

VISHNU SHARAN PANDEY

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v.

JOINT DIRECTOR OF EDUCATION & ORS.

(Civil Appeal No. 9097 of 2014)

SEPTEMBER 23, 2014

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[T. S. THAKUR AND R. BANUMATHI, JJ.]

Constitution of India, 1950 :

Art. 226 – Writ petition – Involving seniority of Lecturers and ad hoc appointment of Principal of an Inter College – High Court observing that appellant was continuing as a Lecturer by obtaining a fraudulent order, directed him to refund the entire salary paid to him from the specified date – High Court ought to have called upon the parties to produce all the materials pertaining to earlier litigations and examined the effect of those orders on the appointment of appellant – Matter remitted to High Court to examine the issues enumerated in the judgment – Service law.

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Allowing the appeal and remitting the matter to High Court, the Court

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HELD : Any finding on the correctness of the appellant's appointment seriously affects his right. The High Court, while proceeding to examine the correctness of the order dated 4.2.1991, ought to have called upon the parties to produce all the materials pertaining to the earlier litigations and examined the effect of those orders on the appointment of the appellant. Instead of this Court by itself examining the issues, it would be better if the matter is remitted back to the High Court to examine the same. Accordingly, the impugned order passed by the High Court is set aside and the matter is remitted back to it for consideration afresh. [Para13-15][1279-A-B; 1279-E-G]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9097 of 2014.

From the Judgment and Order dated 15.11.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 8512 of 2002.

B S.R. Singh, Sr. Adv., Sushant Kumar Yadav, Ms. Asha Gopalan Nair, Advs. for the Appellant.

Manoj K. Mishra, Vijay Pratap Singh, K.S. Rana, Advs. for the Respondents.

C The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

D 2. This appeal arises out of judgment dated 15.11.2006 passed by the Allahabad High Court in CMWP No. 8512/2002 in and by which the High Court has quashed the Order dated 4.2.2002 passed by the Joint Director of Education, Gorakhpur and held that the 3rd respondent was senior to the appellant for holding the post of adhoc Principal and also held that the Order dated 4.2.1991 passed by District Inspector of Schools, Deoria, as relied upon by the appellant is a fraudulent one and directing recovery of the entire salary paid to him for the period subsequent to 24.7.1976.

E 3. Appellant claims to have been appointed on temporary basis as a Lecturer in Sociology in 5th respondent -college on 1.10.1972 and was appointed in the substantive post on 1.01.1973. The appointment of the appellant as a Lecturer in Sociology and his continuance had a chequered career for about two decades. CMWP No.8512/2002 was filed by the appellant in the High Court, mainly raising the issue of seniority for holding the post of adhoc Principal of the 5th respondent college. Dr. Laloo Pathak, Principal of 5th respondent - Inter College died on 13.6.1999, while still in service and on his demise, the post of principal became vacant from 13.6.1999. The Managing Committee by its Resolution

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No. 2 dated 13.6.1999, decided to appoint the senior most lecturer, Sri Lal Mohan Singh- 4th respondent, on the post of principal on adhoc basis and the same was sent to the authorities for approval. The Managing Committee of 5th respondent – college changed its earlier resolution dated 13.06.1999 and sent another decision appointing 3rd respondent– Dr. Prem Sunder Singh as the officiating principal and thus the matter of appointment on the vacant post of principal has been under dispute. A Writ Petition No. 39747/ 1999 was filed by Dr. Prem Sunder Singh in the Allahabad High Court and the High Court directed the parties to approach the concerned authorities. Accordingly, District Inspector of Schools, Deoria heard 3rd and 4th respondents and upon perusal of the representation and the documents produced by them by Order dated 21.10.1999, ordered that Sri Lal Mohan Singh – 4th respondent being the senior most lecturer of the college is entitled to take charge as officiating principal.

