

Mata Pher Pandey and Another Rajinder Singh

Vs

State of U. P. and Others

Civil Appeal Nos. 125 And 869 of 1988

21.07.1994

ORDER

Civil Appeal No. 125 of 1988.

1. The teachers in the High School and Intermediate College in the State of U. P. went on strike from 22-12-1977. The Government issued a notification under the U. P. Essential Services Maintenance Act, declaring the strike illegal and calling upon the striking teachers to resume their duties on or before 5-1-1978. Against this notification, the striking teachers approached the High Court by a writ petition and the High Court extended the time for resumption of duties to 9-1-1978. It appears that by that date, all teachers except 2257 of them resumed their duties. During the interval between 9-1-1978 and 19-1-1978 on which date the remaining 2257 teachers also resumed the duties, some teachers like the appellants in the present case, were recruited. After the resumption of the services by all the teachers, the services of the teachers like the appellants were terminated. Subsequently the Government issued an Ordinance on 24-6-1978 creating a reserve pool of teachers like the appellants. The Ordinance provided that the teachers from the reserve pool would be appointed to the substantive vacancies which may occur anywhere in the State and unless all the teachers in the reserve pool were appointed, others would not be appointed or promoted to the relevant posts.

2. Against this Ordinance creating the reserve pool, the association of the teachers in service. viz., U. P. Madhyamik Shikshak Sangh approached the High Court by way of a writ petition and the High Court by its judgment of 22-12-1978 struck down the Ordinance as being discriminatory and violative of the rights of the regular teachers. Against the said decision, the teachers in the reserve pool preferred various appeals as well as writ petitions in this Court which were decided by this Court by a common judgment delivered on 27-7-1984 in Prabodh Verma v. State of U. P. This judgment took stock of all the events which had occurred ever since the strike and in particular of the fact that during the period between the date of the termination of the services of the reserve pool teachers pursuant to the decision of the High Court on 22-12-1978 and the date of the said decision of this Court on 27-7-1984, several teachers were appointed in the substantive vacancies and some of them were also confirmed. Hence although this Court set aside the decision of the High Court and held that the Ordinance creating the reserve pool of teachers was valid, while granting relief to the appellants/petitioners whose services were illegally terminated, the Court observed and moulded the relief as follows : (SCC pp. 287-292).

"48. The record is not clear whether U. P. Ordinance No. 22 of 1978 was in fact withdrawn by the Governor under Article 213(2) (b) of the Constitution nor has any notification to that effect been brought to our notice. It is, however, unnecessary to consider the above submissions as, in our opinion it is immaterial whether U. P. Ordinance No. 22 of 1978 was withdrawn by the Governor or had ceased to operate

