
(2010) 01 AHC CK 0240
In the Allahabad High Court

Syed Vakil Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Citation : (2010) 3 AWC 2181 : (2010) 125 FLR 49

Hon'ble Judges : C.K. Prasad, C.J.; Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

C.K. Prasad, C.J. and Pankaj Mithal, J.—Writ petitioner-appellant, aggrieved by order dated 10.12.2008, passed by a learned single Judge in Civil Misc. Writ Petition No. 37068 of 2008, has preferred this appeal under Rule 5, Chapter VIII of the High Court Rules.

2. Shorn of unnecessary details, facts giving rise to the present appeal are that the writ petitioner-appellant (hereinafter referred to as "the petitioner") was appointed as Lecturer on 9.7.1970 at B. G. M. Intermediate College, Bhagalpur in the district of Deoria. At that time, it was a duly recognized minority institution. Petitioner was dismissed from service as a measure of punishment after a departmental inquiry by order dated 4th of June, 1978. The District Inspector of Schools disapproved the aforesaid order of dismissal by its order dated 19.9.1978 and instead directed the committee of management to inflict the* punishment of withholding of one increment. An appeal was preferred by the management against the aforesaid order before the Director but the same was withdrawn. Later on, the petitioner was again dismissed from service by order dated 9.4.1979. He challenged the aforesaid order by filing Writ Petition No. 3249 of 1979 before this Court, which was dismissed by order dated 1.11.1993. The status of the institution in which the petitioner was working as minority, was withdrawn on 29.4.1994.

3. Against the order of dismissal of the writ petition, petitioner preferred Special

Appeal No. 488 of 1994 before this Court. By order dated 7.5.1997, the appeal was disposed of with the following direction:

As long time has already elapsed, we consider it appropriate that without disturbing status quo prevailing today the matter may be sent to District Inspector of Schools for passing order in terms of Section 16G (3) (a) of the Act within the specified time. The District Inspector of Schools shall also consider the question with regard to payment of the arrears of salary from the date of the order of dismissal upto the date of order of approval or disapproval is passed. The order shall be passed by him within a period of three months from the date of a copy of this order is filed before him. The District Inspector of Schools shall afford opportunity to appellant as well as to the committee of management and pass order in accordance with law.

4. In the light of the aforesaid order, the District Inspector of Schools considered the claim of the petitioner and by order dated 1.9.2003 declined to approve the order of dismissal and held the same to be void. However, it maintained the order of the District Inspector of Schools passed earlier of withholding of one increment. He also directed that the petitioner shall be entitled for salary from the date he assumes the charge of his office after the issuance of the order.

5. In the light of the aforesaid order, the petitioner joined on 5.9.2003. The matter in regard to the payment of back wages was set at rest but after five years, the District Inspector of Schools, nineteen days before the petitioner's retirement, passed an order on 11.6.2007 for payment of arrears of salary to the petitioner. Claim of the petitioner for payment of salary is from the date of dismissal till reinstatement, i.e., 9.4.1979 to 5.9.2003. The aforesaid order of the District Inspector of Schools was endorsed by the Joint Director of Education and he deemed it expedient to refer the matter to the State Government for payment of arrears of salary to the petitioner. While the matter was pending before the State Government, the petitioner superannuated from service on attaining the age of superannuation on 30th of June, 2007. Thereafter, he filed the writ application in 2008 praying for issuance of a writ in the nature of mandamus commanding the respondents to pay back wages to the petitioner.

6. The learned single Judge, on his finding, which is not disputed, that the petitioner had not worked for a single day from the date of the order of dismissal dated 9.4.1979 till his reinstatement, rejected the claim of the petitioner for back wages. While doing so, the learned single Judge observed as follows:

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 7.5.1997, 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 u/s 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 Smt. J.K. Kalra Vs. Regional Inspectress of Girls Schools, Meerut and others Vs. [OVERRULED], which formed basis for passing of order dated 7.5.1997, 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 v. Gtrdhari 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.

7. Mr. M. A. Qadeer, senior advocate, appearing on behalf of the petitioner submits once the District Inspector of Schools by order dated 11.6.2007 directed for payment of salary, the learned single Judge ought not to have denied the back wages to the petitioner.

8. We do not find any substance in the submission of Mr. Qadeer. The petitioner had approached this Court with a prayer for issuance of a writ in the nature of mandamus for payment of back wages. It is well-settled that for issuance of writ in the nature of mandamus, the petitioner has to satisfy that he has a legal right to receive the arrears of salary and the respondents corresponding legal obligation. In the light of the prayer made, this Court is under obligation to consider petitioner''s legal entitlement and not give direction for payment of salary on the basis of direction of the District Inspector of Schools and that too when the direction was not final and awaiting the approval of the State Government. On consideration of the same, the learned single Judge came to the conclusion that petitioner having not worked for all these long years, is not entitled for the back wages. We are of the opinion that when this Court is asked to issue a writ of mandamus, it''s obligation is to see the legal right of the person claiming it and the writ of mandamus cannot be granted, even if some authority had decided to grant relief, unless a person is entitled to it in law.

9. Mr. Qadeer, then, submits that the petitioner ought not to have been denied the back wages only on the ground that he had not worked during the period for which claim is made. He points out that the principle of no work no pay is not of universal application.

10. We do not find any substance in this submission of Mr. Qadeer also. True it is that the principle of no work no pay is not of universal application but it is equally true that payment of arrears of salary has not to be granted as a matter of course. It depends upon facts and circumstances of each case and it is primarily within the discretion of the learned single Judge. The learned single Judge has exercised his discretion taking into account the facts and circumstances of the case and declined to grant back wages to the petitioner.

11. We are of the opinion that the aforesaid exercise of discretion does not suffer

from any error calling for interference in this appeal.

12. Mr. Qadeer, then, submits that the learned single Judge has not recorded any finding as to why the petitioner is not entitled for the back wages.

13. We do not find any substance in this submission of the learned Counsel. The learned Judge has recorded a categorical finding, which we have reproduced in the preceding paragraph of this judgment that as the petitioner had not worked for a single day, he is not entitled for the arrears of salary.

14. Mr. Qadeer then submits that once the order of dismissal has been held to be void, petitioner is entitled to the arrears of salary.

15. We do not find any substance in this submission of Mr. Qadeer also. Merely because the order of dismissal has been found to be void, the petitioner shall not be entitled for the arrears of salary. As observed earlier, it depends on the facts and circumstances of each case and the learned single Judge in the facts of the present case having declined to grant the same and that exercise of discretion having found not to be unreasonable, petitioner is not entitled to be granted the arrears of salary.

16. Mr. Qadeer, lastly submits that petitioner shall at least be entitled for the back wages for the period another employee had not worked on the post held by him. He submits that the view taken by the learned single Judge that it will amount to the payment of salary to many employees is incorrect as the petitioner only claims arrears of salary for the period others have not worked. As we have found that the petitioner is not entitled for the arrears of salary as a matter of course, merely on the ground that other persons did not work on the post held by him, the petitioner shall not be entitled for the arrears of salary for that period.

17. We are of the opinion that the consideration of the matter by the learned single Judge does not suffer from any error calling for interference in this appeal.

18. We do not find any merit in the appeal.

19. Appeal stands dismissed accordingly.