4. Challenging the order of District Inspector of Schools, Deoria and claiming that he being the senior is entitled to take charge as officiating principal, the appellant filed appeal before the Joint Director of Education, Gorakhpur. The Joint Director of Education afforded opportunity to the appellant and also heard 3rd and 4th respondents and thereafter, passed a detailed order dated 4.2.2002, declaring that the 3rd respondent- Dr. Prem Sunder Singh is the senior most lecturer in 5th respondent–college and is entitled to hold the charge as officiating principal. The above Order of the Joint Director of Education dated 4.2.2002 was challenged by the appellant in CMWP No.8512/2002, contending that he is senior to respondents 3 and 4 and claiming that he is entitled to hold the post of adhoc principal in 5th respondent college. In the writ petition, the High Court had gone into the question of legality of the appointment of the appellant and his continuance as a Lecturer of Sociology in 5th respondent - college and observed that the appellant was able to obtain a fraudulent order dated 4.02.1991, on the basis of which he has been

A receiving salary from the State. On the above findings, the High Court directed the appellant to refund the entire salary paid to him for the period subsequent to 24.7.1976 and in case the same is not refunded, the same was to be recovered from him as arrears of land revenue.

B 5. Mr. S.R. Singh, learned senior counsel appearing for the appellant submitted that the issue involved in the writ petition was the question of seniority of the rival parties as to, who was to be appointed as adhoc principal in 5th respondent college. Therefore, High Court was not justified in reopening the question regarding the validity of the appellant's appointment as a lecturer in the institution and had erred in holding that the appellant's appointment as a Lecturer in Sociology was not a valid one. Learned Senior Counsel further submitted that the order of Deputy Director of Education dated 24.11.1978 was passed on the misconception that Sociology was not a recognized subject in the 5th respondent college; but as per Order dated 8.8.1972 of the Secretary of U.P. Board of High School and Intermediate Education, the subject Sociology was sanctioned in the 5th respondent-college and by virtue of the Order of District Inspector of Schools, dated 4.2.1991 the appellant rightly rejoined the post and the said order dated 4.2.1991 has attained finality. It was further submitted that the various orders passed by Courts and the authorities were not considered by the High Court and without so doing, the High Court erred in saying that the appellant obtained an illegal and fraudulent order of appointment and ordering recovery of salary.

G 6. Learned counsel for the respondents, supporting the order of the High Court, submitted that the appellant managed to obtain the order dated 4.2.1991 from the District Inspector of Schools and before passing the order, neither any notice was issued to the concerned parties nor District Inspector of Schools has considered the effect of the orders and the appellant cannot rely upon the said order dated 4.2.1991.

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7. We have given our thoughtful consideration to the rival A
submissions and carefully perused the materials on record.

8. In Writ Petition No.8512/2002 before the High Court, B
what was under challenge was the order dated 4.2.2002
passed by the Joint Director of Education and the issue
involved was the question of seniority of the appellant and
respondent Nos. 3 and 4 and as to who was entitled to be
appointed as adhoc principal of the 5th respondent-college. C
But the High Court appears to have mainly focussed the
discussion on the validity of the appointment of the appellant
and the order dated 4.2.1991.

9. The order dated 4.2.1991 passed by District Inspector
of Schools (DIS) has been held to be fraudulent by the High
Court mainly on two grounds:- firstly, in the teeth of the order
of the Deputy Director of Education dated 24.11.1978, passed D
on the premise that the subject 'Sociology' was not a
recognized subject in the 5th respondent college. Secondly,
the order dated 4.2.1991 was passed by the then District
Inspector of Schools, on the eve of his retirement without
hearing the 5th respondent- management and the concerned E
authorities.

10. Appellant contends that the subject 'Sociology' was
then a recognized subject in the 5th respondent-college and
he was appointed in the substantive post on 1.1.1973 and
confirmed on the said post on 1.1.1974. Per contra, 5th F
respondent college contends that 'Sociology' was not a
recognized subject in 5th respondent college and the Managing
Committee terminated the appellant from service finding that
the appointment of the appellant was illegal by the order dated
21.2.1976. The appellant challenged the termination order G
by filing Writ Petition No.1265/1976 which was dismissed by
Order dated 15.3.1978 on the ground of availability of
alternative remedy. The appeal filed by the appellant before
the Deputy Director of Education, VIth Region, Gorakhpur

A came to be dismissed by the order dated 24.11.1978, on the premise that Sociology was not a recognized subject.

