
(2010) 07 AHC CK 0338
In the Allahabad High Court

Veer Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2011) 3 AWC 2899

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court being the senior most teacher of Janta Inter College, Sahpau, Mathura was appointed as Officiating Principal. His appointment was duly recognized by the District Inspector of Schools with attestation of his signatures. One Basudev Yadav filed Civil Misc. Writ Petition No. 5774 of 2010 before this Court alleging therein that the present petitioner has already attained the age of superannuation, therefore, in view of the Division Bench judgment of this Court in the case of Hari Om Tatsat Brahma Shukla v. State of U.P. and Ors. reported in 2007 (1) UPLBEC 479, he cannot be permitted to continue as Officiating Principal beyond the date he attained the age of superannuation and his continuance under Regulation 21 of Chapter III of the Intermediate Education Act for the remaining term of the academic session can only be as a teacher. The writ petition was decided under order dated 04.02.2010 with a direction upon the District Inspector of Schools to take appropriate decision in light of the Division Bench referred to above.

2. The District Inspector of Schools accordingly by means of the order dated 31.03.2010 held that the petitioner was entitled to continue as Officiating Principal till 16.05.2010 i.e. the date on which he attained the age of superannuation. This order is being challenged for the first time before this Court by means of the present writ petition which has been put up today as fresh matter.

3. It is not in dispute that in between the petitioner retired as the academic session has come to an end to be precise on 30.06.2010 and is no more in employment. The order is being challenged on the ground that subsequently a Full Bench of this Court vide its judgement dated 20.05.2010 in Special Appeal No. 1987 of 2009 (Surendra Prasad Agnohotri v. State of U.P. and Ors.) has held that an Officiating Principal is entitled to continue as such till the end of the academic session and the judgement in the case of Hari Om Tatsat (supra) is a not a good law. Petitioner, therefore, seeks quashing of the order as well as a writ of mandamus for treating him to be the Officiating Principal till 30.06.2010 and payment of salary accordingly.

4. Having heard learned Counsel for the parties and having examined the records of the present petition, I am of the considered opinion that no case is made for a writ of certiorari being issued at this stage when the petitioner has already retired from service and further since on the date the order was passed i.e. 31.03.2010 the same was in conformity with law as was declared by this Court in the case of Hari Om Tatsat (Supra).

5. It is no doubt true that the Full Bench of this Court has held that the law laid down in the case of Harim Om Tatsat (Supra) is a bad law, yet the issue which remains for consideration is as to whether any relief can be granted to the petitioner because of change in law after his retirement. The answer in the opinion of the Court is obvious. No purpose is to be achieved by quashing the order as it will not confer any benefits upon the petitioner in the facts of this case. The Court will not issue a futile writ. The other prayer made for permitting the petitioner to function as Officiating Principal has become infructuous by passage of time.

6. With regard to claim of salary qua the post of Officiating Principal till 30.06.2010 is concerned, this Court finds that admittedly the petitioner has not worked as Officiating Principal subsequent to 15.02.2010. He was not holding the post of Principal on substantive basis. Payment of salary to an Officiating Principal is granted on the principle of quantum merit i.e. payment of salary qua the post, duties whereof are discharged by the employee concerned. Ref.: Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, Since admittedly the petitioner has not discharged duties subsequent to 15.02.2010 as Officiating Principal and there is no complaint in that regard, the principle of quantum merit has no application in his case. Therefore, no mandamus can be issued to pay him salary of the post on which he has not worked.

7. Writ petition is dismissed.