
(2014) 03 AHC CK 0159

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31311 of 2007

Virendra Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Citation : (2014) 4 ADJ 457 : (2014) 106 ALR 602 : (2014) 143 FLR 1038 :
(2014) 2 UPLBEC 1502

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : P.S. Baghel and Sanjeev Singh, Advocate for the Appellant; Mohit Bihari Mathur and Vishesh Kumar Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner has filed the present writ petition, challenging the order dated 4.6.2007 passed by the Director of Higher Education, U.P., rejecting the claim of the petitioner for payment of salary from State fund. Consequential order of the committee of management dated 18.6.2007 has also been challenged. The petitioner has further prayed for a direction commanding the respondents to pay salary/remuneration to the petitioner from 6.8.2003 and continued to pay the same in terms of the Government Order dated 7.4.1998 from the State Government and also for a direction upon the respondents not to interfere in functioning of the petitioner as Lecturer (Economics) in J.S.H. (P.G.) college, Amroha District Jyotibaphule Nagar. The State of U.P. has issued a Government Order on 7.4.1998, whereby, non aided colleges run by the private management were permitted to engage teachers on payment of fixed honorarium, so long as regularly selected teachers by the Higher Education Service Commission are not made available. Clause 3 and 4 of the said Government Order, which is relevant for the present purposes are reproduced below:

2. Pursuant to the aforesaid Government Order, an advertisement appears to have been issued by the college which is said to have been published in daily

Hindi news paper Amar Ujala dated 19.6.2003, copy of which is enclosed as Annexure-2 to the writ petition. It is undisputed that the petitioner applied pursuant to this advertisement. A supplementary-affidavit has been filed by the petitioner enclosing therewith a communication dated 23.8.2003, stated to have been sent by the Principal of the College to the Director of Higher Education, enclosing therewith the details of selection held in accordance with the Government Order dated 7.4.1998. A perusal of the enclosure, attached to this letter, shows that 3 persons were considered for the post and according to the recommendation of the selection committee, petitioner was placed at Sl. No. 3. One Km. Sharika Chaudhary was placed at Sl. No. 1 and Dr. Seema Malik was placed at Sl. No. 2.

3. It is not in dispute that neither any approval to the recommendation of the selection committee was accorded by the Director nor any appointment order in the format prescribed under the Government order dated 7.4.1998, was issued in favour of petitioner.

4. The issue as to whether persons on honorarium basis could be allowed to occupy the post of Lecturer etc. seems have been a matter of issue in writ petitions filed before this Court and also before the Apex Court. However, as this aspect of the matter is not relevant for the present purposes, and as such it is not necessary to dilate any further on it.

5. The petitioner claims that pursuant to the selection under taken for appointment on honorarium basis, he was allowed to continue as lecturer on honorarium basis. The petitioner filed writ petition No. 23870 of 2004. Initially, an interim order was passed by this Court allowing the petitioner to work till regularly selected candidate is available and ultimately the writ petition was disposed of in terms of the order dated 2.9.2004 passed in Writ Petition No. 22203 of 2004. By the said order, the Division Bench of this Court directed that so long as the issue relating to engagement of teachers on honorarium basis is pending before the Apex Court and regularly selected teachers are not available, the appointment made by interim orders will continue. Dr. Seema Malik, who was placed at Sl. No. 2 and was above the petitioner, also filed a writ petition as well as applied for recall/review of the order dated 2.9.2004. While rejecting the recall application as well as the writ petition of Dr. Seema Malik Division Bench has observed as under:

The decision of this Court in the writ petition of Dr. Virendra Singh does not amount to adjudication as to whether Dr. Virendra Singh was or was not working as a lecturer on honorarium basis or as to whether Dr. Virendra Singh was or was not validly appointed for such purpose.

Petitioner, thereafter, filed another Writ Petition No. 1920 of 2007, which was disposed of on 16.10.2007 by passing the following order:

After the decision of petitioner's writ petition No. 23870 of 2004 which was decided in his favour, one Dr. Seema Malik had filed an application, we do not

find any cogent reason why the petitioner will not be paid salary for the period he has worked.

Therefore, in disposing the writ petition, we direct the Director of Higher Education, respondent No. 2 to consider the representation of the petitioner within a period of two months from the date of communication of this order upon giving adequate opportunity of hearing. For the purpose of effective adjudication, a copy of the writ petition alongwith annexures can also be treated as part and parcel of the representation.

Thus, the writ petition stands disposed of.

No order is passed as to cost.

6. The petitioner, thereafter, submitted a representation to the Director Higher Education by contending that he has been appointed on honorarium basis by institution pursuant to the advertisement dated 19.6.2003 in light of provisions as contained in Government Order dated 7.4.1998 and as he has been continuously working in the institution, therefore, he is entitled to payment of salary from the State fund.

