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Rameshwar Prasad Shukla Vs District Inspector of School and Another

Special Appeal No. 176 of 2012

Court: Allahabad High Court

Date of Decision: Jan. 25, 2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 27 Rule 1, 79#Constitution of India, 1950 â€" Article 200, 226

Citation: (2012) 5 ADJ 127

Hon'ble Judges: Syed Rafat Alam, C.J; Ran Vijai Singh, J

Bench: Division Bench

Advocate: Ashok Kumar Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

1. This intra-Court has been preferred against the judgment and order dated 16.12.2011 passed by the learned Single Judge in Writ Petition No.

18190 of 1987 by which the appellant''s appointment was found contrary to the provisions of law and the writ petition was dismissed. Heard

learned counsel for the appellant and also perused the order of the learned Single Judge impugned in this appeal.

2. We are of the view that the order of the learned Single Judge does not suffer from any error and, therefore, we have no reason to disagree with

the view taken by him. The law in this regard is well settled. The Hon''ble Supreme Court in AIR 1998 91 (SC) , has already held that an interim

order passed in a pending proceeding merges into final order and, therefore, even if on the strength of the interim order passed in the writ petition,

the appellant continued in service, that does not confer any right to claim continuance in service on the ground that a sympathetic view ought to

have been taken since the appellant continued for a long period under the interim order of this Court.

3. It is well settled that justice has to be dispensed in accordance with law and equity and sympathy shall have no place or overriding effect over

the statutory provisions. The Apex Court in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, ,

has held as under:

... Justice according to law is a principle as old as the hills-The Courts are to administer law as they find it, however, inconvenient it may be.

The Courts should endeavour, to find out whether a particular case which sympathetic considerations are to be weighed foils within the scope of

law. Disregardful of law, however, bard the case may be, it should never be done...

4. In the case of Raghunath Rai Bareja v. Punjab National Bank, (2007) 1 AWC 507 (SC), the Apex Court has observed :

...It is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with Latin maxim "dura lex

sed lex", which means the law is hard, but it is the law". Equity can only supplement the law but it cannot supplant or override it.

... what is administered in the Courts is justice according to law, and considerations of fair play and equity however they may be, must yield to

clear and express provision of the law.

5. The matter may be examined from another angle also. The petitioner-appellant, claiming himself to be the Assistant Teacher in C.T. Grade in a

recognized aided institution, has filed the writ petition for payment of salary. The salary of teachers and other employees of a recognized aided

institution are payable under the provisions of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other

Employees) Act, 1971. Under the aforesaid Act, it is the responsibility of the State Government to pay the salary of the teachers and employees of

the aided recognised institution. The petitioner-appellant, without impleading the State Government, filed the writ petition. It is well settled that if an

employee files a writ petition claiming salary from the State exchequer, then the State being a necessary party has to be impleaded and in the

absence of impleadment of the State, no direction can be issued against the State and the writ petition would not be maintainable. The Apex Court

in the case of Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, , has held as under:

It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of

the Union. The appellant challenged that order. Any order which can be passed by any Court would have to be enforced against the Union. The

General Manager or any other authority acting in the Railway administration is as much a servant of the Union as the appellant was in the present

case.

6. The Union of India represents the Railway administration. The Union carries administration through different servants. These servants all

represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order

which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of

India, and not on any servant of the Union. Therefore, from all points of view, the Union of India was rightly held by the High Court to be a

necessary party. The petition was rightly rejected by the High Court.

7. A similar question with regard to impleading the State came up for consideration before the Apex Court in Chief Conservator of Forests, Govt.

of A.P. Vs. The Collector and Others, , wherein it was held that in view of Article 200 of the Constitution of India, the Government of India and

also the Government of State may sue or be sued by the name of Union of India or by the name of State respectively. The Apex Court had also

considered the provisions of Section 79 of the CPC and Rule 1 of Order 27 C.P.C. and held as under:

A plain reading of Section 79 shows that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case

may be, in the case of the Central Government, the Union of India and in the case of the State Government, the State, which is suing or is being

sued.

Order 27 of Rule 1, as mentioned above, deals with suits by or against the Government or by officers in their official capacity. Rule 1 of Order 27

C.P.C. says that in any suit by or against the Government, the plaint or the written statement shall be signed by such person as the Government

may by general or special order appoint in that behalf and shall be verified by any person whom the Government may so appoint.

8. In view of above, we are of the view that since the petitioner-appellant filed the writ petition claiming salary from the State exchequer, therefore,

he ought to have impleaded the State as a party and in the absence of the State as a party in the writ petition, the writ petition itself was not

maintainable.

9. We, therefore, do not find any reason to differ with the view taken by the learned Single Judge. The appeal is, accordingly, dismissed.

10. At this stage, learned counsel for the appellant submits that the amount of G.P.F. and other dues payable to the appellant are still lying with the

Department. He further submits that there is apprehension of initiation of a proceeding for recovery of the amount of salary already paid by the

respondents. However, the aforesaid apprehension has not been substantiated by bringing any material on record. Besides that, in the event, if such

proceedings are initiated, that will be a fresh cause of action and it will always be open to the appellant to approach the appropriate Court

challenging such action/ order but that cannot be a basis to interfere with the order of the learned Single Judge. The appeal, therefore, being with

out merit, is dismissed.