

(2008) 09 AHC CK 0292

Allahabad High Court

Case No: None

Lalji Tiwari

APPELLANT

Vs

The District inspector of Schools,
The Regional Insp Inspectress of
Girls schools, The Committee of
Management of Arya Kana
Pathshala Intermediate College
and The Principal Arya Kana
Pathshala Intermediate College

RESPONDENT

Date of Decision: Sept. 15, 2008

Citation: (2008) 6 AWC 6339 : (2008) 3 UPLBEC 2468

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sanjay Misra, J.

Heard Sri W.H. Khan counsel for the petitioner, Sri B.P. Singh learned Counsel for the respondent Nos. 3 and 4 and learned standing counsel for respondent Nos. 1 and 2. This writ petition has been filed in the year 1993 seeking a writ in the nature of mandamus directing the respondents to permit the petitioner to join in the institution as a Class IV employee and also ensure payment of his salary.

2. The writ petition was entertained and an interim order was passed in favour of the petitioner. However, subsequently, after the respondents put in appearance, the interim order was vacated.

3. By an order dated 18.05.2005, this Court found that the controversy raised between the parties in this writ petition was around an order dated 19.12.1981 which according to the contesting respondents was a forged order and did not entitle the petitioner to claim any benefit out of the same. The petitioner claimed benefit of the said order by saying that the order of termination passed by the

Principal was set aside in appeal on 19.12.1981 by the Committee of Management/Authorized Controller. When such a dispute was raised before this Court, the court required the Joint Director of Education (Vindhyachal Region) to conduct an enquiry/investigation and after giving an opportunity to the parties determine the issue regarding the validity and genuineness of the document (annexure 7) dated 19.12.1981 and investigate as to whether this document has ever been issued by Sri Basudev Yadav (as he was posted then) on the basis of the appeal filed by the petitioner. On the basis of the aforesaid order, it appears that an enquiry was conducted by the authority and he has filed his report dated 14.11.2005 available along with the supplementary counter affidavit filed by respondent No. 2. The said report indicates that upon the enquiry made by the Joint Director of Education, he has found that the appellate order dated 19.12.1981 was genuine and it bore the signature of Sri Basudev Yadav as he then was and is not a forged document.

4. Learned Counsel for the contesting respondents has assailed the said report by filing affidavit wherein he has stated that the Joint Director of Education was required to investigate the matter with respect to genuineness of the order dated 19.12.1981 by going through the records of the appeal and determine as to whether even an appeal was filed since it was the specific stand of the Committee of Management that there were no records of any such appeal before the Committee of Management or even before the District Inspector of Schools, Mirzapur. The other ground for objection against this report is that the conduct of the petitioner is itself very clear that if an order dated 19.12.1981 has been passed in his favour, he has kept silent for a period of 12 years and has approached the High Court by means of this writ petition in the year 1993 which is liable to be dismissed on the ground of laches alone. The further contention of learned Counsel for the contesting respondents is that when the said Sri Basudev Yadav had himself in the year 1999 denied that the order dated 19.12.1981 contained his signature, then in the absence of records, how he could have in the year 2000 taken a "U" Turn to say that after perusal of the records, he found that it was his own signature. For this purpose, he had again stated that when there were no original records available, then which records were seen by Sri Basudev Yadav to say that the order dated 19.12.1981 bore his signature. Learned Counsel for the contesting respondents further states that the law laid down by the courts is quite clear that when an employee absconds from service for a long period of time, it would amount to abandonment of service. For the said purpose, he has placed reliance on a decision reported in 2004 (1) UPLBEC 177 *Dawan Singh v. State of U.P. and Ors.* and in 1999 (3) UPLBEC 2098 *Bharat Heavy Electrical Ltd. v. Labour Court U.P. at Meerut and Ors.* He also submits that the laches in approaching this Court is quite apparent from the filing of the writ petition after 12 years of the alleged order dated 19.12.1981 passed in favour of the petitioner and therefore in view of the decisions reported in 2005 (5) AWC 5143 *Ram Veer Singh v. State of U.P. and Ors.* 2005 (4) SCC 546 [Y.](#)

[Ramamohan and Others Vs. Government of India and Others, State of Orissa Vs. Pyarimohan Samantaray and Others](#), State of Orissa v. Sri Pyarimohan Samantaray and Ors., no relief can be granted to the petitioner in this writ petition.

