

SUPREME COURT OF INDIA

Kisan Inter College Manager

Vs.

State of Uttar Pradesh

C.A.No.7532-7533 of 2019

(L.Nageshwara Rao and Hemant Gupta,JJ.,)

04.10.2019

JUDGMENT

L.Nageswara Rao,J.,

SLP(C)No.17450-17451 of 2017

1. The regularization of the service of Respondent No.5- Shri Ram Mani Pandey as L.T. Grade Teacher in the Appellant-College is the subject matter of the above Appeals.

2. The Appellant-College is an aided College which is recognized by the State of Uttar Pradesh. The post of L.T. Grade Assistant Teacher (Maths) fell vacant due to the promotion of Shri Hari Prasad Pathak as Lecture (Civics) from L.T. Grade Assistant Teacher. Respondent No.5 was appointed as L.T. Grade Assistant Teacher on 31.12.1984 in the resultant vacancy caused by the promotion of Shri Hari Prasad Pathak. The appointment of Respondent No.5 as L.T. Grade Assistant Teacher was not approved as the procedure prescribed under the U.P. Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder was not followed. The College stopped payment of salary to Respondent No.5 in July, 1985. Writ Petition No.18046 of 1985 filed by Respondent No.5 seeking continuance of service and payment of salary was disposed of by the High Court on 22.11.1985 with a direction to pay salary to Respondent No.5. Respondent No.5 was permitted to continue till a regular teacher was appointed. Shri Hari Prasad Pathak was sought to be reverted from the post of Lecturer (Civics) as L.T. Grade Assistant Teacher in view of his promotion being found irregular. Respondent No.5 filed a Writ Petition No.2775 of 1986 challenging the reversion of Shri Hari Prasad Pathak. The High Court by an order dated 22.11.1985 dismissed Writ Petition No.2775 of 1986 filed by Respondent No.5 questioning the reversion of Shri Hari Prasad Pathak on the ground that he does not have locus standi. Thereafter, the Appellant informed Respondent No.5 on 29.07.1988 to join and start working on the post of L.T. Grade Assistant Teacher.

3. The advertisement issued by the Board for filling up the post of Lecturer (Civics) on 14.10.1988 was challenged by Shri Hari Prasad Pathak in Writ Petition No.30808 of 1992.

The High Court directed continuance of Sri Hari Prasad Pathak in the post of Lecturer (Civics) till further orders. Yet another advertisement was issued for filling up the post of Lecturer (Civics) was subject matter of Writ Petition No.2044 of 1992 filed by Shri Hari Prasad Pathak. By an Order dated 14.10.1992, the High Court stayed the selection process pursuant to the advertisement issued in 1992. The third attempt to fill up the post of Lecturer (Civics) was challenged in Writ Petition No.19691 of 1995 filed by Shri Hari Prasad Pathak and Respondent No.5. The High Court granted an interim order in Writ Petition No.19691 of 1995 on 24.07.1995 and directed that Shri Hari Prasad Pathak and Respondent No.5 may be permitted to continue in their respective posts till further orders. Pursuant to the order, Shri Hari Prasad Pathak and Respondent No.5 were permitted to discharge their duties as Lecturer (Civics) and L.T. Grade Assistant Teacher respectively till 2008. They were also paid salary for the said period. On 28.11.2008, Shri Hari Prasad Pathak was regularized on the post of Lecturer (Civics) w.e.f. 07.10.1983. The District Inspector of Schools (for short "the DIOS") by an order dated 16.06.2009 directed the payment of arrears of salary to the 5th Respondent from 01.01.1985. As the Appellant objected to the payment of salary to Respondent No.5, an enquiry was conducted in which it was found that Respondent No.5 had been working continuously as L.T. Grade Assistant Teacher from 01.01.1985 and the Order dated 16.06.2009 of the DIOS, Basti was found to have been properly issued.

4. Writ Petition No.19691 of 1995 filed by Shri Hari Prasad Pathak and Respondent No.5 challenging the advertisement dated 19.06.1995 for filling up the post of Lecturer (Civil) was disposed of by the High Court by a judgment dated 31.03.2010. The High Court took notice of the fact of regularization of the services of Shri Hari Prasad Pathak as Lecturer (Civics) w.e.f. 07.10.1983. Respondent No.5 was permitted to file a representation for regularization of his service as L.T. Grade Assistant Teacher. The High Court permitted Respondent No.5 to continue in service till a decision is taken on his request for regularization. The request made by Respondent No.5 for regularization was accepted by the Regional Level Committee, Basti. By an order dated 31.07.2010, the Regional Level Committee held that Respondent No.5 was appointed on 01.01.1985 as L.T. Grade Assistant Teacher and he continued to work in the said capacity since then. The regularization of the services of Respondent No.5 was challenged by the Appellant in Writ Petition No.50312 of 2010. The judgment of the High Court dated 31.03.2010 in Writ Petition No.19691 of 1995 directing the consideration of regularization was challenged by the Appellant by filing Special Appeal before the Division Bench of the Allahabad High Court.