because, according to us, what is involved here is a far more vital and important principle. Undoubtedly, a teacher in the reserve pool had a right under U. P. Ordinance No. 10 of 1978 as also under U. P. Ordinance No. 22 of 1978 to be appointed to a substantive vacancy occurring in the post of a teacher in a recognised institution which was to be filled by direct recruitment. The Explanation to Section 4 of both the Ordinances is not relevant for this purpose for all that was provided by it was that no teacher in the reserve pool was entitled to claim an appointment to a post which he had joined during the period of the strike or to any post carrying the same or a higher grade. What this Explanation meant was that no reserve pool teacher could claim that he should be appointed to the identical post which he had held during the period of the strike or to such post either in the same recognised institution or in any other recognised institution whether it carried the same grade or a higher grade. What is required to be noted is that the right which these teachers had under Ordinance No. 10 of 1978 continued under U. P. Ordinance No. 22 of 1978 because that Ordinance came into force with retrospective effect from 24-6-1978, that is, the date on which U. P. Ordinance No. 10 of 1978 was promulgated and by Section 8 of U. P. Ordinance No. 22 of 1978 which repealed U. P. Ordinance No. 10 of 1978 it was expressly provided that anything done or any action taken under U. P. Ordinance No. 10 of 1978 should be deemed to have been done or taken under U. P. Ordinance No. 22 of 1978 as if U. P. Ordinance No. 22 of 1978 were in force at all material times. The register of reserve pool teachers maintained under U. P. Ordinance No. 10 of 1978 must, therefore, be deemed to be a register of reserve pool teachers to be maintained under U. P. Ordinance No. 22 of 1978. As appears from the judgment of the High Court in the Sangh case, as against 2257 reserve pool teachers there were at that time 2740 substantive vacancies in recognised institutions. These vacancies were required to be filled by direct recruitment. This fact is not disputed before us. But for the orders of the High Court, all reserve pool teachers would, therefore, have been appointed in accordance with the provisions of either U. P. Ordinance No. 10 of 1978 or U. P. Ordinance No. 22 of 1978. They could not be so appointed by reason of the interim orders passed by the Allahabad High Court and the judgment of that High Court in the Sangh case. Where a court has passed an interim order which has resulted in an injustice, it is bound at the time of the passing of the final order, if it takes a different view at that time, to undo that injustice as far as it lies within its power. Similarly, where an injustice has been done by the final order of a court, the superior court, if it takes a different view, must, as far as lies within its power, seek to undo that injustice. Great prejudice has been suffered and injustice done to those reserve pool teachers who had not been appointed to substantive vacancies which had occurred in the posts requiring to be filled by direct recruitment. Since we have held that the Sangh case was wrongly decided, it is our duty to undo this injustice. There are, however, certain difficulties in directing these teachers to be appointed from the dates on which they would have been respectively appointed but for the orders of the High Court because those vacancies have already been filled and in all likelihood those so appointed have been confirmed in their posts and ought not to be now thrown out therefrom for no fault of theirs. In view of this fact, we feel that it would be in consonance with justice and equity and fair to all parties concerned if the remaining teachers in the reserve pool are appointed in accordance with the provisions of U. P. Ordinance No. 22 of 1978 to substantive vacancies in the posts of teachers in recognised institutions which are required to be filled by direct

recruitment as and when each such vacancy occurs.

49. What we have said above will apply equally to those reserve pool teachers whose services were terminated and who had not filed any writ petition or who had filed a writ petition but had not succeeded in obtaining the stay order as also to those reserve pool teachers who had not been appointed in view of the interim orders passed by the High Court and thereafter by reason of the judgment of the High Court in the Sangh case and who have not filed any writ petition.

50. To summarize our conclusions :

#(1)-(19) * * *##

(20) In view of the fact that the vacancies to which these reserve pool teachers would have been appointed have already been filled and in all likelihood those so appointed have been confirmed in their posts, to appoint these reserve pool teachers with effect from any retrospective date would be to throw out the present incumbents from their jobs for no fault of theirs. It will, therefore, be in consonance with justice and equity and fair to all parties concerned if the remaining reserve pool teachers are appointed in accordance with the provisions of U. P. Ordinance No. 22 of 1978 to substantive vacancies occurring in the post of teachers in recognised institutions which are to be filled by direct recruitment as and when each such vacancy occurs.

(21) This will equally apply to those reserve pool teachers whose services were terminated and who had not filed any writ petition or who had filed a writ petition but had not succeeded in obtaining a stay order, as also to those reserve pool teachers who had not been appointed in view of the interim orders passed by the High Court and thereafter by reason of the judgment of the High Court in the Sangh case and who have not filed any writ petition."

3. From a reading of the aforesaid observations and conclusions in paragraphs 48, 49 and 50(20), 50(21), it is clear that this Court tried to adjust the equities between the two sets of teachers, viz., the reserve pool teachers and those who were appointed in their place during the period between 22-12-1978 and 27-7-1984, it gave a clear direction that those who were appointed during the said period, were not to be disturbed by appointing in their place the reserve pool teachers, even if their services were illegally terminated pursuant to the decision of the High Court. An exception, however, was made in the case of those reserve pool teachers who were continuing in service on the date of the decision of this Court.

4. Coming now to the facts relating to the appellants in the present case, it is not disputed before us that pursuant to the decision of the High Court on 22-12-1978, the services of the appellants were terminated on 30-6-1979. They filed a writ petition being No. 1685 of 1979 before the High Court on 13-7-1979 and the High Court initially granted an ex parte stay which was later vacated on 19-9-1979. The petition which remained pending was ultimately decided on 28-1-1985 after the decision of this Court in Prabodh Verma case. The fact, however, remains that from 19-9-1979 till the decision of this Court in Prabodh Verma case, on 27-7-1984, they were not in service. Hence as per the directions of this Court in that case, they were not entitled to the continuity of service. They are required to stand in queue as reserve pool teachers for appointment in the vacancies arising after 27-7-1984. We are informed that appellant 2 viz., Rajinder Kumar Trivedi was in fact offered such employment on 13-1-1989, but he did not accept it. Appellant 1 is yet to be offered a post.

