

Court No. - 10

Case :- WRIT - A No. - 52085 of 2008

Petitioner :- Ali Ahmad Ansari

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Mahendra Singh, Adarsh Singh, Ashok Khare, Indra Raj Singh, Indraj Singh

Counsel for Respondent :- C.S.C., D.D. Kushwaha, M.N. Pathak

With

Case :- WRIT - A No. - 21149 of 2009

Petitioner :- Daya Shankar Pandey

Respondent :- State Of U.P. Thru. Secy. Edu. Madhyamik And Ors

Counsel for Petitioner :- M.N. Pathak, C.B. Gupta, M.N. Pandey, M.N. Yadav

Counsel for Respondent :- C.S.C., J.B. Baghel, Mahendra Singh, Inderaj Singh

With

Case :- WRIT - A No. - 10720 of 2009

Petitioner :- Ali Ahmad Ansari

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Mahendra Singh, Indraj Singh

Counsel for Respondent :-
C.S.C., D.D. Kushwaha, D.I. Kushwaha, M.N. Pathak

Hon'ble Kshitij Shailendra, J.

1. Since the controversy involved in all these writ petitions relate to a single post of Class IV employee occupied by two persons namely Daya Shankar Pandey and Ali Ahmad Ansari for the time in reference, they are being heard together and disposed of by a common order, Writ-A No. 52085 of 2008 shall be treated as the leading case.

2. Heard Sri Indra Raj Singh learned advocate along with Sri Mahendra Singh, learned counsel for petitioner Ali Ahmad Ansari, Sri I.P. Srivastava, learned Additional Chief Standing Counsel for State-

respondents and Sri S.K. Chaubey along with Sri B.N. Singh, learned counsel for Daya Shankar Pandey.

3. Sri Krishna Intermediate College Semara, Kathkuiya, district Kushinagar is an intermediate college recognised under the provisions of U.P. Intermediate Education Act, 1921 and there is no dispute about the fact that the salary of his teachers and other employees is paid under the provisions of U.P. Act No.24 of 1971.

4. The dispute in the present set of writ petitions is with respect to services rendered by two persons namely Daya Shankar Pandey and Ali Ahmad Ansari in relation to the same post of Class IV category.

5. It is contended that Daya Shankar Pandey was working as Class IV employee (peon) in the said institution, however, his services were terminated on 20-08-1997. The case of Ali Ahmad Ansari is that the post fell vacant because of the said termination and the same was filled up by appointing Ali Ahmad Ansari on 01-09-1997 and the papers were sent to the District Inspector of Schools (hereinafter referred to as the 'D.I.O.S.),' who disapproved the appointment, whereafter, the petitioner filed Writ Petition no. 30896 of 1996, in which an interim order was passed on 23-09-1998 permitting Ali Ahmad Ansari to continue as a Class IV employee with direction to pay his salary.

6. During the pendency of the said writ petition, the D.I.O.S. accorded approval to the petitioner's appointment on 28-05-1999 and the petitioner continued to function on the said post. Thereafter, by an order dated 13-07-2001 the D.I.O.S. cancelled the financial approval granted to the appointment of Ali Ahmad Anasari.

7. It is contended that Daya Shankar Pandey filed some representation and then approached this Court by filing Writ Petition no. 5814 of 2002, which was disposed of by an order dated 08-02-2002 with a direction to the D.I.O.S. to decide the representation. The D.I.O.S. allowed the

representation by an order dated 03-03-2003 and directed the Principal of the Institution to ensure joining of Daya Shankar Pandey on the post.

8. The petitioner Ali Ahmad Ansari challenged the orders dated 13-07-2001 and 03-03-2003 by filing a Writ Petition no.14672 of 2003, which was dismissed on merits by co-ordinate Bench of this Court vide order dated 25-01-2006. By the same order, the previous writ petition no.30896 of 1996 in which the petitioner Ali Ahmad Ansari had got an interim order was also dismissed.

9. Against the said order of the learned Single Judge, the petitioner Ali Ahmad Ansari filed a Special Appeal No.360 of 2006, which was allowed by the Division Bench of this Court by an order dated 19-04-2006 with the following operative portion.

