

Court No. - 1

Case :- WRIT - A No. - 2006769 of 1992

Petitioner :- Smt.Kusum Gupta And 2 Others

Respondent :- State Of U.P.Through Secretary Higher Education And 4 Ors

Counsel for Petitioner :- S.C.Misra,Ankit Verma,Pali Anurag

Counsel for Respondent :- C.S.C.,Shishir Jain

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

(Application for Recall)

1. Heard Shri Ankit Verma, learned counsel representing the petitioner no.1, learned State Counsel representing the State respondents and Shri Shishir Jain, learned counsel representing the respondent no.4 - Committee of Management, Mahila Mahavidyalaya, Kidwai Nagar, Kanpur.

2. This is an application seeking recall of an order dated 07.12.2010 passed by this Court whereby the writ petition was dismissed for non-prosecution.

3. Submission of learned counsel for the petitioner is that as a matter of fact after the petitioner no.3 was regularized on the post of Lecturer, Psychology at Mahila Mahavidyalaya, Kidwai Nagar, Kanpur vide order dated 30.06.2005 and petitioner No.2 was regularized vide order dated 04.12.1998, the petition itself had lost its efficacy, however, on account of the fact that the writ petition was dismissed for non-prosecution on 07.12.2010, a notice by the Regional Higher Education Officer, Kanpur on 25.01.2023 has been issued requiring the Management and the Principal of the College to submit an explanation as to how had she been paid salary after 07.12.2010.

4. To appreciate the issue involved in this application/petition, we need to notice certain facts.

5. All the petitioners including the petitioner no.3 were appointed on the post of Lecturers in different subjects at Mahila Mahavidyalaya, Kidwai Nagar, Kanpur in ad-hoc capacity on 02.09.1991. The petitioner no.3 was appointed on ad-hoc basis as Lecturer in Psychology on 02.09.1991. Similarly other petitioners were also appointed on 02.09.1991.

6. In terms of the provisions contained in Section 31-C of Uttar Pradesh Higher Education Services Commission Act, 1980, cases of all the petitioners for regularizing their services on their respective posts was considered by the Selection Committee constituted under Section 31-C(2) of the said enactment. However, the Committee, for reasons disclosed in the orders dated 01.09.1992, rejected the claim of the petitioners for being regularized in service.

7. Challenging the said order of rejection of the prayer for regularization of their services, the petitioners instituted proceedings of Writ A No.2006769 of 1992 wherein an interim order was passed on 24.09.1992 by a Division Bench of this Court whereby operation of the order impugned in the writ petition, dated 01.09.1992 in respect of all the petitioners was stayed and a further direction was issued that the petitioners shall be allowed to continue on the same status as before. It was also directed by the Division Bench while passing the order dated 24.09.1992 that it will be open to the Regularization Selection Committee to take a fresh decision in the light of the facts stated in the writ petition. On the strength of the said interim order dated 24.09.1992 all the petitioners, including petitioner no.3 continued to discharge their functions on their respective posts in ad-hoc capacity. However, in the meantime

the provisions of Section 31-C of the Act were amended by means of Uttar Pradesh Higher Education Services Commission (Amendment) 1997 (U.P. Act No.10 of 1997). The said Amendment Act came into force w.e.f. 26.05.1997. As per the said amendment Section 31-C was amended and the cut of date provided in the un-amended provision was substituted by "November 22, 1991". It may be noticed that prior to the said amendment the cut of date mentioned in Section 31-C of the Act was "June 30, 1991".

8. Under the amended provisions of Section 31-C of the Act, cases of the petitioner no.3 was considered by the competent authority. The regularization of the services of petitioner no.3 on the post of Lecturer in Psychology at Mahila Mahavidyala, Kidwai Nagar, Kanpur was made by means of an order dated 30.06.2005, which has been annexed as Annexure No.5, to the recall application. Thus, from the aforesaid facts after the order of regularization of petitioner no.3 was passed on 30.06.2005 and similar order of regularization of services of other petitioners were also passed in respect of other petitioners, the writ petition itself had lost its efficacy, however, it appears that unfortunately the writ petition was dismissed for want of prosecution on 07.12.2010. The petitioner no.3 and even other petitioners having been regularized on their respective posts in view of the amended provisions of Section 31-C did not pursue the writ petition and the reason for them not pursuing the writ petition was that their services were regularized under the amended provisions of Section 31-C of the Act.

9. After regularization of the services of the petitioner no.3 on 30.06.2005 it appears that on some unfounded complaint made by an individual, the Regional Higher Education Officer, Kanpur has issued the notice/letter dated 25.01.2023 requiring

the Committee of Management/Principal of the Institution concerned to submit an explanation as to how petitioner no.3 has drawn her salary after the writ petition was dismissed in default on 07.12.2010. Once this notice/letter dated 25.01.2023 of the Director of Higher Education was brought to the notice of the petitioner no.3, he contacted his counsel, however, it is only then that it was revealed to her that the writ petition was dismissed for non-prosecution.

10. In the aforesaid circumstances, specially keeping in view the fact that services of the petitioner no.3 were regularized under amended provision of Section 31-C of the Act on 30.06.2005, there cannot be any presumption that they deliberately did not pursue the writ petition with due diligence.

11. For the aforesaid reasons, we find that the delay in moving the application has been explained sufficiently. Accordingly, the delay in filing the recall application is condoned and order dated 07.12.2010 dismissing the writ petition for non-prosecution is hereby recalled and the writ petition is restored to its original number.

(Order on Writ Petition)

12. Facts of the case have already been discussed above. All the petitioners including petitioner no.3 were initially appointed on ad-hoc basis on the post of Lecturers in their respective subjects at Mahila Mahavidyalaya, Kidwai Nagar, Kanpur. Their cases for regularization of their services were considered, however, the claim was rejected vide orders passed on 01.09.1992 which became subject matter of challenge in this writ petition. In the writ petition, initially an interim order was passed on 24.09.1992 whereby the petitioners were ordered to be allowed to continue to discharge their functions on the post of Lecturers

in their respective subjects in ad-hoc capacity. Subsequent to the amendment brought under Section 31-C of the Act, cases of the petitioners including that of the petitioner no.3 for regularization of their services were considered and accordingly their services have been regularized and all the petitioners have been working and discharging their functions on regular basis since then in the institution.

13. We have been informed that the petitioner no.1 has since died. Accordingly, the instant writ petition filed on behalf of petitioner no.1 stands abated.

14. However, in the aforesaid view of the matter, since the services of petitioner no.3 stood regularized by means of the order dated 30.06.2005 and this fact is not denied, the writ petition itself has lost its efficacy and accordingly it is disposed of keeping in view of the order of regularization passed in respect of all the petitioners.

15. We may also observe that in view of the aforementioned facts, the notice dated 25.01.2023 has also lost its efficacy and, thus, in the present circumstances, petitioners including the petitioner no.3 or even the Committee of Management of the Institution concerned or the Principal need not furnish any explanation.

16. The writ petition is, accordingly, **disposed of**.

17. There will be no order as to costs.

Order Date :- 2.11.2023
Mohd. Sharif