5. In the meanwhile, the Appellant initially suspended Respondent No.5 on 28.08.2010 and later terminated his services on some allegations. The said order of termination was disapproved by the Selection Board which directed re-instatement of Respondent No.5 in service by an Order dated 16.02.2013. As the Appellant was not complying with the direction of the Selection Board, Respondent No.5 filed a Writ Petition No.24051 of 2013 seeking direction to the Appellant to take him back.

6. The learned single Judge of the Allahabad High Court heard all the Writ Petitions

together. Writ Petition No.50312 of 2010 filed by the Appellant assailing the regularization order in favour of Respondent No.5 was allowed. Writ Petition No.24051 of 2013 filed by Respondent No.5 seeking a direction to permit him to join was dismissed along with Writ Petition Nos. 18046 of 1985, 2775 of 1989 and 22891 of 1989 filed by Respondent No.5.

7. Respondent No.5 filed four Special Appeals against the judgment of the learned single Judge. Special Appeal No.1297 of 2013 was filed against the judgment in Writ Petition No.24051 of 2013 pertaining to the permission granted to Respondent No.5 to resume his duties in compliance of the Order passed by the Selection Board. Writ Petition No.18046 of 1985 filed by Respondent No.5 related to the claim of continuity of service and payment of salary. Special Appeal No.1289 of 2013 was filed against the dismissal of the said Writ Petition No.18046 of 1985. Another connected Writ Petition No.22891 of 1989 relating to the payment of salary and arrears was the subject matter of challenge in Special Appeal 1299 of 2013. Special Appeal No.1300 of 2013 was filed against the judgment in Writ Petition No.50312 of 2010 in which the regularization of Respondent No.5 was challenged by the Appellant. The Special Appeals filed by Respondent No.5 were allowed by a Division Bench of the High Court. Review Applications filed by the Appellant were dismissed. Therefore, these appeals.

8. An interim order was passed by this Court on 09.03.2018 staying the impugned judgment of the High Court due to which Respondent No.5 was not paid his salary. During the pendency of these Appeals, Respondent No.5 attained the age of superannuation in March 2019.

9. The crucial point to be considered is whether Respondent No.5 worked between 1984 to 1995 for being eligible to be considered for regularization. The Appellant contended that Respondent No.5 did not discharge his duties as L.T. Grade Teacher during that period. A detailed enquiry that was conducted by the DIOS, Basti was in favour of Respondent No.5 in which it was found that he worked continuously from 01.01.1985. The services of Respondent No.5 were regularized on the basis of the said enquiry report. There is no reason to differ with the findings of the High Court that the 5th respondent was eligible for regularization as per the provisions of Uttar Pradesh Secondary Education Services Commission Act, 1982. The Appellant cannot be permitted to dispute the claim of Respondent No.5 that he had actually served in the School during the disputed period i.e. between 1984 and 1995.

10. Shri Hari Prasad Pathak was regularized in the post of Lecturer (Civics) on 28.11.2008 w.e.f. 07.10.1983. There is no dispute about the existence of a regular vacancy in the post of L.T. Grade Teacher thereafter. The order of regularization of the service of Respondent No.5 was wrongly set aside by the learned single Judge without taking into account the impact of the Order dated 31.03.2010 in Writ Petition No.196191 of 1995. In the said Order, the High Court held that the claim for regularization of Respondent No.5 has to be considered by the Regional Level Committee. The order of regularization was passed after taking into account all relevant material. By taking note of the findings recorded in the enquiry report dated 06.05.2009, the Division Bench directed continuation of

Respondent No.5 in service with all consequential benefits. In view of the conflicting claim relating to service rendered by Respondent No.5 between 1985 and 1995, the stand of the Government assumes importance. The counter affidavit filed by the Government indicates that there were endorsements made by the Appellant itself by letters dated 29.07.1988 and 17.04.2009 that Respondent No.5 had continued in the service since 1985. That apart, the clear stand of the Government is in favour of Respondent No.5. The relief granted to Respondent No.5 is dependent upon the service rendered by him for a period of 10 years between 1985 to 1995 to enable him to claim regularization according to Uttar Pradesh Secondary Education Services Commission Act, 1982. In view of the enquiry report dated 06.05.2009 and the endorsement of the Management in their letters dated 29.07.1988 and 17.04.2009, it is clear that Respondent No.5 had actually worked during 1985 to 1995 and he was eligible for being considered for regularization of his service as LT Grade Teacher. The order of regularization dated 31.07.2010 was rightly upheld by the Division Bench.

11. For the aforementioned reasons, we see no error committed by the High Court. The Appeal(s) are accordingly dismissed.