

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 855 of 2007

Appellant :- Director Secondary Education And 2 Ors.

Respondent :- Smt. Alka Misra And 2 Ors.

Counsel for Appellant :- Standing Counsel

Counsel for Respondent :- Virendra Misra,O.P.Srivastava

Connected with

Case :- SPECIAL APPEAL No. - 470 of 2007

Appellant :- Managing Committee Thru Adhyaksha And Anr.

Respondent :- Smt. Alka Misra

Counsel for Appellant :- Madhulika Yadav

Counsel for Respondent :- Virendra Misra,O.P. Srivastava

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.31694 of 2007 (Application for Condonation of Delay)

In Special Appeal Defective No.855 of 2007

1. Heard Shri Nishant Shukla, learned Additional Chief Standing Counsel for the State-appellant in Special Appeal No. 855 of 2007 and Ms. Madhulika Yadav, learned Counsel for the appellant in Special Appeal No.470 of 2007.

2. Since there is no objection to the application for condonation of delay in filing the appeal, even otherwise after going through the affidavit in support of the instant application, we find that reasons given therein are satisfactory.

3. In view of the above, the application for condonation of delay is allowed and delay in filing the instant appeal is hereby condoned.

Order on Appeals

4. By means of these appeals the appellants have challenged the judgment and order passed in Writ Petition No.2077 (S/S) of

1991 : *Smt. Alka Misra Vs. Director, Secondary Education Lucknow and others.*

5. The respondents herein have filed the said petition seeking the following reliefs :-

"(a) Issue a writ, order or direction in the nature of Certiorari quashing the order, converting the post of Lecturer in History/Political Science into that of Lecturer in Science/Mathematics in L.T. Grade in the Institution, after summoning the same from the opposite parties 2 and 5, in original.

(b) Issue a writ, order or direction in the nature of mandamus or likewise commanding the opposite parties to treat that the approval for the appointment of the petitioner on the post of Lecturer in History/Political Science in L.T. Grade in the Institution, has been given by the opposite party No.2 with effect from January, 1990, on the expiry of 7 days from the date of sending the request to the opposite party No.2 for according her approval.

(c) Issue a writ, order or direction in the nature of mandamus or likewise commanding the opposite parties 2 and 5 to fill up the post or accord approval for the appointment in the subject concerning Lecturer in Science Mathematics.

(d) Issue a writ, order or direction in the nature of mandamus or likewise commanding the opposite parties to decide the representations of the petitioner, in accordance with law.

(e) Issue a writ, order or direction in the nature of mandamus or likewise commanding the opposite parties to give effect to the appointment of the petitioner from January, 1990 and to pay her arrears on account of salary and regular salary.

(e-1) To issue a writ, order or direction in the nature of Certiorari or likewise for quashing the order dated 27.09.1990 alleged to have been passed by the respondent No.2, contained in Annexure No.9.

(f) Issue any other suitable writ, order or direction which this Hon'ble Court may deem just and proper in the exigency of the case.

(g) Award the cost of this writ petition in favour of the petitioner."

6. The said writ petition was allowed vide impugned judgment dated 23.03.2007. However, there was no interim order operating in favour of the respondents-petitioners during pendency of the writ petition.

7. It is contended that after being selected as L.T. Grade Teacher for the post of History/Civics on adhoc basis till the end of the

academic session, the petitioners never worked. The petitioners were never issued the appointment letters. The appellant in Special Appeal No.470 of 2007 in fact could not file counter affidavit in the writ petition during its pendency, but the State filed the counter affidavit and in counter affidavit it is mentioned that after termination of services of Smt. Sarojini Singh one post of Assistant Teacher in L.T. Grade (History/Civics) fell vacant and thereafter the said post was notified by the Administrator, Zila Parishadiya Vidyalaya, Zila Parishad, Kheri on 13.12.1989. Only one application was received for being considered for selection and appointment that was of Smt. Alka Misra and after her appointment financial approval was granted by the Assistant Accounts Officer, office of the District Inspector of Schools, Kheri vide letter dated 20.01.1990 and a letter was written to the Regional Inspector of Girls Schools, Region VI, Lucknow, who vide her letter dated 27.09.1990 informed that as per the provisions of letter dated 21.07.1986, the matter is time barred, hence there is no question of making fresh appointment and as such the appointment of Smt. Alka Mishra was not possible. It was further averred by the State before the Writ Court that on the basis of the provisions of letter dated 21.07.1986 of the Director of Education, U.P. Lucknow, the Regional Inspector of Girls Schools vide her letter dated 10.01.1991 granted permission to revive the post (mentioned as reopen the post) and to change the post into the post of Science subject. Since the approval in respect of the petitioner's appointment could not be accorded, hence the writ petition of the petitioner was liable to be dismissed.

8. The judgment of the Writ Court has remained stayed during pendency of these appeals which were filed in 2007. Considering the facts of the case specially as the stand of the

State had not been considered by the Writ Court while allowing the writ petition and the same has been allowed only on the ground that once the Regional Inspector of Girls did not respond, therefore, the appointment was deemed to have been approved by her whereas the fact of the matter is that on 27.09.1990 the Regional Inspector of Girls School made it clear that the matter was time barred and there was no question of making fresh appointment and appointment of Smt. Alka Mishra was not possible and thereafter the post was revived and converted into the post of Science subject and it is the case of the appellant that subsequently the said post has been filled up by a candidate selected by the Commission and as there has never been an interim order in favour of respondent - Smt. Alka Mishra that is why it appears that she is not contesting this appeal and none is present on her behalf, we are of the opinion that the impugned judgment cannot be sustained. It is, accordingly, quashed.

9. For the reasons discussed hereinabove, the writ petition lacks merit and is accordingly dismissed specially as the initial appointment which is the basis for filing the writ petition was purely adhoc appointments till end of the academic session or till joining of the selected candidates and the same had never been actually approved by Regional Inspector of Girls School.

10. The special appeals are, accordingly, **allowed**.

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

Order Date :- 22.4.2024

Anand Sri./-