of the Additional Munsif No. 6, Basti is Annexure C.A5 and the copy of the judgment of A. D. J., Basti in the Thirst Appeal is C.A6. As the Second Appeal is being decided simultaneously with this writ petition a copy of the judgment in the Second Appeal is not on the record of the writ petition. In the suit the contention of R. L. Verma is that he is regularly appointed HeadMaster of the upgraded High School and, therefore, of the post of HeadMaster should not have been advertised. The suit was decreed by the Munsif's court but on appeal it was .dismissed by the 1st appellate Court, vide Annexure C A6, inter alia, on the ground that a contract of personal service cannot be specifically enforced. It is not necessary to go into that question in the present writ petition. The allegations made by the management in the suit was that R. L. Verma had resigned on 1551980. This was not believed by the, learned Munsif and learned A. D. J. also has given a finding that at the time of appointment of R. L. Verma a resignation letter, without any date, was obtained from him and later on the date "1551980" was written on the resignation letter

in a different ink. Therefore, there is a clear finding of fact by both the courts that the theory of resignation propounded by the management is false. This finding itself is sufficient for the dismissal of the writ petition filed by S. K. Misra.

8. In the impugned order the D. I. O. S. has thoroughly discussed the various orders passed by different courts and has rightly come to the conclusion that respondent No. 3 R. L. Verma was an ad hoc Head Master of the institution and he has already been paid salary of the Head Master upto August, 1990. By the impugned order, Annexure "17" the salary from 1st September, 1990 to March, 1994 has been ordered to be paid and from April, 1994 regular payment has been ordered. This is, of course, subject to the result of the second appeal which has been decided in favour of R. L. Verma by this Court by a separate judgment.

9. On behalf of respondent No. 3, the case of Lallan Pd. Pandey v. D. I. O. S., Dearia, 1985 UPLBEC 539 has been cited in which it has been held that "where the HeadMaster of a Junior High School is appointed officiating Principal on ad hoc basis on the upgradation of the School the mere fact that the appointment was on ad hoc basis will not disentitle him from claiming his salary as Principal for the period for which he worked as officiating Principal. This case is fully applicable to the case of respondent No. 3 and there is no reason why he should be deprived of his salary.

10. On behalf of the petitioner much emphasis has been placed on the fact that R. L. Verma filed Writ Petition No. 4575 of 1991 in this Court which was dismissed on 23101991. It should, however, be noted that while dismissing the writ petition filed by R. L. Verma this Court made some observations in its judgment dated 23101991, Annexure "15" against petitioner S. K. Misra who was respondent in that case. In internal page 19 of Annexure "15" the Court has observed that earlier order was based on wrong statement made on behalf of the respondent that the civil appellate court has believed the theory of resignation by the petitioner from the post....?

11. On behalf of the petitioner it has been argued that the services of the petitioner and seven other teachers were regularised, vide order Annexure "1" dated 1161980 and the name of respondent No. 3 R. L. Verma does not appear in the order passed by D. I. O. S. On this basis it is argued that respondent No. 3 was not even regular teacher of the institution. This contention has no force because a wrong information was given by the management to the D. I. O. S. that R. L. Verma had resigned on 1551980. It was for reason that reason that the services of R. L. Verma were not regularised. Since it is found that R. L. Verma had not resigned and the socalled letter of resignation is a manipulated document, R. L. Verma is entitled to the relief granted to him by the D. I. O. S., Vide Annexure "17" which is impugned in the present writ petition. It appears that the Committee of Management in collusion with the petitioner. S, K. Misra, prepared a false document of resignation. The petitioner has not come to this Court with clean hands. He has not mentioned the facts before 651880 and has deliberately suppressed the fact that R. L. Varma was Head Master of Junior High

School and after its up gradation in 1977 he continued as ad hoc Head Master of the Higher Secondary School. It cannot be imagined that; after upgradation in 1977 the institution continued to work for three years without there being any Head Master. Therefore, it is irrelevant as to when the post of Head Master was actually created. There cannot be any dispute about the fact that R. L. Verma continued to work as ad hoc Head Master of this institution from 1977 onwards and he was working as Head Master prior to 1977.

12. The petitioner has wasted a lot of time of the Court. This is the 5th Writ Petition filed by the petitioner. The first writ Petition was 4309 of 1983 which was dismissed on 24th March, 1983. The second Writ Petition No. 11528 of 1984 was dismissed on 28/3/1990. He has filed two other writ petitions No. 19228 of 1987 and Writ Petition No. 11693 of 1995 which are still pending. It appears that every time whenever the D. I. O. S. passed an order on the basis of the one order or the other passed by the civil court the petitioner rushed to this Court to file a writ petition. Respondent No. 3 also had to file two or three writ petitions. A simple case of promotion of Head Master has consumed a lot of judicial time. The petitioner was fully aware of the fact that the alleged resignation of R. L. Verma is a concoction and yet he persisted with this litigation. Therefore, it is a fit case in which exemplary costs should be awarded against the petitioner.

13. This writ petition, therefore has no force and is hereby dismissed. Costs are assessed of Rs. 10,000 (ten thousand) only which will be paid by petitioner S. K.. Misra to respondent No. 3 Ram Lotan Varma.