

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 528 of 2023

Appellant :- C/M Shri Paras Nath Anusuchit Prathmik Pathshala Maharajganj
Thru. Manager Sri Rajesh Kumar And Ors.

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Social Welfare, Civil
Sectt. U.P. Lucknow And Others

Counsel for Appellant :- Manoj Kumar Mishra, Girish Chandra Verma, Piyush
Tripathi, Shaleshwar Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

1. Heard Sri Girish Chandra Verma, learned counsel for the appellants and Sri Amitabh Rai, learned ACSC for the State.

2. This intra-court appeal has arisen out of the judgement and order dated 31.5.2023 rendered by the writ court in Writ-C No. 747 of 2023 dismissing the writ petition as non-maintainable.

3. It is not in dispute that a writ petition numbered as Writ-C No. 7120 of 2020 was filed by the appellants at Allahabad assailing the order dated 24.1.2020. The writ petition so filed later on was withdrawn as not pressed. The order of withdrawal passed by the Court at Allahabad on 14.7.2022 reads as under:

"Heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

Learned counsel for the petitioner submitted that withdrawal application may be allowed and writ petition may be dismissed as withdrawn, for which learned Standing Counsel has no objection.

Accordingly, withdrawal application is allowed and writ petition is dismissed as not pressed."

4. We take note of the fact that Writ-C No. 7120 of 2020 had prayed mainly for the following relief:

I. A writ, order or direction, in nature of certiorari quashing the impugned order dated 24.01.2020 passed by the respondent No.1/Principal Secretary Social Welfare Department, Government of U.P, Lucknow (Annexure No. 11 to the writ petition).

II. A writ order or direction, in nature of Mandamus, directing the respondents to consider and sanction grant in favour of the petitioner's institute.

5. A subsequent writ petition i.e. Writ-C No. 747 of 2023 came to be instituted before this Court at Lucknow with the following relief:

"(i) issue a writ order or direction in the nature of Mandamus commanding the opposite party no. 1 & 2 to issue the order for grant-in-aid as per decision dated 20.09.2019 taken by the opposite party no. 1, and by the Hon'ble Cabinet Minister for providing grant-in-aid for paying salary to the teachers and employees of the petitioners vidyalaya, available upon the paper-book Writ 64/2019 at page no. 6.

ii) the opposite party no. 2 to comply the directions issued by the Hon'ble Cabinet Minister of the Department of Social Welfare, S.C. & S.T. State of U.P. on 27.12.2021 available at page no. 39 of the paper book and issue the order which is available at page no. 6 of the paper-book.

iii) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to release the grant-in- aid to the petitioners vidyalaya and pay the salary to the teachers and employees of the petitioners institutions regularly every month alongwith arrears of salary."

6. We have perused the material available on record.

7. It is gathered that the office nothings dated 20.9.2019 as well as 27.12.2021 are, in fact, no orders unless acted upon. The office noting dated 27.12.2021 though has reinforced the previous office noting dated 20.9.2019, however, an order in the light of the office noting dated 27.12.2021 was never issued superseding the previous order issued on 24.1.2020.

8. Once the appellants themselves had chosen to file a writ petition at Allahabad as against the order dated 24.1.2020, which unless superseded in the light of office noting made on 27.12.2021 would not give rise to a fresh cause of action for which a subsequent writ petition may lie at Lucknow.

9. It is in this backdrop that a subsequent writ petition i.e. Writ-C No. 747 of 2023 filed before this Court became questionable on the ground of maintainability.

10. We have carefully gone through the impugned judgement.

11. We do not see any issue of territorial jurisdiction involved in the case. It is rather a case of propriety according to which the Court has opined that the matter ought to have been agitated at Allahabad, where the order dated 24.1.2020 having culminated into a cause of action was previously assailed.

12. At this stage, learned counsel for the appellants has submitted that withdrawal of the writ petition at Allahabad was by way of a wrong advice.

13. The wrong advice tendered to a litigant ought not to deprive him of a legal remedy. It is in the interest of justice that we leave it open to the appellants to make an appropriate application before the High Court at Allahabad in Writ-C No. 7120 of 2020 so that challenge to the order dated 24.1.2020 may be considered on its own merit in the light of

subsequent development i.e. office noting dated 27.12.2021 etc. We find no merit in the challenge made against the writ court order which, in our humble opinion, does not call for any interference.

14. It is made clear that we have not expressed anything on the merit of the case except that the appellant is at liberty to approach the Court at Allahabad in the writ petition which was withdrawn under some wrong advice.

15. The special appeal is disposed of accordingly.

Order Date :- 13.12.2023

Fahim/-