

(2012) 04 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15135 of 2012

Tarkeshwar Nath Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Citation : (2012) 5 ADJ 674 : (2012) 4 AWC 3316

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Radha Kant Ojha and S.C. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court was employed as Ad hoc Principal in Patel Smarak Inter College, Patel Nagar, Bhathat, Gorakhpur, which is an institution added and recognized under the provisions of the Intermediate Education Act. The petitioner attained the age of superannuation on 30th June, 2010 after attaining the age of 62 years. Petitioner on the strength of his having been granted National Award for Teachers in 2004 claimed that he was entitled to extension of two years service in terms of the Government Order dated 29th June, 2004. Since the claim of the petitioner was not being considered by the authorities, he filed Writ Petition No. 37348 of 2010. The writ petition was decided under judgment and order dated 30th June, 2010 requiring the State Government to take appropriate decision in the matter of grant of extension of two years service to the petitioner. The claim of the petitioner was rejected by the State Government wide order dated 26th July, 2010. It was recorded that the petitioner was involved in making illegal appointments on Class-IV post while working as officiating Principal and therefore he was not entitled to be granted extension of two years. His representation was accordingly rejected.

2. Not being satisfied the petitioner filed second writ petition before this Court, being Writ Petition No. 45202 of 2010. The writ petition was allowed after

recording a finding that the appointments made of Class-IV employees by the petitioner had been approved by the Regional Level Committee and further the State Government has not invited the comments from the petitioner in respect of the adverse material which has been taken into consideration while rejecting his claim. Therefore, the principle of natural justice have been violated.

3. The petitioner was forced to file a contempt petition and it is only thereafter the State Government vide order dated 01st March, 2011 held that the petitioner may be granted extension of service till 30th June, 2012. After the said order was passed, the petitioner filed Writ Petition No. 50919 of 2011 claiming salary for the period 01st July, 2010 to 03rd March, 2011 i.e. the period during which the claim of the petitioner for extension of service was being examined by the State Government and the High Court, as noticed above. The writ petition was decided vide order dated 15.9.2011 and the petitioner was permitted to represent his grievance before the State Government.

4. Again a contempt petition was required to be filed and thereafter the State Government under the order impugned dated 29.1.2012 has held that the petitioner was granted extension under the order dated 1.3.2011 for a period up to 30th June, 2012. He joined in pursuance thereof on 4.3.2011 for the subsequent period he has been paid his salary. The petitioner had not worked between the period 01st July, 2010 to 03rd March, 2011 and therefore in the facts of the case he was not entitled to salary for this period. It is against this order that the present writ petition has been filed.

5. Counsel for the petitioner submits that in the facts of the case denial of salary, on the principle of No Work No Pay, is legally not justified, inasmuch as the petitioner was always ready and willing to perform his duty while it was the respondents who had not taken any decision for the extension of the services of the petitioner or the order passed by the State Government was found to be illegal by the High Court. It is, therefore, submitted that for the error on the part of the respondents, the petitioner cannot be permitted to suffer.

6. Counsel for the petitioner has placed reliance upon the judgments in State of Kerala and Others Vs. E.K. Bhaskaran Pillai, ; Commissioner, Karnataka Housing Board v. C. Muddaiah, 2007 AIR (SC) 3100 (Para-32) as well as upon the judgment of the Single Judge in Dr. Krishna v. Director North Central Zone Cultural Centre, 2011 (3) UPLBEC 2299.

7. The Court may first examine the legal position as has been laid down in the judgments relied upon by the counsel for the petitioner and it would be worthwhile to reproduce paragraph 4 of the judgment in the case of State of Kerala v. E.K. Bhaskaran Pillai, which read as follows:

4. Learned counsel for the State has submitted that grant of retrospective benefit on promotional post cannot be given to the incumbent when he has not worked on the said post. Therefore, he is not entitled to any benefit on the promotional post from 15.6.1972. In support thereof, the learned counsel invited our

attention to the decisions of this Court in *Paluru Ramkrishnaiah and Others Vs. Union of India (UOI) and Another*, ; *Virender Kumar, General Manager, Northern Railways, New Delhi Vs. Avinash Chandra Chadha and others*, ; *State of Haryana and Others Vs. O.P. Gupta, etc.*, ; *A.K. Soumini Vs. State Bank of Travancore and Another*, and *Union of India (UOI) and Another Vs. Tarsem Lal and Others*, . As against this, the learned counsel for the respondent has invited our attention to the decisions given by this Court in *Union of India Vs. K.V. Jankiraman, etc. etc.*, ; *State of Andhra Pradesh Vs. K.V.L. Narasimha Rao and Others*, ; *Vasant Rao Roman Vs. Union of India (UOI) through the Central Railway, Bombay and Others*, and *State of U.P. and another v. Vinod Kumar Srivastava*, (2006) 9 SCC 621. We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the Court may grant sometime full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where Courts have granted monetary benefits also.

Paragraph 32 of the judgment in the case of *Commissioner, Karnataka Housing Board v. C. Muddaiah* (supra) reads as follows:

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked

(but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.

8. From the aforesaid judgments two principles stand settled (a) even in absence of statutory provision, normal rule is no work no pay, and (b) the issue as to whether a person is entitled for salary, for the period when he has actually not worked, is dependent on the facts of each case. The principle of no work no pay is not to be applied as a rule of thumb.

9. Thus, from the aforesaid judgments it is well settled that the issue, as to whether a person is entitled to salary for the period when he has actually not worked, has to be determined with reference to facts of each case and the normal rule is no work no pay even in absence of statutory provisions.

10. From the facts on record, this Court finds that because of the grant of National Teachers' Award the petitioner became entitled to be considered for grant of extension of two years even after attaining the age of superannuation his right is limited to consideration of such extension only.

11. From the Government Order dated 06th May, 1982 it is apparently clear that in each case the record has to be placed before the State Government for separate orders being passed. Meaning thereby that there is no automatic grant of extension of two years' service on mere grant of National Award.

12. According to the petitioner the position has been altered with the issuance of the Government Order dated 29th June, 2004, wherein it has been provided that if the teacher concerned is mentally and physically fit then such extension of two years' service may be provided.

13. The Government Order is being read completely out of context. The Government Order dated 29th June, 2004 has only been issued to protect the interest of persons who had attained the age of superannuation of 60 years and had been granted National Award, inasmuch in the meantime the age of retirement itself has been enhanced to 62 years. It is in this circumstances that

the Government Order dated 29.6.2004 provided that the teachers, who have actually not retired, may be granted extension of two years service if they are medically and physically fit. The said Government Order will not dilute the basic Government Order which provided that in each case separate orders from the State Government is required for granting the extension.

14. In any view of the matter this Court may record that there is no right of continuance in absence of an order of the State Government granting such extension. The right to continue for two years after attaining the age of superannuation is squarely dependent upon an order being issued by the State Government for the purpose.

15. This Court, therefore, holds that there being no vested right the petitioner to continue after he has attained the age of superannuation and that the order of State Government granting such extension of two years having been issued only on 3.3.2011, the petitioner would be entitled to benefits of the salary from the date of the Government Order/ the date on which he joined in pursuance of the said Government Order till he attains the extended age in terms of the Government Order issued. In the totality of the circumstances of record, this Court finds that the petitioner, having not worked as Principal/ Teacher in the institution for the period 01st July, 2010 to 03rd March, 2011, is not entitled to salary on the principle of No Work No Pay and therefore the writ petition, as filed by the petitioner, is dismissed. The order of the State Government is affirmed.