

(2008) 12 AHC CK 0365
In the Allahabad High Court

Syed Vakeel Ahmad (Retd.Teacher)

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0365

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.

Present writ petition has been filed by the petitioner for issuing a writ in the nature of mandamus commanding/directing the respondents to pay back wages to the petitioner.

Factual matrix of the case, in brief, is that the petitioner was appointed as Lecturer on 9.07.1970 at B.G.M. Intermediate College Bhagalpur, District Deoria, which was duly recognized minority institution. Disciplinary proceedings were undertaken against the petitioner and he was removed from service on 04.06.1978. District Inspector of Schools on 19.09.1978 asked the Committee of Management to deduct first one year's pay of the petitioner by way of punishment. Against the said order, Managing Committee of the institution preferred appeal, which was subsequently, withdrawn and fresh resolution, was passed on 09.04.1979 that in the matter of termination of service of a teacher of minority institution, no approval was required. Against the said order, writ petition No.3249 of 1979 was filed, where in on 01.11.1993 an order was passed holding that in minority institution no approval was required. Against the said order, petitioner preferred Special Appeal No.488 of 1994, and this Court in view of Full Bench judgment in the case of J.K. Kalra v. R.I.G.S., AIR 1997 All 44, passed order for reconsideration of the matter in terms of Section 16G (3) (a) of the Act and also consider the matter in respect of payment of arrears of salary from the date of dismissal up to the date of order of approval or disapproval was passed. Against the said order of this Court, Special Leave to Appeal No.7125 of

1997 was filed, wherein interim order was passed and same was subsequently, withdrawn on 09.12.2002. District Inspector of schools, in total ignorance of the order passed by this Court on 07.05.1999, on 01.09.2003 passed order, that as SLP has been withdrawn, as such order dated 07.05.1999 has been made effective, passed by this Court, and as resolution has been passed by Managing Committee on 09.04.1979, without approval of the District Inspector of Schools, the same is void ineffective, as such order dated 19.09.1978 be made effective, as such joining be ensured with salary. Thereafter, pursuant to the said order on 05.09.1993, the petitioner joined his services and was being paid salary. This fact has also come on record that during the said period various other incumbents have been appointed and paid their salary from State Exchequer. The District Inspector of on 11.08.2005, for the purposes of making payment of arrears, prepared salary bill for the period April, 1979 up to June, 2005, and thereafter, based on the orders passed by this Court and Hon'ble Apex Court matter has been sent to the State Government by the Director of Education for ensuring payment of arrears of wages. At this juncture, present writ petition has been filed.

Sri Ikram Ahmad, learned counsel for the petitioner, contended with vehemence that as a matter of course, petitioner is entitled to back wages and the respondents are obliged under law to grant such back wages to the petitioner, and the matter has rightly been referred to the State Government for ensuring wages, as such writ petition, as it has been framed and drawn, is liable to be allowed.

Learned Standing Counsel, Sri K.K. Chand, on the other hand, contended that back wages cannot be granted as matter of course, and as District inspector of Schools and Director of Education, in the facts of the case have misread the order passed by this court, as such writ petition, as has been framed and drawn, is liable to be dismissed.

After respective arguments have been advanced, factual position to which, there is no dispute, is that services of petitioner were dismissed on 09.04.1979 by the Managing Committee of the institution on the ground that no approval by the District Inspector of Schools was required, qua minority institutions. Writ petition No.3249 of 1979 filed by petitioner, questioning his dismissal, was dismissed by this Court on 01.11.1993. Against the same Special Appeal No.488 of 1994 was filed. At no point of time, in between petitioner ever functioned. Said Special Appeal was taken up and finally decided on 07.05.1999, by directing reconsideration of the matter, in terms of Section 16G (3) (a) of U.P. Act No. 2 of 1921 as well as to consider claim of arrears also.

The Division Bench of this Court in view of Full Bench judgment in case of J.K. Kalra v. R.I.G.S., AIR 1997 All 44, asked the District Inspector of Schools to pass fresh order. Against the said order of Special appeal Bench, Special Leave petition was preferred and during pendency of appeal, there was interim order and in between the very foundation and basis which led passing of order in

favour of petitioner had evaporated as full Bench judgment in the case of J.K. Kalra had been reversed by Hon''ble Apex Court in the case of St. John Inter College v. Girdhari Singh, 2001 AIR SCW 1468, holding therein that approval was not required and the provisions of Section 16G (3) (a) were not applicable qua minority institutions. The Managing Committee of the institution was fully conscious of this fact, but as SLP was got withdrawn on 09.12.2002. District Inspector of Schools on 01.09.2003 directed for reinstatement of petitioner; against the said order, Shiv Prakash Gupta who had been functioning in the vacancy of petitioner preferred writ petition No.42915 of 2003, which was dismissed on 23.09.2003. Against the same Special Appeal No.1083 of 2003 was filed, same was also dismissed on 23.10.2003. S.L.P. No.1845 of 2004 preferred against the same was also dismissed on 08.09.2004. In the mean time, petitioner was reinstated in service on 05.09.2003. The question is can petitioner claim back wages for the entire period, April 1979 to June, 2005, as a matter of right and same has to be awarded as matter right.

The District Inspector of Schools, at no point of time ever considered the validity of resolution as was to be considered pursuant to judgment dated 07.05.1997, passed by this Court and proceeded to pass order according entire back wages to the petitioner for the period starting with effect from April 1979 up to June, 2005, when admitted position is that petitioner had not at all functioned for all this period. The facts and circumstances of the case clearly show the way and manner in which public money from State Exchequer has been sought to be laundered away with, without even remotest application of mind, saying that the petitioner is entitled to back wages. In the present case undisputed position is that in regard to minority institution no approval is required under Section 16G (3) (a) of U.P. Act No. 2 of 1921 by the District Inspector of Schools, as full bench judgment of this Court in J.K. Kalra vs. RIGS , AIR 1997 All 44, which formed basis for passing of order dated 07.05.1997, remitting the matter back for reconsideration, matter of grant of approval/disapproval, had been disapproved by Hon''ble Apex Court, in the case of St. Johns Inter College vs. Girdhari Singh, 2005 AIR SCW 1486, giving absolute right to Management in such matters. Once SLP was withdrawn, then as a matter of right petitioner was not entitled to back wages as is claimed by him. Admittedly, approval was not at al required and once petitioner has not functioned for all this period, then the way and manner in which salary has been sought to be given to petitioner for these 26 years, by misreading order dated 07.05.1997 cannot be subscribed. This Court in order dated 07.05.1997 had merely asked for reconsideration, and not mechanical exercise, to ensure entire back wages, as a matter of course. This Court has repeatedly held that objective consideration has to be done while considering grant of back wages. Here, in the present case, in mechanical manner amount of Rs.20,34,576.55 (Rupees Twenty Lac, Thirty Four Thousand, Five Hundred Seventy Six and Fifty Five Paise only) has been sought to be sanctioned to the petitioner; and as there was some delay, petitioner has rushed to this court. The facts do not warrant payment of back wages to the petitioner

on any count.

Writ petition lacks substance and the same is dismissed.