7. The Director of Education has given an opportunity of hearing to all concerned and has examined the records. It has been found by the Director in his order dated 4.6.2007 that two separate posts were advertised by the institution for the post of Lecturer in Economics. While one post of Lecturer in Economics was on fixed honorarium basis, the other post advertised was for a "Self Financed Evening Course", run by the college. It is claimed that the petitioner applied for both the posts i.e. fixed honorarium basis and also for appointment to the Self Financed Evening Course. By referring to the statement of principal, it was observed that the petitioner was actually engaged by the institution for Self Financed Evening Course and he was paid salary from the funds of the Committee of Management from 6.8.2003 to 14.2.2004 at the rate of Rs. 3000/- and 3500/- per month. It was further noticed that the petitioner was paid salary from the funds of the management at different rates from time to time. The Director found that the appointment and working of the petitioner was only in Self Financed Evening Course and he was paid salary from the saving bank account of the institution No. 1088, Syndicate Bank, Amroha. Further finding returned by the Director was that since the name of the petitioner for appointment on honorarium basis was placed at Sl. No. 3, as such question of issuing any appointment to the petitioner, for the post, on honorarium basis, does not arise and as a matter of fact, no such appointment order on honorarium basis was actually approved or issued to the petitioner. The Director, therefore, has observed that since the appointment of the petitioner is on Self Financed Evening Course, therefore, it is open for the petitioner to claim salary from the committee of management but as his appointment is not made on the post advertised on honorarium basis and no appointment in accordance with the Government Order dated 7.4.1989 could be issued or was actually issued,

therefore, the liability to make payment of salary from the State Funds does not arise.

8. We have heard Sri Sanjeev Singh, learned counsel appearing for the petitioner and Ms. Suman Sirohi appearing for the respondent State.

9. We have examined the order of the Director, the claim made in the writ petition as well as the various documents brought on record by the petitioner and the orders passed by this Court in different writ petitions. The Claim of appointment on honorarium basis as per Government Order dated 7.4.1998, has been examined. The claim for payment of salary from the State fund would arise only if a valid appointment in terms of the scheme is made by the Committee of Management on the format prescribed by the Director of Higher Education on honorarium basis against the sanctioned vacant post. We find that no order of appointment in favour of petitioner actually was issued by the institution, on the basis of advertisement dated 19.6.2003. From the recommendation of the selection committee, it cannot be denied that petitioner's name was at Sl. No. 3. In the absence of issuance of appointment order, as contemplated under clause 3 and 4 of the Government Order, referred to above, no liability for payment of salary from State fund could be created. The petitioner has not been able to demonstrate that any payment whatsoever on honorarium basis was released to him. It is quite obvious that as the name of the petitioner appeared at Sl. No. 3, issuance of an order of appointment in favour of the petitioner was otherwise not possible ignoring the claim of others, who were higher in rank.

10. The reference of dispute in the context of pending adjudication regarding the teachers appointed on honorarium basis, had no relevance so far as the petitioner's case is concerned. The submission of the petitioner that because of pendency of such dispute, order of appointment in his favour on honorarium basis was not issued, also is misconceived. The issuance of appointment in accordance with the Government Order was a condition precedent for the petitioner to assert any right in his favour and in the absence thereof, the petitioner has no case.

11. We have gone through the pleadings of the writ petition and its annexures and we find that the petitioner has not disputed his appointment made against the Self Financed Evening Course for evening classes. The only statement made in para-24 of the writ petition, stating therein that the Director illegally relied on the statement of the principal that the petitioner has been appointed under evening classes and that the said finding is not based on any evidence, is not sufficient. Petitioner has neither before this Court nor in his representation stated that he has not applied for appointment under the Self Financed Evening Course or that he has not worked or received salary for it. The further explanation of the petitioner that management deposited his salary from its own funds, without his consent, is also not acceptable.

12. In such view of the matter, we do not find any error in the finding contained

in the order passed by the Director that the petitioner was actually appointed as a teacher in Self Financed Evening Course, for which responsibility of making payment of salary fell exclusively upon the committee of management and with which the State has no concern.

13. We have also examined various time tables and alleged salary bill, claimed to have been submitted for payment of petitioner's salary on honorarium basis. Since we have held that no appointment was actually issued to petitioner on honorarium basis, nor any such appointment could, at all, be issued to the petitioner, as he was on Sl. No. 3, any document of the institution or of the petitioner suggesting his working on honorarium basis, cannot be entertained.

14. As no appointment in terms of the Government Order was issued in favour of the petitioner, appointing him on honorarium basis, the claim for payment of salary from the State fund under the State Scheme introduced vide Government Order dated 7.4.1998, is not made out. The challenge made by the petitioner to the order of the Director dated 4.6.2007, therefore, fails.

15. At this juncture, we would like to add that we have not adjudicated any claim of petitioner for payment of salary under the Self Financed Evening Course for which salary is to be paid by management and in case the petitioner has been so appointed, the claim for payment of salary from the fund of the institution would be determined on its own merit and this judgment would not influence any such claim. Consequently, the writ petition is devoid of merits and is hereby dismissed.