

(2011) 08 AHC CK 0122
In the Allahabad High Court
Case No : Writ A No. 14346 of 1992

Vishnu Dutt Sharma

APPELLANT

Vs

B.S.A. and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 08 AHC CK 0122

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. This writ petition was earlier dismissed as infructuous on 30.01.2009. Thereafter, in July, 2009, Petitioner filed restoration application, which was misplaced hence along with Listing Application No. 67216 of 2011 duplicate copy of the same was filed. On 02.05.2011 arguments on restoration as well as merit of the writ petition were heard. Today restoration application has been allowed through order passed on the duplicate copy of the restoration application.

3. On 19.07.1986, 19.06.1987 and 04.09.1987 three Government Orders were passed, copies of which are Annexures No. 1, 2 & 3 to the writ petition. It was provided under the said Government Orders that one of the dependents of those teachers of Schools run by Basic Shiksha Parishad who died in harness after 25.07.1972 should be appointed as teacher on the principle of dying-in-harness. The cut off date 25.07.1972 was chosen as on the said date Basic Shiksha Parishad was constituted under Basic Shksha Adhiniyam, 1972.

4. Petitioner represented that his father who was headmaster in a primary school, which had later on been taken over by Basic Shiksha Parishad died-in-harness on 11.11.1972, hence he should be given appointment as teacher under Dying-in-harness Rules as modified by the aforesaid Government Orders. Believing the version of the Petitioner to be true, Petitioner was given

appointment on 30.12.1991 (after more than 17 years of death of his father) as Assistant Teacher in Primary Pathshala No. 1, Jani Khurd, Tehsil and District Meerut.

5. However later on the Basic Shiksha Parishad and its authorities realised that Petitioner had obtained the appointment by giving false date of death of his father hence an enquiry was set up and Petitioner's appointment was kept in abeyance. A communication dated 06.02.1992 was issued copy of which is Annexure-XI to the writ petition. Thereafter, a notice was given on 12.03.1992 to the Petitioner, copy of which is Annexure-XII to the writ petition stating therein that Babu Ram Sharma, father of the Petitioner had died before 24.11.1971. In Annexure-XII, it was mentioned that on the agricultural land left behind by the father of the Petitioner name of the Petitioner was entered in the revenue records on 24.11.1971, hence it meant that his father had died prior to that. In Para-15 of the writ petition, it has been stated that to prove that Petitioner's father had died on 11.11.1972, copy of kutumb register was being annexed as Annexure-VI to the petition and Pradhan had also issued some certificate to that effect, which were being annexed as Annexures No. 7, 8 & 9 to the writ petition. Thereafter, it is mentioned in Para-6 that the said certificates were filed at the time of obtaining appointment. In the entire writ petition not a single word has been said refuting the allegation made in Annexure-XII to the writ petition regarding mutation order dated 24.11.1971.

6. It is therefore quite clear that Petitioner had played a fraud in obtaining the appointment. Such types of situations are likely to occur if Government passes order granting benefit under Dying-in-harness Rules where death has occurred 15 years before.

7. In this writ petition, an interim order was passed on 17.04.1992.

8. Accordingly, as Petitioner obtained appointment through a fraudulent representation, which has been admitted by him in this writ petition, accordingly there is absolutely No. merit in the writ petition, hence it is dismissed. 50% of the salary paid to the Petitioner shall be recovered from him like arrears of land revenue.

9. Office is directed to supply a copy of this order free of cost to Sri S.P. Mishra, learned standing counsel within three days.

This duplicate copy of restoration application is taken on record and treated to be original as the original is not available on record. The application is allowed after condoning the delay in filing the same and order dated 30.01.2009 dismissing the writ petition as infructuous is set aside and writ petition is restored.