

Pancham Lal Pandey vs Neeraj Kumar Mishra on 15 February, 2023

Author: Pankaj Mithal

Bench: Pankaj Mithal, V. Ramasubramanian

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2023
[Arising out of Special Leave Petition (C) No.3329 OF 2021]

PANCHAM LAL PANDEY

.... APPELLANT

versus

NEERAJ KUMAR MISHRA & ORS.

.... RESPONDENTS

J U D G M E N T

PANKAJ MITHAL, J.

1. Heard Mr. Praveen Chaturvedi, learned counsel for the appellant and Mr. V.K. Shukla, Senior Counsel assisted by Ms. Parul Shukla, learned counsel for the respondents and perused the pleadings exchanged between the parties.

2. Leave granted.

3. Tripathi Ramroop Sanskrit Vidyalaya, Jogapur, Kaushambi 15:21:58 IST Reason:

in the State of Uttar Pradesh is a recognised institution imparting Sanskrit Education upto Uttar Madhyama, i.e., Class I to XII. It was granted permanent recognition on 22.02.1999. The Government of Uttar Pradesh decided to take Sanskrit Vidyalaya and Mahavidyalaya on Grant-in-Aid List. The criteria for taking institutions under the Grant-in-Aid List was laid down in G.O. dated 07.02.2014. The State Government vide its order dated 11.08.2015 notified the list of institutions which were taken in the Grant-in-Aid list of the Government, which included the above institution at Serial No.47.

4. The State Government sanctioned five posts for payment of salary from the State Exchequer in respect of the above institution, one for the Headmaster and four for the Assistant Teachers.

5. The Principal Secretary, Government of Uttar Pradesh issued a Circular dated 01.01.2016 granting approval for the payment of salary to all the teachers of the institutions receiving Grant-in-Aid, who were actually working prior to taking the institution under the Grant-in-Aid list. Another Circular dated 18.03.2016 provided for the application of reservation policy. Since the said Circulars were affecting some of the teachers, one of them Satya Prakash Shukla filed Writ Petition No.29784 of 2016 before the Lucknow Bench of the Allahabad High Court. The said Writ Petition was allowed vide order dated 21.12.2016 on the statement made by the Joint Secretary, Department of Secondary Education “that the payment of salary to the teachers shall be made on the basis of seniority of teachers as disclosed in the Manager’s Return”. Unfortunately, the Director Secondary Education ignoring the statement so made by the Joint Secretary before the High Court bifurcated the posts of Assistant Teachers vide order dated 28.03.2017 and directed that one Neeraj Kumar Mishra, who was almost five years junior to one Pancham Lal Pandey, to be paid salary. Accordingly, the aforesaid Pancham Lal Pandey preferred Writ Petition No.19709 of 2017 challenging the order dated 28.03.2017 passed by the Director Secondary Education. The aforesaid writ petition upon hearing the parties was allowed vide judgment and order dated 15.04.2019 quashing the order dated 28.03.2017 with directions to the authorities to declare Pancham Lal Pandey entitled to payment of salary from the State Exchequer.

6. The aforesaid judgment and order of the High Court dated 15.04.2019 was assailed by Neeraj Kumar Mishra as well as State Government by separate Special Appeal Nos.578 of 2019 and 767 of 2019. The Special Appeal No.578 of 2019 of Neeraj Kumar Mishra was dismissed on 14.05.2019 and that filed by the State Government, i.e., Special Appeal No.767 of 2019 was dismissed on 22.08.2019.

7. The aforesaid Neeraj Kumar Mishra preferred Special Leave Petition (Civil) No.23466 of 2019 before this Court which came to be dismissed vide order dated 14.10.2019.

8. Upon dismissal of the Special Appeal filed by the State, a Special Leave Petition (Civil) Diary No.782 of 2020 was preferred by the State and the same was dismissed on 24.01.2020 with the clarification that the liability of the State shall be limited to pay the salary to the Headmaster and four teachers upto the sanctioned strength.

9. It is in the above background that Neeraj Kumar Mishra applied for the review in Special Appeal No.578 of 2019, i.e., against the order dated 14.05.2019, whereby his Special Appeal against the judgment and order of the learned Single Judge dated 15.04.2019 was dismissed. The aforesaid Review Application has been allowed by the impugned judgment and order dated 05.02.2021.

10. In assailing the aforesaid order, the submission of learned counsel for the appellant herein, i.e., Pancham Lal Pandey is that the Review Application was not maintainable as there was no error apparent on the face of the record in dismissing the Special Appeal filed by Neeraj Kumar Mishra and that the review has been allowed without considering his objections with regard to its

maintainability.

11. Mr. V.K. Shukla, learned Senior Counsel on the other hand defended the order on the ground that the learned Single Judge has manifestly erred in law in allowing the writ petition and that if the order is allowed to stand, it will perpetuate illegality which is not permissible in law. The review petition was rightly allowed as there was an error apparent in the order of the Division Bench dismissing the Special Appeal inasmuch as in the light of Section 9 read with Section 10 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, the institution is not entitled to create any new post of a teacher or any employee without the previous approval of the Director and that the State Government is liable for payment of salary of teachers and employees only in respect of those, who have been validly appointed with the approval of the Director.

12. In the review petition the order of the Division Bench dated 05.02.2021 was sought to be reviewed and not of the Single Judge allowing the writ petition. The illegality, if any, pointed out in the order of the Single Judge is not material to review the decision of the Division Bench passed in Special Appeal.

13. The Single Judge has allowed the writ petition in the light of the statement of the Joint Secretary, Department of Secondary Education that payment of salary to teachers shall be made on the basis of seniority and therefore, the subject of teaching had no relevance. The bifurcation of the sanctioned posts of Assistant Teachers of the institution subject wise is simply an internal matter of the institution which does not put any extra burden upon the State. The institution was taken on Grant[□] in[□]Aid list with a Headmaster and four Assistant Teachers in order of seniority and thus permitting only five persons to receive salary from the Government fund is not illegal. There is no creation of any new post of Assistant Teacher at the Institution by the Court. The Writ Court, therefore, rightly allowed the writ petition and the Division Bench has not committed any error in dismissing the Special Appeal.

14. It is not the case of any one that the above orders permit payment of salary to teachers beyond the sanctioned strength. Therefore, the Full Bench decision in State of U.P. through Secretary, Secondary Educations & Ors. vs. C/M, Sri Sukhpal Intermediate College, Tirhut, Sultanpur & Ors. in Special Appeal Defective No.673 of 2014 decided on 12.5.2015 holding that in the absence of sanctioned post, a direction for payment of salary cannot be given is not helpful.

15. The provision of review is not to scrutinize the correctness of the decision rendered rather to correct the error, if any, which is visible on the face of the order / record without going into as to whether there is a possibility of another opinion different from the one expressed.

16. The Division Bench in allowing the review petition has dealt with the matter as it is seized of the special appeal itself and has virtually reversed the decision by taking a completely new stand for the payment of salary to teachers' subject[□]wise. It amounts to rehearing and rewriting the judgment in appeal without there being any error apparent on the face in the earlier order. The Division Bench thus clearly exceeded its review jurisdiction in passing the impugned order.

17. In the facts and circumstances of the case, we are of the opinion that the impugned order dated 05.02.2021 allowing the review is unsustainable in law and is accordingly set aside.

18. The appeal is allowed with no order as to costs.

19. All the pending applications, if any, stand disposed of. J.

[V. Ramasubramanian]J. [Pankaj Mithal] New Delhi;

February 15, 2023.