

KRISHNA NAND SHUKLA

A

v.

DIRECTOR OF HIGHER EDUCATION ALLAHABAD & ORS.

(Civil Appeal Nos. 2544-2545 of 2019)

MARCH 06, 2019

B

[ASHOK BHUSHAN AND K. M. JOSEPH, JJ.]

Pleadings – Writ petition was filed by the appellant in the High Court seeking a writ of mandamus commanding the respondent-University to pay him salary as Lecturer – Writ petition dismissed by the High Court on basis of the paragraph 3(h) and 3(i) of the counter-affidavit and paragraph 6 of the rejoinder – Review application was also dismissed – On appeal, held: From the records it appears that along with the writ petition of the appellant another petition was connected and heard – While deciding the writ petition of the appellant paragraph 3(h) and 3(i) of the counter-affidavit and paragraph 6 of another writ petition was referred to – The judgment of the High Court deciding writ petition of appellant without referring to the pleadings in the concerned writ petition cannot be upheld – Thus, judgment and order of the High Court set aside and matter remitted to the High Court to decide the writ petition afresh on the basis of the pleadings on the record.

C

D

E

Disposing of the appeals, the Court

HELD: 1. The appellant claims ad hoc appointment on the post of Lecturer, Military Science in a Post Graduate College Affiliated to the Gorakhpur University. The submission of appellant is that paragraphs of the counter-affidavit i.e. 3(h) and 3(i) as well as paragraph 6 of the rejoinder-affidavit in the writ petition which has been referred to and relied by the High Court for dismissing the writ petition are not present in the counter-affidavit filed to the writ petition of the appellant and the rejoinder-affidavit filed by the appellant. [Para 10][187-D]

F

G

2. From the records it appears that along with the Writ Petition No. 29473 of 1999 filed by the appellant another writ petition being No.29474 of 1999 was connected and heard. It appears while deciding writ petition of the appellant the paragraph

H

- A **3(h) and 3(i) of the counter-affidavit and paragraph 6 in Writ Petition No.29474 of 1999 has been referred to. [Para 13] [188-H; 189-A]**

- 3. The High Court unless looks into the facts of the appellant's case and pleadings made therein the writ petition could not have been decided. It is relevant to notice that the error committed by the High Court in deciding the writ petition on 06.10.2015 was brought into the notice of the High Court by filing detailed review application after withdrawing SLP from this Court but the review application was dismissed by non-speaking order without adverting to the specific grounds raised in the review application. The judgment of the High Court deciding Writ Petition No.29473 of 1999 without referring to the pleadings in the writ petition i.e. pleadings in the counter-affidavit and rejoinder-affidavit, cannot be upheld. [Para 14][189-B, C]**
- D 4. Thus, the ends of justice would be served in setting aside the judgment and order of the High court dated 06.10.2015 and 09.03.2016 and remitting the matter to the High Court to decide the writ petition afresh on the basis of the pleadings on the record. [Para 15][189-D]**

- E **CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2544-2545 of 2019.**

From the Judgment and Order dated 06.10.2015 of the High Court of Judicature at Allahabad in Writ Petition-A No. 29473 of 1999 and order dated 09.03.2016 in Review Application No. 421500 of 2015.

- F **Vishwajit Singh, Pankaj Singh, Ms. Ridhima Singh, Mrs. Veera Kaul Singh, Ms. Vijaya Singh (for M/S. Vidhi International), Advs. for the Appellant.**

Sanjay Kumar Tyagi, Ajay Kumar Pandey, Sandeep Singh, Advs. for the Respondents.

- G **The Judgment of the Court was delivered by
ASHOK BHUSHAN, J. 1. Leave granted.**

- H **2. These two appeals have been filed against judgment of the Allahabad High Court dated 06.10.2015 dismissing the Writ Petition No.29473 of 1999 and order dated 09.03.2016 rejecting Review Application No.421500 of 2015 filed by the appellant.**

