

State Of Up And 3 Others vs Sunil Kumar Mishra And Another on 30 April, 2025

Author: Ashwani Kumar Mishra

Bench: Ashwani Kumar Mishra

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68100-DB

Court No. - 29

Case :- SPECIAL APPEAL DEFECTIVE No. - 832 of 2024

Appellant :- State Of Up And 3 Others

Respondent :- Sunil Kumar Mishra And Another

Counsel for Appellant :- Ankit Gaur,C.S.C.,S.C.

Counsel for Respondent :- Siddharth Khare

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

(Ref: Civil Misc. Delay Condonation Application)

1. Heard learned Standing counsel for the State and Sri Ashok Khare, learned Senior counsel assisted by Sri Siddharth Khare, learned counsel for the respondents.

2. Delay in filing the present appeal is explained to the satisfaction of the Court. Delay is, accordingly, condoned. Office is directed to allot a regular number to the present appeal.

3. Application stands allowed.

Ref: Appeal

1. Two issues were raised before the learned Single Judge in the writ petition filed by the respondent-petitioner. First was with regard to his claim for payment of salary between 2016 to 2019 and secondly in respect of his regularization. Both these claims had been rejected by the educational authority vide its order dated 2.5.2022. Learned Single Judge has allowed the writ petition after recording a finding that the order of the Regional Level Committee on both the counts was unsustainable.

2. It transpires that the claim of appointment and regularization of the writ petitioner came to be examined by this Court in a batch of writ petitions decided finally vide judgment and order dated 2.4.2019. Operative portion of the order of this Court reads as under:-

"46. For the reasons and discussions held above, claim of Sunil Kumar Mishra, to be senior to Ganesh Chandra Goel, cannot be accepted. Consequently, Writ Petition No. 52277 of 2014 fails and is dismissed. Writ Petition No. 48836 of 2016 filed by Ganesh Chandra Goel succeeds and the order of District Inspector of Schools dated 28.9.2016, accepting the claim of Sunil Kumar Mishra to officiate as Principal of the Institution, stands quashed. To that extent, Writ Petition No. 57215 of 2016 filed by the Managing Committee against same order also succeeds. However, as the Committee of Management has proceeded to terminate services of Sunil Kumar Mishra without obtaining any approval from the Board under Section 21 of the U.P. Secondary Education Services Selection Board Act, 1982, therefore, the resolution of the Committee of Management dated 20th November, 2016 as well as the consequential order of termination dated 22nd November, 2016 cannot be sustained. Writ Petition No. 60494 of 2016 consequently succeeds and is allowed to that extent. The order of District Inspector of Schools, dated 25.11.2016, disapproving the resolution of the Committee of Management, terminating the services of Sunil Kumar Mishra, is affirmed. Since Ganesh Chandra Goel is held senior as Lecturer in the Institution concerned he would have the right to officiate as Principal of the Institution concerned. Services of Sunil Kumar Mishra would also be considered for regularization under the appropriate provisions of the U.P. Secondary Education Services Selection Board Act, 1982, in accordance with law."

3. The judgment dated 2.4.2019 was challenged in a batch of special appeals in which the direction issued by the writ court on 2.4.2019 was not interfered with. It is thereafter that claim of writ petitioner came up for consideration before the Regional Level Committee.

4. We are not required to elaborately narrate the facts as we find that learned Single Judge has noticed the background facts of the present case as per which it is undisputed that the respondent-petitioner was appointed as ad-hoc lecturer on 29.10.1985. His appointment was also approved. The services of respondent-petitioner was also earlier regularized on 19.5.1992. This

order of regularization, however, has been set aside and this aspect of the matter has attained finality.

5. It transpires that the Committee of Management terminated the services of writ petitioner on 22.11.2016. The District Inspector of Schools disapproved the termination order vide his order dated 25.11.2016. This order came to be challenged in a writ petition filed by the Committee of Management, wherein an interim order was passed on 5.12.2016. As a result of this interim order the respondent-petitioner was not permitted to work till the writ petition of Committee of Management came to be dismissed vide judgment and order dated 2.4.2019. It is, therefore, apparent that the non-working of the respondent between 2016 to 2019 was on account of the interim order passed by this Court which, in the writ filed by the management ultimately was dismissed. The entitlement of the respondent to work and to receive salary was accepted by this Court in the final judgment. Once that be so, the direction to pay salary to the respondent between 2016 to 2019 would be an obvious consequence. The principle of 'no work no pay' will not be attracted in the facts of the case, inasmuch as the respondent-petitioner was prevented from working under an interim order of this Court which has subsequently been vacated and the writ petition is dismissed. The first part of the direction of learned Single Judge holding the respondent entitled to salary for the period between 2016 to 2019, therefore, merits no interference.

6. The other aspect relates to the regularization of the respondent-petitioner. The only reason on account of which his claim for regularization was not considered is that there existed no vacancy against which he could be regularized. It is undisputed that the respondent was appointed against the short term vacancy created due to Suraj Prakash Aggarwal going on long leave. It is admitted that Suraj Prakash Aggarwal never returned. According to the appellant such substantive vacancy arose when Suraj Prakash Aggarwal attained the age of superannuation in 2016. This conclusion, however, has not been approved by learned Single Judge on the ground that maximum leave permissible for a teacher is only five years which expired in 1990. Learned Single Judge, therefore, has concluded that for the purposes of considering the petitioner's regularization a vacancy did occur against which the services of the writ petitioner could have been regularized under Section 33-B of the U.P. Secondary Education Services Selection Board Act, 1982.

7. Having given our thoughtful consideration to the rival submissions as also the fact that writ petitioner has continued in service since 1985 as also upon perusal of materials on record, we find that on both the aspects the view taken by learned Single Judge is based on correct appreciation of legal provisions and, therefore, no interference in the appeal is called for.

8. Special appeal is, accordingly, dismissed.

Order Date :- 30.4.2025 RA