

(2010) 11 AHC CK 0248

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 31933 of 2005

Sunil Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 24, 2010

Citation: (2011) 7 ADJ 238

Hon'ble Judges: S.P. Mehrotra, J; Pankaj Mithal, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. We have heard Sri Dharmendra Kumar Pandey, Learned Counsel for the Petitioner, and the learned Standing Counsel appearing for the Respondent Nos. 1 and 2, and perused the record.

2. The present Writ Petition has been filed by the Petitioner making the following prayers:

(A) Issue a writ order or direction in the nature of Mandamus directing the opposite party Nos. 1 and 2 to appoint the Petitioner, either at K.P. Training College Allahabad or D.B.S. College Kanpur.

(B) Issue any other and further writ order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(C) Award the cost of the Writ Petition to the Petitioner.

It appears that an advertisement dated 26th April, 2002 (Annexure 1 to the Writ Petition) was issued by the Respondent No. 1, inter alia, inviting applications for appointment on the post of Lecturer in the subject of Shiksha Shastra (B. Ed.). Pursuant to the said advertisement, the Petitioner applied and was selected for appointment on the post of Lecturer in the subject of Shiksha Shastra (B. Ed.) as per the select list dated 24.11.2004 (Annexure 3 to the Writ Petition). By the communication dated 2nd April, 2005 (Annexure 5 to the Writ Petition) issued by the

Respondent No. 1, the Petitioner was given posting at D.S.N. College, Unnao. The Petitioner thereupon filed the present Writ Petition before this Court seeking the reliefs as mentioned above. This Court passed the following interim order on 25.4.2005:

Issue notice.

Because the private Respondents have already joined their posts at Allahabad, therefore, this application cannot be heard ex parte in respect of the post at Allahabad. However, if the Petitioner joins at Unnao, such joining will not prejudice his claim in this writ petition.

3. Another order was passed on 25.4.2005 in the Writ Petition permitting the Petitioner to implead the persons posted at Allahabad as Respondents No. 6 to 11 in the Writ Petition, and notices were directed to be issued to the said private Respondents. However, no steps were taken by the Petitioner for issuance of notices as per the order dated 25.4.2005 passed by the Court on the Writ Petition as is evident from the office reports dated 4.6.2005 and 16.9.2005.

4. It appears that the Petitioner did not join at Unnao as mentioned in the order dated 25.4.2005.

5. A Counter-affidavit, sworn on 14th December 2005, was filed on behalf of the Respondent No. 1. In paragraphs 3a and 6 of the Counter-affidavit, it was stated as under:

3a. That through the instant Writ Petition the Petitioner has prayed the Hon'ble Court to be pleased to order the relevant Respondents to allot him K.P. Training College, Allahabad or D.B.S. College, Kanpur. It is submitted that vide order No. Degree Arth-1/Ayog/1992/2004-05 dated 2.4.2005 the Petitioner has been allotted D.B.S. College, Kanpur and information in this regard has also been sent to the Petitioner. It is submitted that in this state of facts the Petitioner has, already, been given the relief he has sought through this writ petition, therefore, writ petition has, now become infructuous and deserves to be dismissed on this ground alone.

6. That in reply to the contents of paragraph Nos. 17, 18, 19, 20, 21, 22, 23 and 24 of the writ petition, it is reiterated that the Petitioner has already been allotted D.B.S. College, Kanpur vide letter dated 2.4.2005 of the Directorate of Higher Education U.P., Allahabad. The photocopy of the said letter dated 2.4.2005 is being annexed herewith to this counter-affidavit and marked as Annexure No. C.A-1.

6. The letter dated 2nd April, 2005 annexed as Annexure CA-1 to the counter-affidavit, shows that by the said communication, the Respondent No. 1 posted the Petitioner at D.B.S., College, Kanpur in place of D.S.N. College, Unnao.

7. In paragraphs 3 and 4 of the Rejoinder-Affidavit, sworn on 30th January 2006, the Petitioner has replied to the above-quoted paragraphs of the Counter-affidavit as

under:

3. That, the contents of paragraph Nos. 1 to 7 of the counter-affidavit are wholly irrelevant to decide the controversy involved in this case hence the Petitioner gave option for the first option at Allahabad and second option at Kanpur.

4. That, the prayer made in the writ petition is that he may be permitted to join at Allahabad or Kanpur in alternative. The Petitioner has allowed to join at Kanpur. The Petitioner's merit is such that he should be given preference for first option i.e. at Allahabad.

8. It will thus be seen that by the letter dated 2nd April 2005, the Petitioner was given posting at D.B.S. College, Kanpur, as prayed for by him in the Writ Petition. The averments made in the above- quoted paragraphs of the Rejoinder-Affidavit show that the Petitioner has joined at D.B.S. College, Kanpur in the year 2005 itself. It is not the case of the Petitioner that he joined at Kanpur due to some compulsion or under protest.

9. In view of the above, the prayer made in the Writ Petition by the Petitioner for being posted at K.P. Training College, Allahabad or D.B.S. College, Kanpur stood granted in the year 2005 itself.

10. Subsequently, in the year 2009, an amendment application being Civil Misc. Amendment Application No. 260982 of 2009 was filed on behalf of the Petitioner wherein the Petitioner prayed that he be permitted to substitute prayer (A) made in the Writ Petition by the following prayer:

(a) Issue a writ, order or direction, including a writ in the nature of Mandamus commanding the Respondent No. 1 to issue appointment letter to the Petitioner in respect of K.P. Training College, Allahabad as Lecturer in B. Ed.

In our view, once the relief prayed for in the Writ Petition for being posted at D.B.S. College, Kanpur stood granted, no cause of action remained surviving in the Writ Petition. Therefore, there is no question of permitting the Petitioner to amend the Writ Petition and to seek appointment letter in respect of K.P. Training College, Allahabad as Lecturer in B. Ed. The Amendment Application is misconceived and is rejected.

11. We may further add that once the Petitioner joined the D.B.S. College, Kanpur, the question of posting of the Petitioner pursuant to his selection and appointment ceased to exist. In view of this also, no further relief for appointment/ posting of the Petitioner may be granted to the Petitioner in the Writ Petition.

12. In view of the above discussion particularly in view of the fact that the relief prayed for in the Writ Petition for being posted at D.B.S. College, Kanpur stood granted, no further orders are required to be passed in the present Writ Petition. The Writ Petition stands disposed of accordingly. However, on the facts and in the

circumstances of the case, there will be no orders as to costs.