3. Brief facts of the case necessary to be noticed for deciding the appeals are:

The appellant claims to be appointed on 02.08.1991 by the Management of Jawaharlal Nehru Smarak Post Graduate College (Affiliated to Gorakhpur University, Gorakhpur. The appellant's case is that an advertisement was issued on 22.06.1991 in the newspaper-Hindi Dainik, Gorakhpur in response to which he applied for the post of Professor Defence Studies. The Registrar of the University nominated an expert for appointment. By its letter dated 09.10.1991, based on the recommendation of the Selection Committee dated 22.07.1991 the appointment of the appellant was approved on ad hoc basis by the University for a period of six months or until a regular teacher is selected by the Commission, whichever was earlier. By a subsequent letter dated 29.11.1991 ad hoc appointment of appellant was re-approved until a candidate duly selected by the Selection Commission takes charge on the post. The appellant's further case is that by letter dated 09.02.1996 a post of Lecturer Military Science was created in the College. Appellant's case was that he received salary from the College till April, 1998 and thereafter due to the dispute between Committee of Management his salary was not paid. Writ Petition No.29473 of 1999 was filed by the appellant in the High Court seeking a writ of mandamus commanding the respondents to pay salary to the petitioner on month to month basis as Lecturer, Military Science and not to interfere in the functioning of the petitioner as Lecturer, Military Science. An interim order was passed on 20.07.1999 in pursuance of which salary was started being paid to the appellant.

4. A counter-affidavit was filed by Assistant Director of Education in the writ petition where the claim of the appellant was refuted and it was mentioned that the claim of the appellant had already been rejected by order dated 28.07.2005. It was pleaded that although appellant claimed his appointment as ad hoc Lecturer, Military Science on 02.08.1991 whereas post for Military Science was created only on 09.02.1996. The State has no liability to pay salary in view of the provision of the U.P. State Universities Act, 1973, Section 60E and 60A(vi). It was also pleaded that the petitioner was not appointed following the due procedure. The writ petition was dismissed by the Division Bench vide its judgment dated 06.10.2015. The High Court referred to paragraph 3(h) and 3(i) of the counter-affidavit and paragraph 6 of the rejoinder-affidavit of the

A
B

C

D

E

F

G

H

- A petitioner. The High Court held that the appointment made without advertisement is void. Challenging the order dated 06.10.2015 an SLP was filed by the appellant in this Court. The SLP was dismissed by this Court on 30.11.2015 by following order:
- B "Learned counsel for the petitioner says that there is an error apparent on the face of the record inasmuch as there is no paragraph 3(i) in the counter affidavit filed by the State Government nor is there any paragraph 6 of the rejoinder affidavit, as quoted in the impugned order. He says that he would like to file a review petition.
- C Liberty granted.
- The special leave petition is dismissed as withdrawn.
- In case, the review petition is dismissed, the petitioner is at liberty to challenge the impugned order before this Court."
- D 5. After the above order of this Court dated 30.11.2015 the appellant filed a review application in the High Court. The review application has been dismissed by the High Court by a non-speaking order dated 09.03.2016. The appellant aggrieved by the order dismissing the review application as well as the main judgment dated 06.10.2015 dismissing the writ petition has filed these two appeals.
- E 6. Shri Vishwajit Singh, learned counsel for the appellant submits that the writ petition was dismissed by the High Court by referring to pleadings in some other writ petition. In the writ petition filed by the appellant, counter-affidavit was filed by one Dr. R.R. Yadav which is brought on the record of these appeals as Annexure-P14. In the counter-affidavit, there are no paragraphs 3(h) and 3(i) whereas the High Court in the impugned judgment dated 06.10.2015 referred to paragraphs 3(h) and 3(i) of the counter-affidavit and reply of the said paragraphs of the counter-affidavit in paragraph 6 of the rejoinder-affidavit as quoted in the impugned judgment was different.
- F 7. Learned counsel submits that in the review application appellant has taken grounds pointing out apparent error but the review application was rejected without considering the said grounds. Learned counsel for the appellant submits that before the appointment of the appellant vacancy was advertised, copies of one of the advertisements dated 22.06.1991 in Hindi Dainik is filed as Annexure P-1. He submits that appellant has
- H

already filed a writ petition in the High Court for his regularization being Writ Petition No.1704(SB) of 2013 which is pending at Lucknow Bench of the Allahabad High Court. Learned counsel for the appellant submits that the appellant has been working for more than two decades the High Court committed an error in dismissing the writ petition without adverting to the facts and pleadings of the appellant's writ petition.

A

8. Learned counsel for the State refuting the submission of the appellant contends that the appointment of the appellant was not made following procedure as prescribed in law. He submits that the High Court has rightly dismissed the writ petition of the appellant.

