
(2010) 11 AHC CK 0302

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 38703 of 2006

Guru Narain Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 22, 2010

Acts Referred:

- Constitution of India, 1950 - Article 136, 226

Citation: (2011) 1 ADJ 702 : (2011) 3 AWC 2599 : (2011) 2 UPLBEC 971

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard Sri Vinod Kumar Singh for the Petitioner, learned Standing Counsel for the Respondents and Sri Bhola Nath Yadav holding brief of Sri Ram Krishna Yadav for Respondent No. 6 and perused the record.

2. The order dated 17th April, 2006 passed by the Joint Director of Education, Azamgarh (Annexure No. 7 to the writ petition) is impugned in this writ petition.

3. The Petitioner has sought a writ of certiorari quashing the aforesaid order on the ground that the post of Lecturer in Janta Shiksha Niketan Inter College, Dubari, District Mau (hereinafter referred to as "College") was liable to be filled in by promotion being within promotion quota, but instead of making promotion, the same has been filled in by direct recruitment hence the impugned order is liable to be set aside.

4. It is not in dispute that in the College, 9 posts of Lecturer were sanctioned. Before 30th June, 2003, all the posts were occupied. One Sri Lal Chand Gupta, Lecturer (Hindi) retired on attaining the age of superannuation on 30th June, 2003 causing a substantive vacancy w.e.f. 1st July, 2003. In anticipation of the aforesaid vacancy, the

Management sent requisition to the Secondary Education Services Selection Board on 1st February, 2003 notifying the vacancy to be filled in by a reserved category candidate belong to Other Backward Class. It is no doubt true that in the said requisition, the Management said that all the 9 sanctioned posts are occupied at that time i.e. sending of the requisition, since it was made in anticipation of vacancy occurred on 30th June, 2003. The management simply gave correct factual position that stood on the date of sending requisition. It is also not in dispute that one post fell vacant on 30th June, 2003 due to retirement of Lai Chand Gupta resulting in only 8 posts of lecturer occupied. Out of 8 posts, 5 were already filled in by direct recruitment. The quota for promotion and direct recruitment under the Rules was 50%, hence the post in question ought to be filled in by promotion. The Management was of the view that the post in question ought to have been filled in by a reserved category candidate of OBC. There was only one OBC in the entire remaining 8 lecturers. Since no person of that category was eligible for promotion, it sent its requisition for filling in the said post by direct recruitment. The Petitioner did not challenge the said requisition or staked his claim for filling in the said post by way of promotion. The Commission notified the vacancy, held selection and sent its recommendation on 27th September, 2005 for appointment of Respondent No. 6 on the post of Lecturer in OBC category. The Joint Director of Education issued letter dated 21st December, 2005 after verification of selection of Respondent No. 6 and directed the Management to allow him to join on the post of Lecturer. It is thereafter the Committee of Management on 11th January, 2006 resolved to appoint Respondent No. 6 on the post of Lecturer and he was issued letter of appointment on the same date. The Respondent No. 6 is said to have joined on the post of Lecturer (Hindi) on 16th January, 2006.

5. However, in the meantime, the Management also resolved on 4.12.2005 for promotion of the Petitioner on the post of Lecturer (Hindi) and sent record of said proposal of promotion i.e. resolution on 10th February, 2006 to the office of the Joint Director of Education, Azamgarh without informing that in the meantime it has already allowed Respondent No. 6 to join on the post in question. Further it also appear that after recommendation dated 21st December, 2005 by the Joint Director of Education of appointment of Respondent No. 6 the Petitioner approached this Court by filing Writ Petition No. 3846 of 2006 which was disposed of on 20th January, 2006 directing the Joint Director of Education to consider his representation and pass appropriate order in respect to his claim for promotion. It is pursuant to this judgment dated 20.01.2006, the Respondent No. 3 has passed the impugned order.

