

BASIC SHIKSHA PARISHAD AND ANR.

A

v.

SMT. SUGNA DEVI AND ORS.

DECEMBER 12, 2003

[S. RAJENDRA BABU AND RUMA PAL, JJ.]

B

*Service Law :*

*U.P. Basic Education Act, 1972 :*

*Basic Education—Services of teacher—Termination of—Without serving termination order—Validity of—Held : The services of a validly appointed teacher could not be terminated without serving the termination order—Termination set aside.*

C

*Limitation Act, 1963 :*

D

*Section 22—Continuing breach and torts—Cause of action—Salary recurring every month—Held : Cause of action was continuing—Hence, question of limitation did not arise.*

**Respondent No. 1 was appointed as an Assistant Teacher by the then President of the District Board. Respondent No. 1 was on long leave, consequent to her prolonged illness, and after she rejoined, her services were terminated without any termination order. The representations made by respondent No. 1 were of no avail. In the meanwhile Basic Education was taken over by the Basic Shiksha Parishad from Zila Parishad vide U.P. Basic Education Act, 1972.**

E

F

**Respondent No. 1 filed a claim before the State Public Services Tribunal, which was rejected on the grounds that the claim was barred by limitation and that respondent No. 1 could not prove that she was validly appointed by the President District Board.**

G

**The High Court allowed the writ petition filed by respondent No. 1 holding that she was working as a teacher, that as the salary was recurring every month the cause of action was continuing and, therefore, the claim was not barred by limitation. Hence the appeal.**

H

**A Dismissing the appeal, the Court**

**B HELD : 1. The competent authority duly appointed respondent No. 1 as an assistant teacher and she was prevented from joining, as a teacher after leave. Once no order of termination or dismissal is produced, the services of respondent No. 1 has to be treated as stood transferred to the Basic Education Board by operation of law. In that event, she has to be treated as continuing in service and salary was accruing every month that accorded her a continuing cause of action. Therefore, the question of limitation also will not arise in this case.**

**[762-G-H]**

**C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3957 of 1998.**

**D From the Judgment and Order dated 29.7.97 of the Allahabad High Court in W.P. No. 8585 of 1986.**

**E Subodh Markandeya, Mrs. Chitra Markandeya and Ms. Feroza Bano for the Appellants.**

**E Manoj Swarup, Ms. Lalita Kohli and R.N. Pandey for the Respondents.**

**F The Judgment of the Court was delivered by**

**F RAJENDRA BABU, J. : Whether the Respondent No. 1 - Smt. Sugna Devi could be considered as a teacher employed by the Petitioner No 1 - Basic Shiksha Parishad, Allahabad (UP) is the short question for consideration in this matter.**

**G Respondent No. 1 maintained the case that she was appointed as an Assistant Teacher in Kanya Pathshala, Mallawan in district Gonda on 22/03/1966 by the then President of District Board Gonda. Subsequently she was transferred to Paraspur. Later she was transferred back to Mallawan. Consequent to her prolonged illness she took leave between July 1970 and 14/05/1971 and thereafter between July 1971 and 29/12/1971. When she returned on 30/12/1971 the Headmistress told her**

**H that she was terminated from services. But she was not served with any**

termination orders. She was told by the Headmistress to approach the Zila Parishad to seek for a transfer. Accordingly she placed representation before the Chairman, Zila Parishad for transferring her to another school. Several follow up reminders for this representation was sent. By the time vide UP Act No. 34/1927 the Basic Education was taken over by the Basic Shiksha Parishad from Zila Parishad. Thereafter Respondent No. 1 approached District Basic Education Officer, Secretary Basic Shiksha Parishad and even the Minister and made several representations. Thereafter, she filed a Claim Petition before the UP Public Services Tribunal.

Basic Shiksha Parishad maintained the stand that she was never been their employee and since she could not produce any documents that could authenticate the factum of her service the case has to be rejected as a concocted one. Learned Tribunal found that since she could not prove that the President of District Board Gonda validly appointed her or she was working as a teacher the Claim Petition was rejected both on grounds of prolonged delay and on merits.

She preferred a Writ Petition challenging the Tribunal's order before the High Court. Along with the Writ Petition she annexed all the documents that were relied upon by her before the Tribunal. By the time she also filed an application before the Basic Shiksha Adhikari to furnish her copies of all the relevant documents such as salary / pay bills, vouchers etc. Though the Basic Shiksha Adhikari had directed to furnish all the documents required by her, the Record In-Charge refused to give it to her under one pretext or another. At the outset the High Court noted that these documents were not made available either to the Tribunal or to the High Court.

Primarily the High Court relied upon the documents filed by Respondent No 1 such as - the document that proves the payment of Rs. 80 as arrears, her transfer orders, joining reports, letter of Adhyaksha calling upon her to present her testimonials etc. and found that she was working as a teacher. High Court also noted that that the Zila Parishad has not disputed *Sugna Devi's* case nor was there any valid reason on record that shows that she was not working as a teacher. Another pertinent finding of the High Court is that once the name of a staff was found in the list, the Basic Education Board was under legal obligation to give reasons or explanation as to under what circumstances or for what reasons the services

A of that staff was not treated to have been transferred under the mandatory provisions of Section 9(1) of the Act. This was not complied in the case of Respondent No 1. Hence her service was considered as transferred to the Basic Shiksha Parishad. For these reasons the High Court set aside the findings of the Learned Tribunal and held that she had continued to be in service. Due to the fact that the salary was recurring every month the cause of action was continuing. Therefore the finding of the Tribunal on account of bar of limitation was also held to be erroneous. Considering all these facts the High Court ruled that Sugna Devi is entitled to salary for three preceding years before the date of superannuation to be computed on the basis of revised pay scales as existing at the time of her retirement. By this finding the Writ petition was allowed. This judgment is impugned before us.

The only point for consideration is whether the Respondent No. 1 was in service or not on the relevant date. The Tribunal only on the basis that she was not able to produce the appointment letter ruled that she was never in service. On the other hand the High Court relied on documents like transfer orders and joining reports found that she was validly in service. There is also positive evidence to the effect that she was paid arrears during the relevant period. All this goes to show that the President of District Board appointed her as a teacher and she was working as one. Therefore the finding of the Tribunal is difficult to subscribe. We uphold the view adopted by the High Court and hold that Respondent No. 1 was appointed as a teacher. By virtue of the enactment of UP Basic Education Act, 1972 her service was transferred to the Basic Shiksha Parishad. Since her services were never terminated, why her name was missing from the list of transferred employees has to be explained by the Appellant No. 1. In contrast, Appellant No. 1 strongly maintained the stand that she was never in service. In the facts and circumstances of this case we find it difficult to accept this contention. Failing which, the case of the Respondent No. 1 that the competent authority duly appointed her as an assistant teacher and she was prevented from joining, as a teacher after leave has to be accepted. Once no order of termination or dismissal is produced, her service has to be treated as stood transferred to the Basic Education Board by operation of law. In that event she has to be treated as continuing in service and salary was accruing every month that accorded her a continuing cause of action. Therefore the question of limitation also won't arise in this

case. In this context the view adopted by the High Court is perfectly justified. We don't propose to interfere. The view of the High Court that Respondent No. 1 is entitled to compensation equivalent to the salary for the three preceding years before the date of superannuation on the basis of revised pay is also quite reasonable. A

Accordingly we dismiss this Petition. The High Court order shall be given effect to within a period of three months from today. B

V.S.S.

Appeal dismissed.