
(2012) 09 AHC CK 0082

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 8402 of 1996

Vidya Kant Tiwari

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2013) 1 ALJ 621

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : H.N. Pandey, A.C. Tiwari and N.C. Rajvanshi, for the Appellant; R. Asthana, C.S.C., for the Respondent

Judgement

Rajes Kumar, J.—The petitioner was initially appointed as a teacher in Mahananda Junior High School on 15.7.1977. The said institution was upgraded to High School in the year 1979. The institution came in grant in aid in October, 1984. When the institution came in grant in aid, one post of Head Master, three posts of L.T. Grade Teacher and six posts of C.T. Grade teachers were sanctioned. Six teachers working in the institution have been absorbed against the six sanctioned posts of C.T. Grade teachers, however, the petitioner has not been absorbed, but continued to work. When salary has not been paid, the petitioner filed Writ Petition No. 9374 of 1987, which has been dismissed, against which the petitioner filed Special appeal, which has been dismissed by the Division Bench vide order dated 18.7.1995 against which the petitioner filed SLP before the Apex Court in which on 13.11.1995, following order was passed:

It is stated by the learned counsel for the petitioner that in view of the amendment of the U.P. Secondary Education Commission Act, 1982 by incorporating Rule 33-A(1)(c), the petitioner intends to move the High Court. On the basis of the right under the said Rule, the petition is, therefore, not pressed and is, accordingly, dismissed.

In the meantime, it appears that the petitioner has been promoted on ad hoc

basis on the post of Lecturer. However, when the salary has not been paid, the petitioner filed the present Writ Petition No. 8402 of 1996. During the pendency of this writ petition, the petitioner filed a Recall Application in Writ Petition No. 9374 of 1987, which has been disposed of by the order dated 18.2.2000, observing as follows:

Admittedly, petitioner has filed writ petition No. 8402 of 1996, which is pending in this Court. In the circumstances we do not find any justification to recall order dated 18th July, 1995. Learned counsel for applicant, however, submitted that the dismissal of the writ petition may come in the way of petitioner in pending writ petition. We make it clear that since the matter was cognizable by single Judge, the order dated 18th July, 1995 shall not come in way of petitioner and it shall be open to petitioner to raise all the points in that petition and the writ petition shall be considered and decided on, the basis of the material on record. Subject to aforesaid, the application is disposed of.

2. He further submitted that under Regulation 4 of Chapter II where any Junior High School is recognised as a High School u/s 7, a permanent or temporary teacher of such school, possessing the minimum qualification under Regulation 1, shall be deemed to be permanent or temporary teacher, as the case may be, of such High School provided that the services of a temporary teacher, who is not selected for appointment in accordance with the provisions of the Act and the Regulations, shall be dispensed with, after giving him one month's notice in that behalf or one month's pay in lieu of such notice, the petitioner's appointment as C.T. Grade teacher may be deemed to be regularised and, therefore, the promotion of the petitioner as L.T. Grade teacher was in accordance with law and the petitioner was entitled for the salary.

3. Sri. H.N. Pandey, learned counsel for the petitioner submitted that the petitioner has received the salary in pursuance of the interim order passed by this Court and, therefore, the direction to recover the salary is wholly unjustified. He further submitted that in the case of three similarly situated teachers this Court has directed for the sanction of the post and, therefore, similar direction be issued in the case of the petitioner also, inasmuch as the petitioner has worked for several years.

4. Ms. Suman Sirohi, learned Standing Counsel, submitted that the petitioner was not working as a C.T. grade teacher against the six sanctioned posts, therefore, he could not be promoted to the post of L.T. Grade teacher. Only those teachers, whose services have been regularised against the sanctioned posts, were entitled for promotion. Thus, the petitioner's promotion on L.T. Grade was ab initio illegal and the petitioner is not entitled for the salary of the said post.

5. She further submitted that though in the letter written by the manager of the committee of management dated 18.09.1996 it is mentioned that in the resolution the petitioner has been appointed temporarily as teacher by direct recruitment but in fact the petitioner has not been appointed on ad hoc basis by

direct recruitment. There is no pleading in the writ petition in this regard. All along the claim of the petitioner is that he has been promoted on ad hoc basis on the post of LT Grade Teacher. The observation in this regard in the letter dated 18.09.1996 is wholly erroneous inasmuch as it is the case of direct recruitment, the same was also illegal as it was made without following procedure provided under the Removal of Difficulties Order, 1981 and the law laid down by the Full Bench of this Court in the case of Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, .

6. I have considered the rival submissions.

7. When the institution was taken under the grant-in-aid in October, 1994 only six posts of CT Grade Teachers were sanctioned. Accordingly, six teachers were absorbed against sanctioned posts. Admittedly the petitioner has not been absorbed but the petitioner continued to work. Though the petitioner continued to work as a teacher but it does not amount to appointment of the petitioner against the sanctioned post. The engagement was not regular and in accordance to law. Since the engagement of the petitioner was not in accordance to law, the petitioner was not entitled for promotion on ad hoc basis. Thus, the claim of the petitioner for the promotion on ad hoc basis has no substance.

8. So far as the direction to recover the salary which has already been paid to the petitioner is concerned, I find substance in the submission of learned counsel for the petitioner. The petitioner has been paid salary in view of the interim order granted by this Court. There was neither any fraud nor misrepresentation on the part of the petitioner. In the absence of any fraud or misrepresentation on the part of the petitioner, the direction to recover the amount of salary is not justified. Reliance is placed on the decision of the Apex Court in the case of Syed Abdul Qadir and Others Vs. State of Bihar and Others, . Apex Court held as follows:

This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle of calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

The relief against recovery is granted by Courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, Courts may, on the facts and circumstances, of any particular case, order for recovery of the amount paid in excess.

9. So far as the request of the petitioner that the direction be issued for the

creation of post is concerned, the same cannot be issued by this Court. It is open to the petitioner to make a claim to the competent authority in this regard. In the result, the writ petition is allowed in part.