B

9. We have considered the submissions of the parties and perused the records.

C

10. The appellant claims ad hoc appointment on the post of Lecturer, Military Science in a Post Graduate College Affiliated to the Gorakhpur University. The submission of the learned counsel for the appellant is that paragraphs of the counter-affidavit i.e. 3(h) and 3(i) as well as paragraph 6 of the rejoinder-affidavit in the writ petition which has been referred to and relied by the High Court for dismissing the writ petition are not present in the counter-affidavit filed to the writ petition of the appellant and the rejoinder-affidavit filed by the appellant. The appellant has brought on the record the copy of counter-affidavit as Annexure-P14. In the counter-affidavit has paragraph 3 upto subparagraph 'g.' only. There are no paragraphs 3(h) and 3(i) in the counter-affidavit of Dr. R.R. Yadav, Assistant Director in the Directorate of Higher Education, U.P., Allahabad filed in the writ petition filed by the appellant. In the judgment of the High Court paragraph 6 of the rejoinder-affidavit has been extracted which was claimed to be reply to paragraph 3(h) and 3(i). The appellant filed rejoinder-affidavit in his writ petition which is brought on record as Annexure-P15. In paragraph 6 of the rejoinder-affidavit filed by the appellant following has been pleaded by the appellant:

D

E

F

"6. That in reply to the contents of paragraph No.3(c) of the counter-affidavit it is submitted that the petitioner was appointed on 06.08.1991 as Lecturer in Military Science and against the said post the petitioner was adjusted and the petitioner was continuing her salary and getting the salary and all emoluments including the G.P.F. and financial approval has been granted by

G

H

- A the Respondent No.1 For kind consideration of this Hon'ble Court a true copy of the order of financial approval dated 12.11.2001 granted by the Respondent No.1 is being filed herewith and is marked as Annexure No.R.A.-2 to this Rejoinder Affidavit.”
11. The paragraph 6 of the rejoinder-affidavit as quoted in the
- B impugned judgment dated 06.10.2015 is entirely different. As noted above, before this Court an SLP was filed by the appellant in which the above argument was addressed and this Court dismissed the SLP by permitting the appellant to withdraw the SLP to file a review petition before the High Court. A review application being No.421500 of 2015 was filed where following grounds apart from other grounds have been taken:
- C “1. Because there is an error apparent on the face of the record inasmuch as there is no paragraph 3(i) in the counter-affidavit filed by the Respondent No.01 and 02 jointly nor is there any paragraph 6 of the rejoinder-affidavit, as quoted in the impugned order dated 06.10.2015.
- D 2. Because there is an error apartment on the fact of the petitioner and issue date of appointment letter did not match with the record of the writ petition No.29473 of 1999 as mentioned in impugned order dated 06.10.2015.
- E 3. Because it is relevant to state here before the Hon'ble Court that the petitioner's writ petition No.29473 of 1999 disposed by the Hon'ble Court without hearing and examine the facts and evidence of the petition. The impugned order dated 06.10.2015 is the same copy of order passed on 06.10.2015 in writ petition No.29474 of 1999 (Dr. Triyogi Nath vs. Director of Higher Education & others), while date & events regarding the appointment and contents of counter-affidavit, rejoinder-affidavit & supplementary affidavit are absolutely different.”
- F
- G 12. Although above grounds specifically were taken by the appellant in the review application but the High Court by non-speaking order rejected the review application on 09.03.2016. As per the liberty earlier granted to the appellant he has again come up in these appeals challenging both the orders of the High Court.
- H 13. From the records it appears that along with the Writ Petition No. 29473 of 1999 filed by the appellant another writ petition being

No.29474 of 1999 (Dr. Triyogi Nath vs. Director of Higher Education & others) was connected and heard. It appears while deciding writ petition of the appellant the paragraph 3(h) and 3(i) of the counter-affidavit and paragraph 6 in Writ Petition No.29474 of 1999 has been referred to.

14. The High Court unless looks into the facts of the appellant's case and pleadings made therein the writ petition could not have been decided. It is relevant to notice that the error committed by the High Court in deciding the writ petition on 06.10.2015 was brought into the notice of the High Court by filing detailed review application after withdrawing SLP from this Court but the review application was dismissed by non-speaking order without adverting to the specific grounds raised in the review application. We are of the view that the judgment of the High Court deciding Writ Petition No.29473 of 1999 without referring to the pleadings in the writ petition i.e. pleadings in the counter-affidavit and rejoinder-affidavit, cannot be upheld.

15. We are of the view that ends of justice would be served in setting aside the judgment and order of the High court dated 06.10.2015 and 09.03.2016 and remitting the matter to the High Court to decide the writ petition afresh on the basis of the pleadings on the record. We make it clear that in the facts and circumstances of the case we have neither adverted to the merits of the claim of the appellant nor have expressed any opinion on the merits of the claim. The High Court shall now proceed to decide the writ petition afresh on merits in accordance with law. It goes without saying that claim of petitioner for payment of salary or claim for regularization as pending in W.P.No.1704(SB) of 2013 shall be dependent on the outcome of Writ Petition No.29473 of 1999. The judgment dated 06.10.2015 and order dated 09.03.2016 are set aside. The appeals are disposed of accordingly.