

SUPREME COURT OF INDIA

State of Uttar Pradesh

Vs.

Ali Hussain Ansari

C.A.No.314 of 2020

(S.Abdul Nazeer and Sanjiv Khanna,JJ.,)

15.01.2020

JUDGMENT

Sanjiv Khanna,J.,

SLP(Civil)No.18627 of 2019

1. Leave granted.

2. State of Uttar Pradesh and its functionaries have filed the present appeal challenging the judgment dated 19.07.2018 passed by the High Court of Judicature at Allahabad, whereby the Division Bench has dismissed their appeal and affirmed the order dated 04.01.2018 passed by the learned Single Judge directing grant of consequential benefits in the form of post-retirement benefits with seniority in service and promotion(s), if any, but not actual payment of salary for the period between 08.06.1987 to 30.06.2006. The Division Bench by the impugned judgment has thereby affirmed the finding regarding continuation of service treating the first respondent's initial date of appointment as 08.06.1987 and directed that the period between 8.6.1987 till the date of actual joining on 30.06.2006 shall be counted for the purpose of consequential benefits, including pensionary benefits, albeit would be excluded for payment of back wages.

3. Having heard counsel for the parties, we feel, in view of peculiar facts and on balance of equities, the directions regarding the post-retirement benefit etc. as granted requires a modification.

4. Ali Hussain Ansari, the first respondent before us, was recommended for appointment as Assistant Teacher in Satya Prakash Vivekanand Inter College, Musahari, Deoria, Uttar Pradesh on ad hoc basis. However, the Committee of Management in the said college, the second respondent before us, did not agree and consequently did not issue an appointment letter. They issued an advertisement dated 08.07.1987 for direct recruitment to the post. The names registered with the Employment Exchange were to be included. One Shesh Mani Shukla, upon selection, was appointed and a letter dated

11.09.1987 was written to the District Inspector of Schools, Deoria for approval. However, the District Inspector of Schools, Deoria declined and did not grant approval vide his letter dated 10.12.1987 stating inter alia that the selection of Shesh Mani Shukla was contrary to the provisions of Uttar Pradesh Secondary Services Commission (Removal of Difficulties) Order, 1981. By order dated 20.04.1988, the District Inspector of Schools, Deoria refused to grant financial approval for appointment of Shesh Mani Shukla. Aggrieved with the stand taken by the District Inspector of Schools, Deoria, Shesh Mani Shukla assailed these orders in Writ Petition No. 14530/1988 before the High Court of Judicature at Allahabad. By the interim order dated 27.01.1992, the appellants before us, including District Inspector of Schools, Deoria and the second respondent were directed to pay salary to Shesh Mani Shukla. Therefore, and in terms of the interim directions, Shesh Mani Shukla had worked and was paid salary till 23.04.2004, when the High Court was pleased to dismiss the Writ Petition filed by him. Aggrieved, Shesh Mani Shukla had preferred Special Appeal No. 590 of 2004 which was dismissed by the Division Bench of the High Court on 22.02.2006. The appeal against this judgment was also dismissed by this Court in C.A. No. 4966 of 2009 vide judgement dated 31.07.2009.

5. Thereupon, the first respondent was issued appointment letter and was appointed as Assistant Professor on 30.06.2006 after the competent authority, that is, the District Inspector of Schools, Deoria had issued order dated 31.07.2006. The first respondent retired from service on 30.06.2009 on attaining the age of superannuation.

6. On or about 01.05.2008, the first respondent had filed Writ Petition No. 221012 of 2008 before the High Court seeking payment of arrears of salary from 08.06.1987 till 30.06.2006. This Writ Petition was disposed of by order dated 01.05.2008 of the learned Single Judge with a direction to the District Inspector of Schools, Deoria to consider and decide the representation made by the first respondent. The District Inspector of Schools, Deoria vide order dated 20.05.2009 rejected the representation for payment of arrears of salary on the principle of “no work no pay”. Aggrieved, the first respondent had preferred Writ Petition No. 11131 of 2010 which was disposed of vide judgment dated 04.01.2018 directing that the first respondent would be entitled to consequential benefits including pension benefits with effect from 08.06.1987. We have already referred to the order in Special Appeal Defective No. 416 of 2018 passed by the Division Bench which has dismissed the appeal holding inter alia that the respondent would be entitled to retirement benefits treating him to be in service with effect from 08.06.1987 with seniority and benefit of promotion(s), if any, for the purpose of payment of retirement benefits. However, actual salary was not to be paid on the principle of “no work no pay”.

7. From the fact recorded above, it is apparent that Shesh Mani Shukla upon selection and appointment had filed a Writ Petition in 1988 and worked as an Assistant Professor till 2004. This was in view of the interim directions issued by the High Court. The salary was also paid to Shesh Mani Shukla as the Assistant Professor. The first respondent though recommended for the vacant post of Assistant Teacher was never issued an appointment letter and was not appointed and had not worked till he joined the post on 30.06.2006. After working for three years, he retired on 30.06.2009. Keeping in view the aforesaid

peculiar factual position, we would modify the directions given by the Court on the payment of retirement benefits with a direction that the first respondent would be paid an amount of Rs. 4,00,000/- (rupees four lakhs only) as compensation. This compensation would be in addition to any other benefits which would be payable to the first respondent in accordance with law treating his date of appointment as 30.06.2006. The aforesaid sum of Rs.4,00,000/- (rupees four lakhs only) would be paid by the appellant within a period of six weeks from the date of this order and in case of delay of payment, the appellant would be liable to pay interest @ 10% per annum from the date of this order. The appeal is accordingly disposed of.