5. It further appears that after the High Court passed its final order on 28-1-1985, in Writ Petition No. 1685 of 1979 filed by the appellants, the Management preferred an appeal against the said order in this Court being CA No. 2697 of 1985. That appeal was disposed of on 15-7-1985, directing that the directions given by this Court in Prabodh Verma case should be followed.

6. It appears that pursuant to the order dated 28-1-1985 of the High Court, the District Inspector passed an order on 11-7-1985 directing the respondent-Management to offer employment to the appellants and to stop the salary of Respondents 4 and 5 who are the teachers appointed between 22-12-1978 and 27-7-1984. Against the said order, the said teachers as well as the Management preferred writ petitions in High Court being Writ Petition Nos. 4017 of 1985 and 5560 of 1985 respectively. Both these writ petitions were disposed of by a common order dated 22-5-1987 which is impugned in the present case. By the impugned order, the High Court has given the following directions :

"In the result, the two writ petitions succeed and are allowed and the orders of the District Inspector of Schools dated 5-6-1985 and 11-7-1985 (Annexures 10 and 11 respectively) in Writ Petition No. 4077 of 1985 are hereby quashed as also the orders dated 25-9-1985 (Annexure 12), and 27-9-1985 (Annexure 13) and 5-6-1985 (Annexure 7) to the Writ Petition No. 5560 of 1985 passed by the District Inspector of Schools, Rae Bareilly, stand quashed. Let a writ of certiorari issue accordingly. As indicated hereinabove, opposite parties, Mata Pher Pandey and Rajendra Kumar Trivedi, opposite parties 4 and 5 in Writ Petition No. 4017 of 1985 who are opposite parties 2 and 3 in Writ Petition No. 5560 of 1985 will be appointed by the District Inspector of Schools, Rae Bareilly under the provisions of the U. P. Ordinance 22 of 1978 to substantive vacancies in the post of teachers in recognised institutions which are required to be filled in the direct recruitment as and when such vacancy occurs provided they have been brought on the register of reserve pool teachers in accordance with law. The petitioners shall also be entitled to get their salary and to work on the posts which were held by them without any break at the time of the presentation of the writ petition. It is, however, made clear that in case the aforesaid opposite parties, Mata Pher Pandey and Rajendra Kumar Trivedi, have actually worked and received their salary, they will not be called upon to refund the amount received by them. This is in consonance with the directions of their Lordships of the Supreme Court in the decision dated 8-5-1986 passed in petition for Special Leave to Appeal (Civil) No. 2890 of 1980 which is on the record of Writ Petition No. 4017 of 1985."

7. It will appear from the above directions, that they are in terms of the direction given by this Court in Prabodh Verma case that the teachers like the appellants are to be accommodated in the substantive vacancies occurring after 27-7-1984 which are required to be filled in by direct recruitment provided they have been brought on the register of reserve pool teachers in accordance with law. The High Court also directed that Respondents 4 and 5 herein who were the appellants there were entitled to get their salary and to work on the posts which were held by them without any break.

8. Against the said decision, the present appeal is filed by the appellants who are the reserve pool teachers and were the opposite parties in the said writ petitions before the High Court. Mr. O. P. Sharma learned counsel appearing for the appellants contended that the directions given by this Court in Prabodh Verma case make a distinction between those teachers who were appointed

between 22-12-1978 and 27-7-1984 and confirmed, and those though appointed, were not confirmed in their posts. It is only the employment of those who were confirmed, which was protected, according to him. Hence, he urged that the appellants can be deemed to be in service with effect from the date from which the non-confirmed teachers were appointed and the appellants should be given all the benefits on the said basis. His second contention was that when the appellants were appointed during the strike period, they were appointed to the substantive vacancies and, therefore, their services could not have been terminated in the manner done. The second contention has already been dealt with by this Court in Prabodh Verma case and hence it is not necessary to deal with it here. Suffice it to say that, although this Court held that the Ordinance creating the reserve pool and giving preference to the reserve pool teachers was valid, while moulding the relief, the court took notice of the fact that in the meanwhile, others were appointed. Hence, notwithstanding that the appointments were to the substantive posts, although temporarily they could not be given the relief which Mr. Sharma urges us now in this appeal to give them.

