

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 298 of 2024

Appellant :- Joint Director Secondary Education Lko. And Another

Respondent :- Arvind Kumar Trivedi And Another

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Sharad Kumar Srivastava

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

C.M.A. No.1 of 2024 (Application for Condonation of Delay)

1. Heard Shri Pratul Srivastava, learned Standing Counsel for the State-appellant and Shri Sharad Kumar Srivastava, learned Counsel for the respondent no.1.

2. Shri Sharad Kumar Srivastava, learned Counsel for respondent no.1 does not have any 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 appeal

4. This is an appeal by the State challenging the judgment and order dated 04.01.2024 by which the writ petition of the respondent no.1 challenging the order dated 20.07.2019 rejecting his claim for regularization/being treated as regularised Lecturer w.e.f. 07.08.1993 has been allowed. The writ petition of the respondent has been allowed.

5. After hearing the learned Counsel for the parties and perusing the record what comes out is that earlier the respondent no.1 - Arvind Kumar Trivedi along with one Arun Kumar Mishra had filed a writ petition bearing Writ Petition No.2582 (S/S) of 1989 seeking writ of certiorari quashing the entire selection process of opposite party no.5 therein, namely, Syed Arshad Ali, inter alia, to the post of Lecturer in Geography in Rashtrapita Municipal Inter College, Shahabad, Hardoi. The said writ petition was allowed vide judgment and order dated 05.10.2006. The operative portion of the said judgment is quoted below :-

"Under the circumstances I hereby quash the appointment of the opposite party no.5 on the post of Lecturer in Geography and a writ of mandamus is issued to the respondent no.3, i.e. the Manager of the Committee of Management of the College concerned to issue appointment order in favour of the petitioner no.1 and further a direction is issued to the opposite party no.2, i.e. the District Inspector of Schools, Hardoi to accord approval of the petitioner No.1 for the purposes of payment of salary etc. This all exercise shall be completed within fifteen days from the date of production of a certified copy of this order before the concerned authorities. It is further provided that the petitioner No.1 shall be entitled for the benefit of all purposes of service from the date of appointment, on which the respondent no.5 was appointed on the post in question, except the wages/salary on the principle of no work no pay.

With the aforesaid observations and directions the writ petition is allowed."

6. As would be evident from the said judgment, not only the appointment of opposite party no.5 on the post of Lecturer in Geography was quashed but a writ of mandamus was issued to the Manager of the College concerned to issue appointment order in favour of petitioner no.1, i.e. Arvind Kumar Trivedi, who is respondent no.1 herein. It was categorically directed -

"that the petitioner no.1 (Arvind Kumar Trivedi) shall be entitled for the benefit of all purposes of service from the date of appointment, on which the respondent no.5 (Syed Arshad Ali) was appointed on the post in question, except the wages/salary on the principle of no work no pay." This judgment was challenged in appeal by Syed Arshad Ali bearing Special Appeal No.750 of 2006 which was disposed of on 23.09.2008. The aforesaid judgment of the Single Judge Bench was never challenged by the State nor by the Committee of Management. The appeal of Syed Arshad Ali was disposed of and while disposing of the appeal, the Division Bench issued a direction to the respondent nos.3 to 6 therein to accommodate the appellant, i.e. Syed Arshad Ali by protecting his last salary against the seven vacant posts of Assistant Teacher for which the requisition had already been sent to the District Inspector of Schools. Further direction was issued to respondents no.3 to 6 therein to allow the respondent no.1 (Arvind Kumar Trivedi) to work and pay him salary. Further compensation of Rs.30,000/- was awarded in favour of respondent no.1 therein to be paid by the Committee of Management for restraining the respondent no.1 from working. The said decision was complied and order was passed on 16/19.10.2006 cancelling the appointment of Syed Arshad Ali on the post of Lecturer in Geography in the college in question and appointing the respondent no.1 herein -Arvind Kumar Trivedi on the said post in the pay scale of Rs.5500-10500/-.

7. Now as is evident from the Single Judge Bench judgment which has been affirmed in appeal, Arvind Kumar Trivedi was to be given all service benefits as had been given to Syed Arshad Ali. It is not in dispute that Syed Arshad Ali had been appointed as Lecturer Geography on 15.11.1988, i.e. the appointment which was subsequently quashed vide judgment

dated 05.10.2006, therefore, the respondent no.1 - Arvind Kumar Trivedi was to be treated as Lecturer Geography from the said date in the institution in question.

