
**Committee of Management Jain Vidya Mandir Inter College Vs Manu Dutt
Sharma and Others**

Special Appeal No. 88 of 1991

Court: Allahabad High Court

Date of Decision: Dec. 9, 1991

Citation: (1992) 1 AWC 261

Hon'ble Judges: S.D. Agarwala, J; R.R.K. Trivedi, J

Bench: Division Bench

Advocate: B.P. Shukla, for the Appellant;

Final Decision: Allowed

Judgement

R.R.K. Trivedi, J.

This special has been preferred from the order dated 23-9-1991, passed by a learned Single Judge in Civil Misc. Writ

Petition No. 28678 of 1991, filed by Manu Dutt Sharma, Respondent No. 1. Respondent No. 1 filed the aforementioned writ petition for a

direction or order in the nature of mandamus from this Court directing the Respondents to pay salary to him from March, 1991 up to date along

with interest at the current market rate and further to pay salary to him in future and continue to pay the same till he attained the age of

superannuation. The claim of Respondent No. 1 in the writ petition was that he is entitled to continue as lecturer in Economics up to the age of 60

years and as his date of birth is 16-7-1932, he shall retire from service on 15-7-1992 under the provisions applicable to him and as per

Government Orders and since he is entitled to continue up to the end of the academic session, he is entitled to continue on his post up to 30-6-

1993.

2. It appears that there was some controversy regarding the age of superannuation applicable in the case of Respondent No. 1. The Appellant

committee of management Jain Vidya Mandir Inter College Nahtaur, District Bijnor (hereinafter referred to as the Management) which was

Respondent No. 3 in the writ petition, by its order dated 8-4-1991 retired Respondent No. 1 on attaining the age of 58 years which was

questioned by him by filing a writ petition in this Court, which was disposed of by learned Single Judge on 9-7-1991 and the Respondent No. 1

was asked to approach the District Inspector of Schools, Bijnor for the reliefs sought against the action of the Management. The District Inspector

of Schools was directed to decide the representation of the Respondent No. 1 within a period of six weeks. The question relating to the payment

of salary was also to be decided along with the representation. The order of the learned Single Judge has been filed as Annexure I to the writ

petition. The District Inspector of Schools by order dated 31-7-1991 accepted the grievance of the Respondent and found him entitled to remain

in service up to the age of 60 years, being the age of superannuation applicable to him. The Respondent No. 1 was also found entitled for the

salary and other payments. Respondent No. 1 relied on the order of the District Inspector of Schools in the writ petition and the main allegation

was that the Management is flouting the orders passed by the District Inspector of Schools and is creating obstacles in payment of salary. The

learned Single Judge after hearing Learned Counsel for Respondent No. 1 and the learned Standing Counsel disposed of the writ petition with the

finding that the Respondent No. 1 is entitled to continue in service upto the age of 60 years and by virtue of the Government Order he is further

entitled to continue during whole of the academic session. The learned Single Judge further observed that steps shall be taken to pay the salary to

the Respondent No. 1 as early as possible after completing legal formalities required in respect thereof. It is this order passed by the learned Single

Judge which has been challenged in this Special Appeal.

3. The main contention of Learned Counsel for the Appellant is that the committee of management which is Respondent No. 3 in the writ petition,

was a necessary party and the writ petition could not be legally decided without affording an opportunity of hearing. The findings and the

observations recorded are highly prejudicial and cannot be sustained being in violation of the principles of natural justice.

4. Learned Counsel for the Respondent No. 1, on the other hand, contended that the payment of salary is the responsibility of the State of U.P.

under the Payment of Salaries Act and hence it was not legally necessary to hear the committee of management before passing the order impugned

in the present appeal. It was further contended by the Learned Counsel that the order passed on 31-7-1991 by the District Inspector of Schools

has not been challenged by the Appellant committee of management and it has become final. The order was passed by the District Inspector of

Schools in pursuance of the order passed by this Court and under this order the Respondent No. 1 is legally entitled to continue on the post up to

30-6-1993 and consequently he is also entitled to get his salary along with other benefit available to him under law.

5. We have considered the rival contentions advanced on behalf of the parties and in our considered opinion the position of the committee of

management as the appointing authority has not been in any manner shaken or diluted on enforcement of the U.P. High Schools and Intermediate

Colleges (Payment of Salary of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1971). The legislature enacted the aforesaid Act

only to regulate the payment of salaries to teachers and other employees of High School and Intermediate Colleges receiving aid out of the State

funds. The Act aimed at stopping the mischief of exploitation of teachers and other employees serving in such institutions by the Management, but

the legal position of the committee of management as appointing authority of the teachers and other employees remained unaffected. As by order

of the learned Single Judge Respondent No. 1 was being held to be entitled to continue in service as lecturer in Economics in the College, the

committee of management, in our opinion, ought to have been heard before disposing of the writ petition finally by the order dated 23-9-1991. The

committee of management was a necessary party and was to be vitally affected by this order.

6. The second submission of the Learned Counsel for Respondent No. 1 is that in view of the order passed by the District Inspector of Schools

dated 31-7-1991, Respondent No. 1 was legally entitled for the relief granted by the learned Single Judge and no prejudice has been caused to

the Respondent No. 1 as the order of the District Inspector of Schools has not been challenged and has become final. This contention of the

Learned Counsel for the Respondent No. 1 is also devoid of any merit and is not acceptable for two reasons, firstly that the order of the District

Inspector of Schools was passed on 31-7-1991 and as per practice of this Court it could be challenged in this Court by means of a writ petition

within a period of 90 days which was available to the Petitioner up to 31-10-1991. Thus on the date the writ petition was disposed of finally by the

learned Single Judge., the Appellant had still more than a month to approach this Court for challenging the order passed by the District Inspector of

Schools and it could not be legitimately concluded that the order of the District Inspector of Schools became final against the committee of

management. The second reason for not accepting the contention of the Learned Counsel is that the order passed in violation of the principles of

natural justice is itself a serious prejudice and the applicant is entitled for the relief even without showing any further prejudice touching the merits of

the claim. Hon"ble Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, , in para. 24 has concluded as under:

In our opinion the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural

justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of

denial of natural justice is unnecessary. It ill comes from a person who has denied justice with the person who has been denied justice is not

prejudiced as we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is

permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice

but because Courts do not issue futile writs.

7. In our opinion, in the present case the Appellant committee of management ought to have been heard before disposing of the writ petition finally

in favour of Respondent No. 1. The question relating to the correct age of superannuation applicable in case of Respondent No. 1 is a disputed

question of fact and ought to have been decided after hearing the Appellant. The order of the District Inspector of Schools was subject to scrutiny

of this Court and the Appellant could establish in this Court while defending himself in the writ petition that the order of the District Inspector of

Schools is illegal or bad and could not be legally accepted. In these facts and circumstances, in our opinion, the present is not such a case where it

can be said that in view of the admitted or undisputable facts only one conclusion is possible. The question required determination after hearing the

parties.

8. For the reasons recorded above, this appeal is allowed, the order dated 23-9-1991 passed by the learned Single Judge is set aside and the writ

petition shall stand restored to its original number and the parties are relegated to the stage at which the order dated 23-9-1991 was passed.

Office shall list the writ petition before appropriate bench at an early date. There will be no order as to costs.