“ In view of the aforesaid discussions, we **set aside** the order of District Inspector of Schools **dated 3rd March 2003** as well as the order passed by learned Single Judge dated 25th January 2006 and **remand** the matter to the District Inspector of Schools for consideration afresh with regard to the alleged removal of respondent no.4. **We have been informed that respondent no.4, in the meantime retired on 31th August 2005 after having joined the duties after the order dated 3rd March 2003.** It will be open for the District Insepctor of Schoosl to decide the issue, as afroesaid and pass other consequential orders in accordance with law within a period of three months from the date of production of a certified copy of this order.”

10. It is apparent from the order of the Division Bench that the order dated 03-03-2003 by which a direction was issued to the Principal to ensure joining of Daya Shankar Pandey, was set aside by this Court and the matter was remitted back to the D.I.O.S. to decide the issue in accordance with law.

11. It is contended that the D.I.O.S. rejected the representation of the petitioner by an order dated 30-03-2007 against which Ali Ahmad Ansari

filed a Writ-A No.23523 of 2007 which was allowed on 21-05-2007, the order dated 30-03-2007 was set aside and again the matter was remitted back to the D.I.O.S. for a fresh decision after hearing Ali Ahmad Ansari, Daya Shankar Pandey as well as Principal of the Institution.

12. In pursuance of the said order of this Court, the order impugned dated 02-01-2008 has been passed by the D.I.O.S. again rejecting the representation of Ali Ahmad Ansari.

13. Sri I.R. Singh, learned counsel for the petitioner Ali Ahmad Ansari submits that the order impugned is simply based upon the order dated 03-03-2003 which was already set aside by the Division Bench and it does not take into consideration the order of the Special Appellate Court but the only order passed by the learned Single Judge in writ petition no.58140 of 2008. He has referred to the order dated 21-05-2007 whereby his previous petition was allowed and submits that the order of the Special Appellate Court was considered by the learned Single Judge.

14. Learned Additional Standing Counsel submits that though it is apparent that the order of the Division Bench has not been taken into consideration, the D.I.O.S., pursuant to successive remand, has examined the validity of the appointment of Ali Ahmad Ansari and observed that he was appointed without there being any post and that the salary concerning post has been paid to the petitioner Daya Shankar Pandey and hence, it was not possible to pay salary to two persons concerning same post.

15. Sri S.K. Chaubey, learned counsel appearing on behalf of the heirs of Late Daya Shankar Pandey submits that though the order dated 03-03-2003 was set aside by the Division Bench on 19-04-2006, the Division Bench made certain other observations also noticing the fact that the respondent no.4 in the Special Appeal, i.e. Daya Shankar Pandey in the meantime, stood retired from his post on 31-08-2005 after having joined the duties in pursuance of the order dated 03-03-2003. The submission therefore, is that despite setting aside the order impugned dated 03-03-

2003, the benefits derived by Daya Shankar Pandey were already availed of prior to the disposal of the Special Appeal and hence quashing of the order dated 03-03-2003 would be of no significance. It has also been brought to the notice of the Court that heirs of the Late Daya Shankar Pandey are receiving some family pension arising out of service rendered by Daya Shankar Pandey and Sri I.R. Singh, learned counsel appearing for Ali Ahmad Ansari very fairly submits that he is not opposing the release of family pension to the heirs of the Late Daya Shankar Pandey, however, his claim is confined to the validity of his appointment, which has not been dealt with by the D.I.O.S. in the order impugned for the reasons stated hereinabove.

16. Insofar as Daya Shankar Pandey in the connected writ petition no.21149 of 2009 is concerned, the same is directed against the order dated 20-09-2008 whereby the Deputy Director of Education decided the claim of Daya Shankar Pandey holding him entitled to receive service benefits w.e.f 01-07-1978 to 15-07-1995 and, thereafter, w.e.f. 04-03-2003 till 31-08-2006. The grievance raised is that no benefits have been awarded for the period in between 16-07-1995 till 02-03-2003, i.e. about 8 years.

17. After hearing the learned counsel for the parties following position stands emerged:-

(i) The services of Daya Shankar Pandey were terminated on 20-08-1997 and there was no order in his favour until 03-03-2003.

