

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 194 of 2020

Appellant :- Ram Karan Yadav

Respondent :- State Of Up Thru. Secy. Secondary Education
Lko And Ors.

Counsel for Appellant :- Anu Pratap Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

**(C.M. Application No. 41924 of 2020 : Application for
condonation of delay)**

This is an application seeking condonation of delay in filing the appeal.

Heard.

There is delay in filing the appeal, however, considering the order of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, the same is liable to be condoned.

Accordingly, the delay in filing the special appeal is condoned.

Let the appeal be assigned regular number.

(Order on Memo of Appeal)

This is a special appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, challenging the judgment dated 05.03.2020 passed by the Writ Court in Writ Petition No. 5122 (S/S) of 2015 : Ram Karan Yadav Vs. State of U.P. and others, whereby the writ petition filed by the appellant/petitioner has been dismissed.

The facts of the case, in brief, are that the appellant/petitioner claims to have been appointed on Class-IV in non-government aided Intermediate college, which has not been arrayed as a party in the appeal, though the Principal has been arrayed as opposite party no.3. Even in the writ petition, situation was the same. The appellant/petitioner claims that he was paid salary w.e.f. 27.03.1994 till 31.12.1999 for his services, however, from 01.01.2000 till 15.01.2013, it appears that he was not paid

salary as he did not perform any work.

The appellant/petitioner filed a writ petition before this Court in the year 2010, bearing Writ Petition No. 5306 (S/S) of 2010 : Ram Karan Yadav Vs. State of U.P. and others. According to the learned counsel for the appellant/petitioner, this petition was filed seeking a direction to the Principal of the Institution to permit the petitioner to join. Copy of the said writ petition is not on record. Nevertheless, on being asked to show any order which may have been passed in the said writ petition, learned Counsel could only refer to one order dated 25.02.2015 by which the said writ petition was dismissed as infructuous. No interim order, which may have been passed in the said case, is on record. In fact, Sri Anu Pratap Singh, learned counsel for the appellant/petitioner fairly submits that there was no interim order in favour of the appellant/petitioner in the said writ petition. He submits that prior to dismissal of the said writ petition as infructuous on 25.02.2015, the Principal of the institution had allowed the appellant/petitioner to join in 2013 itself. The submission is that even after joining and performing work, the appellant was not paid any salary, therefore, he preferred a writ petition i.e. Writ Petition bearing No. 5122 (S/S) of 2015, which has been dismissed by the writ Court, leading to this appeal.

Contention is that while dismissing the writ petition, the learned writ Court has ignored the provisions of the Fundamental Rule 18, Volume II contained in the Financial Hand Book, according to which, the provision of automatic abandonment/cessation of service, which was incorporated/included therein, had been deleted on 12.09.1989, meaning thereby, from the said date, there is no question of automatic abandonment/cessation of services of an employee.

Learned Standing Counsel, on the other hand, has invited our attention to the impugned judgment, to contend that this aspect has been considered by the Writ Court in the context of a judgment rendered in **Ali Akbar Vs. Zila Basic Shiksha Adhikari, Kaushambi and others : (2009) 2 UPLBEC 1811**, wherein the said provision was considered. The Writ Court has referred to the said provision as vesting a power in the Government, therefore, the said judgment, according to the Writ Court, was not applicable to the present case, obviously because the appellant/petitioner herein was not an employee of the Government but an employee of a private institution, albeit an aided one, to which the FR-18 did not apply.

On being confronted with this scenario, learned counsel for the petitioner, again invited our attention to the judgment rendered

in the case of **Ali Akbar (supra)**, which, in fact, has been considered by the writ Court, to submit that the said judgment also related to a teacher, however, this does not satisfy us for the reason, the said judgment nowhere deals with the issue as to whether the Financial Hand Book was applicable to an educational institution or not. Secondly, the said case related to basic education, to which Basic Education Act, 1972 and rules made thereunder apply.

The appellant/petitioner claims to have been appointed on a Class-IV post in a non-government aided institution. We asked learned Counsel for the appellant/petitioner to demonstrate as to how Fundamental Rule-18 was applicable to his condition of service, but he could not do so. He submitted that the Principal of the Institution has given, in writing, that even prior to 2013, the appellant/petitioner used to visit the institution, but not regularly, but we do not see as to how this helps the appellant/petitioner. It is the own case of the appellant/petitioner, as stated by his counsel, that the appellant/petitioner was not paid single penny towards salary from 2001 to 2013. The case of the opposite parties is that he never worked and absented himself. Learned counsel for the appellant/petitioner could not show any rule where leave to the extent of 13 years could have been sanctioned to the appellant/petitioner.

Learned Standing Counsel has also invited our attention to an inquiry report, consequent to an inquiry conducted by DIOS, Pratapgarh, pursuant to the order dated 15.10.2015 passed in writ petition 5122 (S/S) of 2015. Copy of said inquiry report has been filed by the appellant himself. According to which, on inquiry, it was found that the appellant/petitioner remained absent from 01.01.2000 for 13 years and on 15.01.2013, the then Principal without permission of the competent authority and without adopting any procedure of law allowed him to join, i.e., without taking into consideration his unauthorized absence for 13 years. There was no evidence/order/record of any leave having been sanctioned to the appellant/petitioner for the said long period of 13 years nor any such document could be produced by the appellant/petitioner. Not only this, no application was ever filed by the appellant/petitioner seeking salary since 2000 till the date of inquiry. The DIOS has opined that there was no occasion to allow the appellant/petitioner to join back in service after 13 years.

Now when we peruse the judgment of the writ Court, we find that the writ court has taken into consideration the aforesaid facts and ultimately opined that this is not a fit case for interference. It has also held that FR-18 has no application to

the fact of the case. We concur with the finding of the writ Court in this regard, as counsel for the appellant has not been able to demonstrate as to how FR-18 is applicable in the case of the appellant/petitioner. Considering the facts of the case this is not a fit case for interference with the Judgment of the Writ Court in an intra-court appeal. The first writ petition filed by the appellant/petitioner was in the year 2010, which was dismissed as infructuous on 15.02.2015. The second writ petition was filed in the year 2015 i.e. after 15 years of the cause of action, if any, having arisen in 2001. Writ Court has rightly held that the appellant/petitioner himself abandoned his services, therefore, no relief can be granted.

Appeal lacks merit and is **dismissed**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 2.4.2024

Ajit/Vipul