6. Learned Counsel for the Petitioner vehemently contended that the post in question ex facie fell in promotion quota and hence could not have been filled in by direct recruitment. There were only 9 posts and the quota of promotion being 50%, it cannot be doubted that at least (sic) posts ought to be filled in by promotion. Since 5 posts of lecturer were already occupied by persons appointed by direct recruitment, apparently the post in question fell within promotion quota. However,

it also cannot be disputed that out of 4 posts liable to be filled in by promotion, since the quota reserved for Other Backward Class stood 27%, one post could have been reserved for Other Backward Class candidate. It is stated that only one lecturer was working in the College belonging to Other Backward Class though he was appointed by direct recruitment, against the vacancy meant for direct recruitment hence the post in question was available for promotion of a reserved OBC candidate. Since none of that category was available for promotion, the management proceeded for direct recruitment.

7. Be that as it may, when the post in question fell within promotion quota and no candidate belonging to OBC was available, the same could have been filled in by appointment of general category candidate by promotion and the Management ought not to have proceeded for filling in the said post by direct recruitment. On this premises, in my view, the issue in the present writ petition being quite simple, this writ petition ought to have been allowed, had the Petitioner approached this Court, well in time, without allowing the rights and interest of third party coming into existence. In other words it is a case of undue delay and laches of almost more than two and a half years, inasmuch as, the post in question fell vacant on 1st July, 2003. The Management sent requisition in February, 2003, to be more precise on 1st February, 2003. It is not the case of the Petitioner that he was not aware of the said requisition having been sent to Commission for making direct recruitment on the said post. The Petitioner kept quiet and decided not to challenge the same. The Commission proceeded with the selection, made its recommendation on 27th September, 2005, which, after verification, was communicated by the District Inspector of Schools on 21st December, 2005 to the management directing it to appoint Respondent No. 6 on the post of Lecturer (Hindi) within 16 days. The management thereafter issued letter of appointment to the Respondent No. 6 pursuant to its resolution dated 11th January, 2006 and appointed him. He joined on 16th January, 2006. The earlier writ petition filed before this Court was disposed of on 20th January, 2006. It does not appear that therein the Petitioner has disclosed this fact that Respondent No. 6 had already been appointed on the post of Lecturer (Hindi). Consequently, the writ petition was disposed of directing the authorities to consider Petitioner's claim but this direction would not cover up the delay and laches on the part of the Petitioner in not challenging requisition sent on 1st February, 2003 for more than two and a half years. For the post in question, it was not stated that he was not aware of this requisition. As a result thereof, he allowed the entire selection to be completed by the Commission, resulting in the selection of Respondent No. 6 and recommendation in his favour for appointment. All this exercise ultimately resulted in creating rights and interest of Respondent No. 6 for appointment after having participated in such long going selection made by the Commission only because the Petitioner could not stake his claim for promotion on the post in question within reasonable time.

8. It is now well settled that even if there is some error, this Court in exercise of its power under Article 226 of the Constitution is not bound to interfere in case it finds that the Petitioner is guilty of undue delay and laches which has resulted in creation of third party's interest.

9. Delay and laches constitute substantial reason for disentitling relief in equitable jurisdiction under Article 226 of the Constitution of India. In [New Delhi Municipal Council Vs. Pan Singh and Others](#), the Apex Court observed that after a long time the writ petition should not have been entertained even if the Petitioners are similarly situated and discretionary jurisdiction may not be exercised in favour of those who approached the Court after a long time. It was held that delay and laches were relevant factors for exercise of equitable jurisdiction. In [Lipton India Ltd. and Others Vs. Union of India \(UOI\) and Others](#), and [M.R. Gupta Vs. Union of India and others](#), it was held that though there was no period of limitation provided for filing a petition under Article 226 of Constitution of India, ordinarily a writ petition should be filed within reasonable time. In [The Oriol Industries Ltd. Vs. The Bombay Mercantile Bank Ltd.](#), it was said that representation would not be adequate explanation to take care of delay. Same view was reiterated in [State of Orissa Vs. Pyarimohan Samantaray and Others](#), and [State of Orissa and Others Vs. Shri Arun Kumar Patnaik and Others](#), and the said view has also been followed recently in [Shiv Dass Vs. Union of India \(UOI\) and Others](#), and New Delhi Municipal Council (supra) The aforesaid authorities of the Apex Court has also been followed by this Court in *Chunvad Pandey v. State of U.P. and Ors.* 2008(4) ESC 2423. This has been followed in [Virender Chaudhary Vs. Bharat Petroleum Corporation and Others](#), In [S.S. Balu and Another Vs. State of Kerala and Others](#), the Apex Court held that it is well settled principle of law that delay defeats equity. It is now a trite law that where the writ Petitioners approaches the High Court after a long delay, reliefs prayed for may be denied to them on account of delay and laches irrespective of the fact that they are similarly situated to other candidates who have got the benefit. In [Yunus \(Baboobhai\) A Hamid Padvekar Vs. State of Maharashtra through its Secretary and Others](#), the Court referred to the observations of Sir Barnes Peacock in *Lindsay Petroleum Company v. Prosper Armstrong Hurde etc.* (1874) 5 PC 239 and held as under:

Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material... Two circumstances always important in such cases are the length of the delay and the nature of the Acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.

10. On the question as to whether the Court is bound to set aside an order which is otherwise found not in accordance with law, the precedent is that in exercise of power under Article 226 this Court is not bound to do so. In [Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others](#), the Apex Court while dealing with jurisdiction of the Court with respect to issuance of writ of certiorari held that "a writ of certiorari is discretionary, it is not issued merely because it is lawful to do so.

11. In [Durga Prashad Vs. Chief Controller of Imports and Exports](#), and in [Bombay Municipal Corporation for The Municipal Corporation for Greater Bombay and Another Vs. The Advance Builders \(India\) Private Ltd. and Others](#), it was held that writ jurisdiction is discretionary and the Court is not bound to interfere even if there is error of law.

12. It would be appropriate to refer at this stage the view expressed by the Apex Court in [Municipal Board, Pratabgarh and Another Vs. Mahendra Singh Chawla and Others](#), wherein it was held:

...this Court is not bound to tilt at every approach found not in consonance or conformity with law. The interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, Rule of law must prevail but as is often said, "rule of law must run akin to Rule of life And life of law is not logic but experience". By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the Rule of law has been ensured its pristine glory. Having performed that duty under Article 136, it is obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136

13. What has been observed by the Apex Court with reference to Article 136 of the Constitutions, in my view would equally be applicable when this Court is required to exercise its equitable extraordinary jurisdiction under Article 226 of the Constitution of India. In a given case, having set legal position straight, still this Court may decline to interfere where the equity justifies the same or where the fact and circumstances warrant that discretionary relief should be declined.

14. In [Ramniklal N. Bhutta and another Vs. State of Maharashtra and others](#), the Apex Court observed:

The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point.

15. In [State of Himachal Pradesh Vs. Raja Mahendra Pal and Others](#), of the judgment the Apex Court held:

... It is true that the powers conferred upon the High Court under Article 226 of the Constitution are necessary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual right arising out of an agreement particularly in view of the existence of an efficacious alternative remedy. The constitutional Court should insist upon the party to avail of the same instead of invoking of extraordinary writ jurisdiction of this Court. This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of an alternative efficacious remedy. The existence of special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article

16. Similarly, in [Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another](#), the Apex Court held that the power vested in High Court under Article 226 of the Constitution is discretionary

17. It is a fit case where in my view, this Court should decline to exercise its extra-ordinary equitable jurisdiction under Article 226 of the Constitution since the Petitioner is guilty of undue delay and laches resulting in creation of valuable right and interest of Respondent No. 6 which are not to be interfered at a late stage.

18. Submission of learned Counsel for the Petitioner that pursuant to the interim order passed by this Court Respondent No. 6 is working but not paid his salary, will not make any difference for the reason that once the Respondent No. 6 is appointed and joined pursuant to letter of appointment, it will be in the interest of justice that this Court may not interfere in such a case particularly as discussed above, when the Petitioner is guilty of undue delay and (sic) which is unexplained.

19. The writ petition is dismissed No costs.