8. In spite of the aforesaid when the pay of Arvind Kumar Trivedi was wrongly fixed he filed a writ petition bearing Writ Petition No.10987 (S/S) of 2017 which was allowed by a detailed judgment dated 19.05.2017 taking into consideration the earlier judgment dated 05.10.2006 and stipulation contained therein for giving all the service benefits as had been given to Syed Arshad Ali. A direction was issued to the District Inspector of Schools to refix the pay of Arvind Kumar Trivedi. Against the said judgment a special appeal was filed albeit belatedly and after condoning the delay the appeal was also dismissed on 06.11.2017. Thereafter two strangers filed a review application which was also dismissed on 01.02.2018 by the Single Judge Bench.

9. In the meantime, the services of Syed Arshad Ali had been regularised, w.e.f. 07.08.1993 on the post of Lecturer, i.e. prior to passing of the judgment by the Division Bench on 23.09.2007 in his Special Appeal No.750 of 2006 by considering his case under Section 33-B of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as 'the Act, 1982'). The said order is on record. This being so, the respondent no.1 - Arvind Kumar Trivedi also raised a claim of being considered and his services be regularised as Lecturer as had been done in the case of Syed Arshad Ali. It is this claim which was rejected by the order dated 20.07.2019 which has been quashed by the Writ Court against which this appeal has been filed.

10. We have perused the order dated 20.07.2019 and we find that the order is clearly in the teeth of the judgment dated

05.10.2006 which has become final between the parties. The same having been upheld in appeal as already discussed. The order dated 20.07.2019 has proceeded on the premise that prior to his appointment in 2006 in the College in question, the respondent no.1- Arvind Kumar Trivedi was working in various capacities in different colleges and, therefore, the said period cannot be taken into consideration for the purposes of considering his regularisation of service referring to the provisions contained in Section 33-A, B, C, D, E and F without referring to any specific provision in this regard. As already discussed earlier, Arvind Kumar Trivedi was entitled to all the services benefits which had been extended to Syed Arshad Ali including regularisation of his services from 07.08.1993. A fact which had been adjudicated and attained finality in the earlier proceedings which had never been put to challenge either by the Committee of Management nor by the State which has now come up in appeal against the judgment of the Writ Court. The order dated 20.07.2019 does not even take into consideration that Syed Arshad Ali in fact his services had been regularised w.e.f. 07.08.1993 under Section 33-B of the Act, 1982 under which the cut off date is of 1991. The respondent no.1 was clearly appointed prior to the said date as Lecturer under the orders of this Court, therefore, the order dated 20.07.2019 was apparently erroneous and illegal. The Writ Court has rightly quashed the same.

11. The only argument advanced by Shri Pratul Srivastava before this Court in this appeal is that prior to 2006 the respondent no.1 had not worked as Lecturer but had worked in different capacities, i.e. Head Master, Assistant Teacher in different colleges and, therefore, the said period cannot be taken into consideration for the purposes of regularisation of his services under the aforesaid provision. However, on being

confronted with the judgment dated 05.10.2006 and as to how this plea was open at this stage and that Syed Arshad Ali's services had been regularised on the post of Lecturer w.e.f. 07.08.1993, he had no answer. The judgment dated 05.10.2006 clearly directed the appointment of respondent no.1 - Arvind Kumar Trivedi in place of Syed Arshad Ali as Lecturer Geography and also further provided that he shall be entitled for the benefit of all purposes of service from the date of appointment on which the respondent no.5 was appointed on the post in question, which was 15.11.1988 except wages/salary on the principle of no work no pay, meaning thereby except for the wages for the said period all other benefits including the date of appointment were to be extended and as thereafter on 07.08.1993 services of Syed Arshad Ali were regularised on the post of Lecturer then obviously all these benefits were to be extended to respondent no.1 also in view of the judgment dated 05.10.2006.

12. On being confronted, learned Counsel for the State could not point anything from the record which could persuade us to take any other view of the matter.

13. The earlier judgment having attained finality and the case of respondent no.1 being squarely covered by the provisions discussed hereinabove including Section 33-B of the Act, 1982, the Writ Court has rightly quashed the order dated 20.07.2019. In fact we find that the Writ Court has issued a writ of mandamus to the competent authority to pass appropriate orders regularising petitioner's (respondent no.1 herein) service w.e.f. 07.08.1993. We do not find any error therein. As regards the cost of Rs.50,000/- imposed upon the appellants, considering the discussion made hereinabove, we also do not find any error therein. In fact we were inclined to impose an additional cost of

Rs.1 lac, but only because of the fervent pleas of Shri Pratul Srivastava, learned Standing Counsel, we refrain ourselves from doing so, but with the caution that in future the State should be cautious in filing such appeals.

14. Dismissed.

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

Order Date :- 30.5.2024

Anand Sri./-