

Court No. - 2

Case :- SPECIAL APPEAL DEFECTIVE No. - 670 of 2023

Appellant :- State Of U.P. Thru. Secy./Special Secy. Basic Education U.P. Lko. And Others

Respondent :- Ram Khelawan And Another

Counsel for Appellant :- C.S.C., Shivam Sharma

Counsel for Respondent :- Prashant Shukla

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard.

2. Since there is no objection to the application for condonation of delay in filing the appeal and 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. The only contention raised by appellant's Counsel is that by means of an interim order, final relief has been granted. Therefore, not only this special appeal is maintainable under Chapter VIII Rule 5 of High Court Rules as the interim order has trapping of final order/judgment, but the interim order is liable to be quashed on this very ground itself.

5. The prayer in the writ petition out of which this appeal arises is as under :-

"i. Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 20/05/2022, passed by respondent no.1, contained as Annexure No.1 to this writ petition.

ii. Issue a writ, order or direction in the nature of MANDAMUS commanding the respondents to pay the salary of the petitioner along with arrears w.e.f. April, 2019 to December, 2020.

iii. Issue a writ, order or direction in the nature of MANDAMUS commanding the respondents to regularly pay the salary of the petitioner.

iv. Issue a writ, order or direction in the nature of MANDAMUS commanding the respondent no.1 and 2 to consider the case of the petitioner for transfer/adjustment in some other school or district as this Hon'ble Court may deem fit and proper in the given circumstances of the case, considering the condition of the institution at issue.

v. Any other relief, deem fit and proper may kindly be passed in the favour of petitioner.

vi. Kindly allow the petition with costs."

6. The operative portion of interim order reads as under :-

"As an interim measure, it is directed that the State Government shall ensure the payment of salary to the petitioner regularly on month to month basis.

As the appointment of the petitioner has not been cancelled, the respondents shall ensure the payment of arrears of salary from April, 2019 to December, 2020 and from December, 2021 till date without fail. As admittedly the respondents withdrawing the grant-in-aid was passed on 20.01.2022, the liability to pay the salary is essentially in terms of the mandate of the 1978 Act.

However, it is open for the State is to take the work from the petitioner in any other institution as may be desired by them.

The respondent shall also be entitled to adjust the petitioner in any other institution as stopgap arrangement as per rules."

7. Apparently final relief has been granted. Moreover, once the Institution was removed from grant-in-aid list on 20.05.2022 thereafter the liability to pay salary/remuneration was obviously with the Management. So far as entitlement of the respondent/petitioner to salary/remuneration and arrears thereof for the period the Institution was on the grant-in-aid list that is a question which has to be considered and answered finally by the Writ Court. A direction to pay arrears of salary from April 2019 and onwards could not have been given as an interim measure. As regards the issue of transfer, learned Counsel for the respondents says that this may be allowed to be raised in the writ petition. We have no difficulty with this.

8. We have been informed that subsequently an application for clarification was filed by the respondent-petitioner because while passing the interim order stay of the impugned orders had not been granted and, therefore, the impugned order has been clarified

subsequently on 08.02.2024 in the following terms:-

"I.A. No.6 of 2024:

1. The application has been filed seeking modification of the order dated 28.02.2023 wherein the following directions were issued:

".....

As an interim measure, it is directed that the State Government shall ensure the payment of salary to the petitioner regularly on month to month basis.

As the appointment of the petitioner has not been cancelled, the respondents shall ensure the payment of arrears of salary from April, 2019 to December, 2020 and from December, 2021 till date without fail. As admittedly the respondents withdrawing the grant-in-aid was passed on 20.01.2022, the liability to pay the salary is essentially in terms of the mandate of the 1978 Act.

However, it is open for the State is to take the work from the petitioner in any other institution as may be desired by them.

The respondent shall also be entitled to adjust the petitioner in any other institution as stopgap arrangement as per rules."

2. It is argued by learned counsel for the applicant that this Court while passing the interim order had specifically noticed that the order dated 20.05.2022 was also under challenge, however, as nothing specific was observed in respect to the order dated 20.05.2022, a stand was taken by the respondent before the Contempt Court, as such, an order came to be passed by the Contempt Court on 18.01.2024, which is as under:

"Learned counsel for the petitioner submits that there is a specific order for payment of salary from the State Exchequer, from each month. He added that in the Writ-A No.1666 of 2023, the order dated 20.05.2022 by which the grant in aid order was withdrawn, was under challenge and considering the same, the writ court has passed the order.

He further submits that he may be given further two weeks' time so as to move a modification application in the Writ-A No.1666 of 2023.

In view of the aforesaid, list/ put up this matter on 12.02.2024.

Shri Shivam Sharma, learned counsel for opposite party no.2 is present.

The personal appearance of opposite party no.2 i.e. Shivendra Pratap Singh, Basic Shiksha Adhikari, Raebareli is hereby exempted."

3. In the light of the said, he argues that this Court may modify the order and pass direction with regard to the order dated 20.05.2023.

4. Shri Shivam Sharma and Shri Neeraj Chaurasiya, learned counsel(s) for the respondent have opposed the modification application by arguing that in the garb of modification, the applicant is seeking stay of the order

dated 20.05.2022, thus, the application deserves to be rejected.

5. Having heard both the parties, the intent of the order dated 28.02.2023 is clear and directions for payment of salary, as an interim measure, are clearly contained in the order dated 28.02.2023. The ultimate quashing of the order dated 20.05.2022 would be decided when the matter is finally decided.

6. Thus, it is clarified that even if the order dated 20.05.2022 has not been mentioned/stayed in the order dated 28.02.2023, the intent of the Court was that during the pendency of the writ petition, the salary/arrears as indicated should be paid to the petitioner.

7. In view of the clarification as recorded above, the present application is disposed off."

9. This does not make much of difference to the conclusion arrived by us as for all practical purposes the interim order grants final relief which could not have been granted at the interim stage certainly not without quashing the order.

10. In view of the above, as by the interim order final relief has been granted, we quash the said order leaving it open for the Writ Court to consider the entitlement of the respondent-petitioner to salary for the period the Institution was on the grant-in-aid list of the State Government in accordance with law. We also leave it open for the Writ Court to consider the question of transfer as has been raised by the respondents in the writ petition, uninfluenced by the result of this appeal.

11. Appeal is **allowed** in the aforesaid terms.

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

Order Date :- 8.5.2024

Anand Sri./-