9. As regards the first contention we find that the manner in which Mr. Sharma wants us to read the directions given by the High Court is inconsistent with the tenor of the entire reasoning given by the Court in paragraphs 48, 49 and 50(20) and 50(21) of the judgment. The observation, viz., "that in the meanwhile some of them might have already been confirmed" has been made only to show the extent of complications and inequity and injustice that may be caused to the teachers who had already been appointed. The said observations do not make any distinction between the confirmed and the non-confirmed teachers as alleged by Shri Sharma for the purpose of terminating the services of the latter to give advantage to the teachers from the reserve pool. We, therefore, reject the contention and hold that the impugned order of the High Court is in consonance with the observations made and directions given by this Court.

10. It appears that during the pendency of the present appeal an interim order was passed on 16-12-1987 whereby the appellants were directed to be paid their salary from the date of the judgment of the High Court as well as the current salary. Hence the appellants have been in receipt of their salary from 22-5-1987 till date. Admittedly, they have not worked during all this period. On the contrary appellant 2 refused to accept the employment. In terms of the decision of this Court, the appellants were only entitled to the vacancies occurring after 27-7-1984 which is the date of the decision of this Court. Thus, we have a case here where the appellants are in receipt of their salary till date without doing any work. This is a case which is almost opposite to the case with which we are going to deal hereafter. Hence the appeal is dismissed with costs. Each of the appellants will be (sic liable to pay) cost to the respondent-Management in the sum of Rs. 10,000.

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11. The facts in this case are different from those in the aforesaid appeal. In this case, the appellant's services were terminated on 29-6-1979 pursuant to the High Court's decision on 22-12-1978. The appellant approached the High Court by a writ petition and the High Court by its order of 26-7-1979 stayed the order of termination of his services. This order was not challenged. Subsequently, the appellant's writ petition was allowed by the High Court on 27-3-1985 confirming his continuation in service and the interim order passed on 26-7-1979. It appears that pursuant to the interim order of stay granted by the High Court on 26-7-1979, the District Inspector of Schools also wrote a letter on 27-8-1981 to the Management requiring it to abide by the order of stay. This letter was not given effect to. Again, pursuant to the final order of the High Court on 27-3-1985, the District Inspector of Schools addressed two more letters on 7-5-1985 and 11-7-1985 calling upon the management to offer employment to the appellant. Pursuant to these letters ultimately, the Management

condescended to employ the appellant and addressed two letters to him on 23-7-1985 and 21-8-1985, but offering him a fresh employment which was inconsistent with the order of stay passed by the High Court. This offer of employment was not accepted by the appellant. It appears that to one of the two writ petitions, viz., Writ Petition No. 5560 of 1985 disposed of by the High Court by the impugned judgment, the appellant was a party. However, the High Court has not dealt with the facts of the appellant's case anywhere in the decision nor has it referred to his case in the final directions given therein with the result that his case has gone by default.

12. In the aforesaid special facts concerning the appellant which are distinct from the facts relating to the appellants in the appeal which has already been disposed of, there is no doubt that his case is squarely covered by the direction given by this Court in Prabodh Verma case relating to those of the reserve pool teachers who had continued in service on the date of the said decision. This being the case, he will be entitled to the continuity of service from the beginning, viz., from the date when he was first appointed on 27-10-1978 from the reserve pool under the Ordinance of 24-6-1978. The question, however, still remains as to what relief should be given to him in the circumstances obtaining since admittedly he has not worked from 26-7-1979 till date. It would be stretching the equities too far to require the Government or the Management to pay his salary for the entire period. While, therefore, we direct that he should be reinstated in service within four weeks from today and should be given continuity in service for all purposes, we direct that he should be paid a sum of Rupees one lakh and five thousand in lieu of all arrears of his salary and the costs of this appeal. The payment should be made within eight weeks from today. The appeal is allowed accordingly.

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