5. Learned Counsel for the petitioner has disputed the aforesaid resistance made to this writ petition by the contesting respondents to contend that it is not true that he has been sitting silent since the passing of the order dated 19.12.1981 in his favour. He has referred to the annexures filed along with the writ petition and with the supplementary rejoinder affidavit to contend that the petitioner who was a Class IV employee in the institution was pursuing the authorities right from the date the appellate order was passed in his favour by making application and when no heed was paid to his requests due to a dispute between two incumbents vying for the post of Principal of the institution, he was compelled to approach this Court in the year 1993. He therefore, states that in view of the aforesaid circumstances, it cannot be said that this writ petition suffers from laches and requires to be dismissed on that ground alone. He clarifies that this writ petition has not been filed for quashing of any order, but it has been filed for enforcing his rights by virtue of the appellate order dated 19.12.1981.

6. On the question of abandonment of services, the submission of Learned Counsel for the petitioner is that the petitioner was appointed as a Class IV employee in the institution and was terminated by the Principal. At that time, the Committee of Management was under the control of the Authorized Controller (Sri Basudev Yadav). Upon his appeal against the order of termination, the authorized controller allowed the appeal by a detailed order dated 19.12.1981 filed as an annexure along with the writ petition. A perusal of such order contained in annexure 7 to the writ petition indicates that the Authorized Controller has considered the grievance of the petitioner, the reason for his termination by the Principal and has allowed the appeal on valid reasons and also on the ground that he was a confirmed Class IV employee of the institution.

7. He has therefore, submitted that the argument made on behalf of the contesting respondents regarding abandonment of services has no application to the facts and circumstances of the present case because the petitioner has been repeatedly approaching the authorities for implementation of the order dated 19.12.1981 whereby his appeal was allowed. Learned Counsel for the petitioner has also stated that the report of the Joint Director of Education on the genuineness and validity of the order dated 19.12.1981 cannot be said to be incorrect or wrong in any manner since the signatory of the order dated 19.12.1981 was faced with the order and he has himself stated that he has signed the said order which bears his signature. According to him, the contention of the contesting respondents regarding refusal by Sri Basudev Yadav in the year 1999 to have signed the order and his admission in the year 2000 with respect to the very same order and his signature thereon will have no relevance because the signatory is the best person to give a statement as to

whether his signature appears on the order or not. The explanation of Sri Basudev Yadav regarding his first refusal and subsequent admission since the records were placed before him has no relevance for judging the validity and genuineness of his signature on such order when he has admitted his own signature. It has also been stated that insofar as respondent No. 4 is concerned, she has herself written a letter in the year 1990 (annexure 9 to the writ petition) referring to the appellate order dated 19.12.1981 passed in favour of the petitioner and therefore, it cannot be said that the appeal was never filed by the petitioner or that the order dated 19.12.1981 is forged or fictitious.

8. Having considered the submission of learned Counsels for the parties and gone through the records, the order dated 18.05.2005 passed by this Court required the Joint Director of Education to investigate upon the genuineness and validity of the order dated 19.12.1981. The report has come and the Joint Director of Education states that the same is genuine and not forged. There is an affidavit of Sri Basudev Yadav (the signatory of the said order) available on record wherein he has clearly stated that the order is genuine and it has been signed by him. Consequently, it appears that the controversy with respect to the genuineness or ingenuineness of the order dated 19.12.1981 arose due to Sri Basudev Yadav who in the year 1999 In reply to a query made to him stated that the order was not signed by him. However, subsequently, when faced with the said order he had admitted that the same has been signed by him. Once such admission has been made and a report has been submitted in this court that the order dated 19.12.1981 is a genuine document, the rights of the petitioner flowing therefrom cannot be denied to him.

9. Insofar as the question of abandonment of service is concerned, it is quite apparent that the plea of the petitioner is that he was repeatedly approaching the authorities to be reinstated in pursuance of the order dated 19.12.1981, but to no avail and ultimately, he filed the present writ petition in the year 1993. This circumstance pleaded by the petitioner does not indicate a case of abandonment of service. In order to successfully plead that the petitioner has abandoned his services, it was incumbent upon the contesting respondents to bring on record the relevant fact that in spite of having been successful in the appeal, the petitioner did not come to join his services. If that had been the defence of the contesting respondents, the question of abandonment would have arisen in this writ petition. On the other hand, the contesting respondents who are the Committee of Management and the Principal of the institution have clearly denied the passing of the order dated 19.12.1981 by the Authorized Controller or even the filing of the appeal by the petitioner. If that be the defence of the contesting respondents, then they cannot say that the petitioner has abandoned his services because it is according to them that the petitioner's services were terminated and no appeal was filed. Even this defence is not supported by any cogent evidence. It is the admitted case of the respondents vide annexure 9 to the writ petition that the Principal was seeking directions for re-instatement of the petitioner in the year 1990. When the

