

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 8484 of 2023

Applicant :- Sunil Kumar Singh

Opposite Party :- Sri Sameer, District Basic Education And 3 Others

Counsel for Applicant :- Manisha Chaturvedi

Hon'ble Rohit Ranjan Agarwal, J.

Heard learned counsel for the applicant.

Perused the order dated 01.04.2019 passed in Writ-A No.3976 of 2019, which is as under:-

"Heard Sri Indraraj Singh, learned Senior Counsel assisted by Sri Kamal Kumar Singh, learned counsel for the petitioner, Smt. Praveen Shukla, learned Standing Counsel for respondent nos.1 and 3 and Sri B.P. Singh, learned counsel appearing for respondent nos. 2,4 and 5.

Issue notice to respondent nos. 6 and 7. Steps be taken within a week.

The petitioner has preferred the present writ petition challenging the order dated 30.5.2018 passed by respondent no 3-Additional Director of Education (Basic), Azamgarh Region, Azamgarh.

In so far as the delay in filing the present writ petition is concerned, it is contented that the petitioner came to know about the order impugned for the first time on 26.2.2019 and immediately thereafter, he has filed the present writ petition.

In view of the same delay in filing the present writ petition is hereby condoned.

It is contented by Sri Indraraj Singh, learned counsel that father of the petitioner was working on the post of Assistant Teacher. He died during course of his employment on 8.10.1985. Subsequently, petitioner was appointed on Class IV post after completion of formalities vide order dated 25.10.1999. The appointment of the petitioner was approved by the District Basic Education Officer, Azamgarh vide letter dated 25.10.1999 and only thereafter appointment letter was issued to the petitioner. It is further contented that the institution in question came under Grant in Aid list for the first time in the year 2006 and since then he started getting his salary. It is contented in para 10 of the writ petition that certain objections were raised by the Lekha Paricharak Directorate, Allahabad vide letter dated 29.7.2011 and in view of the same salary of the petitioner was stopped.

Being aggrieved for non payment of salary petitioner preferred writ petition being Writ A No. 22632 of 2012 (Sunil Kumar Singh Vs. State of

U.P. and others) . The said writ petition was dismissed vide order dated 9.5.2012. Against the aforesaid judgment Special Appeal No. 451 of 2017 was filed by the petitioner. The said Special Appeal was decided vide judgment and order dated 5.12.2017. After the aforesaid judgment was delivered on 5th December, 2017 an order has been passed by the respondent no. 3 rejecting the appointment of the petitioner on the ground that appointment of the petitioner was made in terms of the Government Order dated 31.1.1997. It is stated that the aforesaid Government Order will apply in respect to the persons where death occurred on or after 1.1.1991 and since the father of the petitioner died on 8.5.1995 the petitioner was not entitled for his appointment.

Learned counsel for the petitioner also relied upon the judgment of the Supreme Court in case of Mohd. Jamil Ahmad Vs. State of Bihar, reported in AIR 2016 SC 2237. Para 22 of the said judgment relied upon by learned counsel for the petitioner is quoted below-

"22. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground.

In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services.

It was more so because the appellant was not responsible for making any false declaration and nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State."

To the contrary, learned Standing Counsel as well as Sri B.P. Sigh, learned counsel for the respondents relied upon the judgment delivered by the Division Bench of this Court in Special Appeal No. 264 of 2017 (Abdul Qadir Vs. State of U.P.) on 9th May, 2017. It is contented by learned counsel for the respondents that in view of the law laid down by the Division Bench of this Court in case of Abdul Qadir (Supra) no relief could be granted to the petitioner.

To the contrary it is contented by learned counsel for the petitioner that the case of the Division Bench is distinguishable as in that case applicant seeks appointment in place of his deceased father but in so far as present case is concerned petitioner was already appointed in the year 1999 and he is working even today in the institution in question. It is contented that in view of the law laid down by Supreme Court in case of Mohd. Zamil Ahmad (Supra) the petitioner is entitled for the relief, as prayed.

Matter needs consideration.

All the respondents are granted six weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List this matter in the second week of July, 2019.

Until further orders of this Court, effect and operation of the order dated 30.5.2018, passed by respondent no. 3 (Annexure-11 to the writ petition) shall remain stayed."

From the perusal of the aforesaid order, no case for contempt is made out as the applicant has been reinstated pursuant to the stay of the order dated 30.05.2018.

Contempt application is misconceived and the same stands dismissed.

Order Date :- 23.11.2023

SK Goswami