B 11. Ever since 1976, there had been a spate of litigation between the appellant and the Management and the authorities. According to the appellant, he filed a case bearing
C No. 397/1982 in the Court of Munsif-Magistrate, Deoria. In the said case, Sri Nageshwar Nath Srivastava—Assistant in the Intermediate Education Board is said to have produced the document paper No.453 of his Office and letter No.11325 dated 8.8.1972 as per which the 5th respondent—college was given
D recognition for intermediate examination as well as recognition for some subjects including Sociology. The said letter No.I.v./ Recognition/11325 Allahabad dated 8.8.1972 is placed on record as Annexure-P/1 filed in SLP paperbook.

D 12. The appellant had also filed Writ Petition being CMWP No.1915/1983, which was disposed of by order dated 28.3.1984 directing the appellant to approach the concerned authorities. Pursuant to the said order, the appellant submitted his representation dated 11.4.1984 to the Deputy Director of
E Education praying to recall his earlier order dated 24.11.1978. Further case of the appellant is that the said representation dated 11.4.1984 was forwarded to District Inspector of Schools, who upon consideration of all the materials, passed the Order dated 4.2.1991. The learned Senior Counsel for the
F appellant submitted that the said Order dated 4.2.1991 was acted upon by the authorities and the 5th respondent-college and the said order has attained finality.

G 13. Since the Order dated 4.2.2002 passed by the Joint Director of Education was under challenge in CMWP No. 8512/ 2002, it is not known whether the various orders pertaining to the appointment of the appellant were placed on record before the High Court. It appears that the High Court had not gone into the nuances of the spate of litigations between the appellant and the Management and the effect of the orders

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passed in those litigations. Any finding on the correctness of the appellant's appointment seriously affects the right of the appellant. While the High Court proceeded to examine the correctness of the order dated 4.2.1991, in our view, the High Court ought to have called upon the parties to produce all the materials pertaining to the earlier litigations and examined the effect of those orders on the appointment of the appellant. We find many issues arising between the parties remain unanswered and many areas remaining obscure.

14. Upon consideration of rival submissions and the materials, the following among other issues arise for consideration:- (a) Whether the subject 'Sociology' was then a recognized subject in 5th respondent college and whether the appellant was appointed in a substantive post; (b) the effect of decree and orders passed in Case No.397/1982, W.P.No.1915/1983, C.S.No.66/1991 and W.P.No.31716/1991 vis-à-vis the order dated 24.11.1978 passed by Deputy Director of Education and order dated 4.2.1991 passed by District Inspector of Schools; (c) whether the Order dated 4.2.1991 was acted upon by all concerned including the 5th respondent-management and the authorities and whether the said order has attained finality as contended by the appellant; (d) whether the appellant has been actually working from 4.2.1991. We are of the view that instead of this Court by itself examining the above issues, it would be better if the matter is remitted back to the High Court to examine the same.

15. In the result, the impugned order dated 15.11.2006, passed by the High Court in CMWP No.8512/2002 is set aside and the appeal is allowed. The matter is remitted back to the High Court for consideration of the matter afresh in the light of the above discussion. The High Court shall afford an opportunity of hearing to all concerned and proceed with the matter afresh. Considering the age of the appellant and the fact that the writ petition is of the year 2002, we request the

- A** High Court to expedite the hearing and dispose of the same at an early date, preferably within a period of nine months from the date of receipt of the copy of this Order. We make it clear that we have not expressed any opinion on the merits of the matter. In the facts and circumstances of the case, no order
- B** as to costs.

Rajendra Prasad

Appeal allowed and
matter remitted back to High Court.