
(2006) 10 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7850 (S/S) of 2006

Surya Prakash Misra

APPELLANT

Vs

Director of Education (Basic), Lucknow & Ors.

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 10 AHC CK 0104

Hon'ble Judges : S.N.Srivastava, J

Final Decision : Allowed

Judgement

S. N. Srivastava, J.—Heard learned Counsel for the petitioner and also learned Counsel appearing for Opposite Party No. 5, I have also heard learned Standing Counsel representing the State authorities.

2. This writ petition has been filed assailing the order dated 2682006 passed by District Magistrate Rae Bareilly arrayed as opposite party No. 2 whereby the appointment of the petitioner as Shiksha Mitra was rescinded.

3. Learned Counsel for the petitioner canvassed that the petitioner was not afforded any opportunity of hearing before passing the impugned order. It is further canvassed that no notice was issued and further that the impugned order passed by Opposite party No. 2 is ex parte

4. This Court while disposing of the earlier writ petition No. 3802 (S/S) of 2006, specifically enjoined the Opposite Party No. 3 to have the version of both the parties and pass a reasoned and speaking order within one month. Learned Counsel for the petitioner specifically referred to paragraph 18 of the writ petition the substance of which is that it is the Village Education Committee which is empowered for selection and managing the affairs of Shiksha Mitra and the District Magistrate is assigned no role in the selection of Shiksha Mitra and urged that the order being ex parte and without jurisdiction is liable to be quashed. Per contra, learned Counsel for the Opposite Party No. 5 as also learned Standing

Counsel contended that the petitioner was a student studying in class 1112 and as such he could not be appointed as Anudeshak. The averments of paragraph 18 of the writ petition have been replied in paragraphs 20 and 21 of the counteraffidavit. From a perusal of paragraph 21 of the counteraffidavit, it would transpire that the averments of paragraph 18 of the writ petition have been replied by the expression "Not admitted".

5. I have given my anxious considerations to the arguments advanced across the bar. In my considered view, the impugned order having been passed without giving opportunity of hearing to the petitioner fraught with civil consequences and impinges upon the petitioner's rights and by this reckoning, the impugned order is liable to be quashed on this score alone.

6. From a perusal of the impugned order, it is manifestly clear that copy of the order was issued to Chief Standing Counsel stationed at Lucknow Bench, the Asstt. Basic Shiksha Adhikari and even to Sri Surya Prakash Bajpai, complainant who had made the complaint against the petitioner but no copy was supplied to the petitioner. There is nothing on record to vouch for the fact that any notice was ever issued or served to the petitioner. Even the impugned order does not speak anything on this score. I have also been taken through counteraffidavit and there is nothing in it to show that any notice was issued or served to the petitioner. It would further appear that averments made in paragraphs 17 and 18 of the writ petition have been replied in the counter affidavit with the expression "not admitted". In this connection, attention is drawn to Chapter 8 Rule 5 of the CPC which envisages that every allegation of fact in the plaint if not denied specifically or by necessary implication and stated to be not admitted in pleading of the defendant shall be deemed to be admitted except as against the person under disability. The Apex Court in *Bharat Singh v. State of Haryana*, AIR 1988 SC 2181, by drawing a subtle distinction between a pleading under the Civil Procedure Code and a writ petition of a counter affidavit held that while in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counteraffidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

7. In view of law laid down by the Apex Court and also regard being had to the materials on record, it is explicit that specific averments of petitioner that he was not given any opportunity was not denied and the reply to the averments by the expression "not admitted" cannot be interpreted to mean specific denial and by this reckoning, in view of the law laid down by the Apex Court and also regard being had to the provisions of CPC as contained in Chapter 8 Rule 5 CPC the expression "not admitted" contained in para 20 and 21 of the counteraffidavit shall be deemed to have been admitted in view of law of pleading as discussed above.

8. In the above conspectus, it is thus explicit from the record that no opportunity was given to the petitioner before passing the impugned order. In the fact

situation where dispute involved was whether an instructor appointed under Anopcharik Shiksha was required to work from 3 p.m. to 5 p.m. as teacher to such persons who are not able to go to school, opportunity was a compelling necessity.

9. In the result, the writ petition succeeds and is allowed and the impugned order dated 2682006 passed by District Magistrate, Rae Bareilly is quashed. The District Magistrate aforesaid is directed to pass appropriate speaking orders after affording opportunity of hearing to the parties concerned within two months from the date of production of a certified copy of this order.