
(2010) 4 AWC 3482 : (2010) 124 FLR 613

Allahabad High Court

Case No: C.M.W.P. No. 53721 of 2009

Kamlesh Kumar Tiwari

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Oct. 28, 2009

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (2010) 4 AWC 3482 : (2010) 124 FLR 613

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Sudhir Agarwal, J.

Earlier the petitioner was engaged as part time teacher for a period of one year on contract basis in the year 2006. It is

said that after expiry of the aforesaid period, the contract was extended year to year basis. The same ultimately expired in the session 2008-09.

2. It is submitted by the learned Counsel for the petitioner that he has made representation to the respondent No. 4 for renewal of his contract for

the session 2009-10 but the same has not been granted. However. I find no merit. The part time teachers appointed on contract basis for a tenure

would cease to hold the office by efflux of time, i.e., on the expiry of the period for which appointment was made. Learned Counsel for the

petitioner could not show any legal right vested in him for renewal of his contract till regularly selected candidate is available. In the absence of any

legal right to claim renewal of the contract of personal service, no writ of mandamus can be issued to the respondents Nos. 2 to 4 for such purpose.

It is a well-settled that in order to seek a writ of mandamus, a litigant has to show that he has a legal right and the respondents have corresponding

legal obligation to do or not to do an act. In absence of any statutory provision conferring a right upon the petitioner to seek renewal of contract of

personal services, it is difficult to accept the contention of the petitioner that a mandamus be issued to the respondents to make such renewal. It is

well-settled that a writ of mandamus would lie only if the petitioner is enforcing a legal right and the respondents are under a statutory obligation to

do or not to do something but have failed to do so.

3. In *Oriental Bank of Commerce Vs. Sunder Lal Jain and Another*, decided on 8.1.2008, the Apex Court after referring to its earlier Judgments

in *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, *Lekhraj Satramdas, Lalvani Vs. Deputy*

Custodian-cum-managing Officer and Others, and *Dr. Uma Kant Saran v. State of Bihar* 1993 (1) SCC 485, observed as under:

There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty

imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ

is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officer exercising public functions within the

limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown

that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance....

4. Learned Counsel for the petitioner could not show any such statutory legal duty cast upon the respondents or conferring a statutory legal right on

the petitioner which could be enforced by issuing a writ of mandamus as prayed for by the petitioner. In view thereof, no such relief can be

granted.

5. Moreover, in cases pertaining to enforcement of right which is of contractual nature, it would be appropriate to refer the Apex Court's decision

in National Highway Authority of India Vs. Ganga Enterprises and Another, wherein the Apex Court has held as under:

It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases

of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.,

and Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, This is settled law. The dispute in this case was regarding terms

of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr. Dave, however, relied upon the cases

of Verigamto Naveen Vs. Government of Andhra Pradesh and Others, and Harminder Singh Arora Vs. Union of India (UOI) and Others, These,

however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a

matter of contract only. Thus, on the ground of maintainability the petition should have been dismissed.

6. In the circumstances, I do not find any good ground to grant any relief to the petitioner. Dismissed.