

(1996) 03 AHC CK 0089

Allahabad High Court

Case No: C.M.W.P. No. 18266 of 1986

Dhanpat Singh and Others

APPELLANT

Vs

Banaras Hindu University and
Another

RESPONDENT

Date of Decision: March 13, 1996

Hon'ble Judges: Paritosh K. Mukherjee, J; Kundan Singh, J

Bench: Division Bench

Advocate: S.N. Singh, R.N. Singh and V.K. Singh, for the Appellant; Sidheshwari Prasad, for the Respondent

Final Decision: Allowed

Judgement

Paritosh K. Mukherjee and Kundan Singh, JJ.

The writ petition is directed against a purported order of reversion, whereby the Petitioners, Dhanpat Singh and two others were sought to be reverted from the post of Senior Library Attendant, on which they were performing since 11.2.1972, by the impugned orders dated 23.9.1986, contained in Annexures 5, 6 and 7, respectively to the writ petition.

2. It is to be noted that by the aforesaid impugned orders, no reasons have been subscribed as to why the promotional orders of the Petitioners have been cancelled unilaterally, which was communicated to the Petitioners by the Registrar, Banaras Hindu University, Varanasi.

3. In the aforesaid communication, the Registrar has communicated to the Petitioners that separate order shall be issued to recover the excess amount drawn by the Petitioners, as a result of erroneous appointment and subsequent confirmation in the post of Senior Library Assistant in the scale of Rs. 260-350, till the date of their reversion to the post of Junior Library Assistant, i.e., with effect from 14.9.1986.

4. At the time of moving of this writ petition, a Division Bench of this Court, consisting of Hon'ble B. D. Agrawal and Hon'ble A. P. Misra, JJ. had passed interim order dated 24.10.1986 to the following extent:

Meanwhile, it is understood, there shall be no recovery made from the Petitioners nor shall they be reverted unless this has been done already.

5. Sri V.K. Singh, learned counsel appearing for the Petitioners formulated three points on assailing the aforesaid impugned orders of reversion.

Firstly, he contended that the Petitioners who had continued in the promotional post with effect from 11.2.1972, till the date of passing of the impugned orders dated 23.9.1986. i.e., after expiry of fourteen years cannot be reverted, without communicating any reason, by treating their appointment on the promotional post as cancelled unilaterally. Learned counsel submitted that the Respondents are guilty of the doctrine of acquiescence, which has been deprecated by Hon'ble Supreme Court, in the case of [The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another.](#)

6. In the next place, learned counsel submitted that the Petitioners being direct recruits cannot be reverted in view of the observations of Hon'ble Supreme Court, in the case of [Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra](#), wherein it has been held as follows:

A direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post from which he was promoted. The order of the State Government reverting the Petitioner, a direct recruit to the post of Assistant Deputy Education Inspector, to the lower post of primary teacher was unsustainable. Decision of Bombay High Court Reversed.

7. Learned counsel also referred to another decision of Hon'ble Supreme Court on the point of direct recruit, in the case of [State of U.P. and others Vs. Smt. Jaya Quddusi](#). In paragraph 5 of the said judgment it has been held that the direct recruit to a post cannot be reverted, as it was done in the facts of that case.

8. Thirdly, on the question of passing of the order for recovery of the alleged excess amount, the learned counsel for the Petitioners referred to another decision of Hon'ble Supreme Court in the case of [Sahib Ram Vs. State of Haryana and Others](#), wherein a Division Bench of Hon'ble Supreme Court, consisting of Hon'ble K. Ramaswamy and N. Venkatachala, JJ., inter alia, observed that since the impugned order is ex facie bad, the question of recovery pursuant to the ex-facie illegal order could not and does not arise.

9. Having gone through the aforesaid decisions of Apex Court cited by learned counsel for the Petitioner and considering that since the Petitioners have enjoyed the interim order dated 24.10.1986, by which the reversion to Junior post as well as the recovery of the excess amount already paid to the Petitioners have been stayed,

we are of the opinion that the instant writ petition is liable to be allowed.

10. Accordingly, the impugned orders dated 23.9.1986 (Annexures 5, 6 and 7), containing the order of reversion as well as recovery of the excess amount already paid to the Petitioners, on the post of Senior Library Attendant, are hereby quashed.

11. Respondents and each one of them are restrained from recovering any amount from the Petitioner in any manner, whatsoever, in view of the decisions of Apex Court cited above as well as of this judgment and orders passed today.

12. Writ petition succeeds and is allowed, in terms indicated above. There shall be no order as to costs.