(ii) Ali Ahmad Ansari was appointed on 01-09-1997, i.e. just after **three** days from the date of termination of service of Daya Shankar Pandey and he received salary pursuant to the interim order dated 23-09-1998 passed by this Court in Writ Petition no. 30896 of 1996 until 13-07-2001 on which date the D.I.O.S. cancelled financial approval.

(iii) In view of the above, salary was released from the State Exchequer **for a period of three years** in favour of Ali Ahmad

Ansari and hence, for the said period of time, Daya Shankar Pandey was not entitled to receive any payment.

(iv) Insofar as the acceptance of Daya Shankar Pandey's claim qua post is concerned, the benefits granted by the co-ordinate Bench of this Court under the order dated 03-03-2003 were reversed by the Division Bench of this Court in terms of the order dated 19-04-2006.

(v) Despite all the orders referred to above, Ali Ahmad Ansari never came back to his post, rather it is better to say that he was not allowed to join.

(vi) The admissibility of payment to Daya Shankar Pandey for any period in between 16-07-1995 to 03-03-2003 would have also be examined by the D.I.O.S. after ignoring the period for which Ali Ahmad Ansari worked and received salary.

(vii) After retirement of Daya Shankar Pandey on 31-05-2005, there is nothing on record to prove as to who is working on the post on which both the persons made their claim and despite sufficient knowledge of the proceedings and due representation, the institution has chosen not to appear before this Court for raising arguments despite the fact that the case is continuously running on the top of the list and is being taken up for consideration.

18. In view of the above and on account of change of circumstances after death of Daya Shankar Pandey and foregoing the claim of the family pension being received by the heirs of Late Daya Shankar Pandey, this Court finds that D.I.O.S. was not justified in ignoring the effect of the order dated 19-04-2006 passed by the Division Bench in Special Appeal No. 360 of 2006 and making a decision simply based upon the order of the learned Single Judge which has already been set aside, appears to be ignorance of material documents particularly order of the Division Bench.

19. Nevertheless considering the stand taken in the counter affidavit and arguments advanced by Sri I.P. Srivastava, learned Additional Chief

Standing Counsel that the appointment of Ali Ahmad Ansari in itself was contrary to law, the Court cannot ignore the fact that Ali Ahmad Ansari was appointed just after **three** days from the date of termination of services of Daya Shankar Pandey. Although Sri I.R. Singh has tried to justify the said appointment taking a plea that continuous absence of Daya Shankar Pandey without intimation led the Principal of the Institution to fill up the post based upon the exigency of service and necessity, there being no adjudication to this aspect of the matter, all the petitions stand **disposed of** in the following terms.

(A) The order dated 02-01-2008 passed by the D.I.O.S. is **quashed** and the Writ Petition no.52085 of 2008 is **allowed**.

(B) The order dated 20-09-2008 impugned in Writ Petition no. 21149 of 2009 is also **quashed** and the said writ petition is **allowed**.

(C) In view of the fact that writ petition no. 21149 of 2009 stands allowed and the order dated 20-09-2008 stands quashed, the challenge made to the same order by Ali Ahmad Ansari by means of the Writ Petition no.10720 of 2009 renders infructuous and, accordingly the said writ petition is **dismissed** as infructuous.

(D) The D.I.O.S. Kushinagar is **directed to** pass an order after hearing the petitioner, Principal of the institution as well as the heirs of Daya Shankar Pandey on the following aspects:-

(a) What procedure of law was followed by the then authorities while offering appointment to the Ali Ahmad Ansari on 01-09-1997?

(b) Since no salary was paid from the State Exchequer from July 2001 to March 2003 to anyone as to who will be entitled to receive salary for the said period depending upon the fact as to who was working on the post during that period of time?

(c) How many posts are still lying vacant in Class IV category in the institution and as to whether, in the given facts and circumstances of the case, based upon the proceedings discussed hereinabove, any accommodation to Ali Ahmad

Ansari can be provided, provided his initial entry is found in accordance with law?

20. The financial benefits being received by heirs of Late Daya Shankar Pandey will not be stopped and they shall continue to receive the same.

21. The order as directed hereinabvoe shall be passed by the D.I.O.S. Kushinagar on or before 31-03-2024 provided the certified copy of this order is filed before him by either of the parties in the month of December 2023.

Order Date:-08-12-2023

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