respondents were not permitting the petitioner to join and the petitioner was continuously approaching them, then it cannot be a case of abandonment of service. The decision in the case of Bharat Heavy Electrical Ltd. v. Labour Court at Meerut and others (supra) has no application to the facts and circumstances of this case. In that case, it was an absence of eight days without leave. In Dawan Singh v. State of U.P. and others (supra) also the employee had absented himself for more than five years without leave and this Court refused the relief of reinstatement on the ground that he was no more an employee having abandoned his services. Such is not the circumstance in the present writ petition- Consequently, the decisions relied upon on the question of abandonment of services on behalf of the contesting respondents cannot be of any help to them because there is a difference in the facts and circumstances of those cases and the defence taken by the contesting respondents in the present writ petition. 10. Insofar as the question of laches is concerned, it will be seen that in the decisions cited by learned Counsel for the contesting respondents, the laches were for challenging an order passed against a petitioner. Admittedly, the rights of the parties against the order are subject to the law of limitation and insofar as the writ petition is concerned, it is to be filed within a reasonable time.

11. In State of Orissa v. Sri Pyarimohan Samantaray (supra) the representation was rejected against his supersession by his juniors in the select list. He allowed a period of eleven years to lapse before bringing an action in court against that list. He pleaded that he was making representations against that list all these years. The Hon"ble Apex Court held that making of repeated representations after rejection of one representation cannot be a satisfactory explanation of delay.

12. In Y. Ramamohan and others (supra) the Hon"ble Supreme Court held in paragraph 2 as quoted hereunder::

2. Mr. Guru raj a Rao appearing for the appellants vehemently contended that the Tribunal was not justified in dismissing the application on the ground of laches on the part of the appellants, particularly when there is a positive assertion of the appellants that they did not know of the earlier gradation list prior to the order of the Tribunal in the earlier case filed at the Instance of the direct recruits. Even if that is assumed to be correct, notwithstanding a positive finding of the Tribunal in the earlier proceedings wherein the appellants were party-respondents to the effect that the Principal Chief Conservator of Forests has, in fact, communicated the common gradation list dated 03.05.1983, even then there was no rationale or logic on the part of the appellants to file a representation to the Central Government claiming that the order of allotment should be 1974. Even if they have come to know of the gradation list during the course of the proceedings in 1986, we see no justification for them not approaching the appropriate authority within a reasonable time, and having waited for more than 3 years they have approached only in the year 1990. We, therefore, do not see any illegality with the order of the Tribunal

dismissing the claim of the appellants on the ground of laches. Before us, four authorities of this Court have been cited in support of the contention that the application ought not to have been rejected on the ground of laches only. But in each and every case, what has been noticed is that the question whether the discretion of the Court or the Tribunal should be exercised for condoning the laches would depend upon the facts and circumstances of each case. In the case in hand, when the Tribunal itself has recorded a finding in the earlier case that the gradation list had been duly communicated in the year 1983, we must assume that the applicants knew of the gradation list assigning them the year of allotment as 1976, In 1983, and therefore the so-called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time. We, therefore, see no infirmity with the impugned order of the Tribunal requiring our interference in the matter.

13. Clearly, the assignment of the year 1976 was communicated in the year 1983 and after the earlier application filed by the direct recruits was disposed of, the appellants filed their representation. The Hon'ble Supreme Court held that once the seniority list had been settled, it need not be disturbed after lapse of a length of time. Here also it was a case of challenging the seniority list after great delay and after it had been settled on an earlier application of the direct recruits.

14. In *Cheripalli Madar v. Assistant Division Engineers (supra)* the Tribunal had set aside the order of the Labour Court. The workman filed a writ petition three years after the order was passed by the Tribunal against him and the High Court dismissed the writ petition on grounds of delay. The Hon'ble Apex Court affirmed the order of the High Court. Here again it was a belated challenge made by a person against whom an order had been passed.

15. In *Ram Veer Singh v. State of U.P. and others (supra)*, this court found that the petitioner was given appointment as reserve pool teacher, but was not permitted to join since there was no vacant post. It was only after 19 years that the approval given to Respondent No. 7 was cancelled by the District Inspector of Schools that the petitioner approached the court for relief having kept silent all the time. He had also not given any explanation for the delay of 19 years. It was not a case where the petitioner was pursuing his rights or that it was at his instance that the approval of respondent No. 7 was cancelled. This Court therefore held that he was not entitled to any relief.

16. In the present case, there is no order under challenge and the limitation did not start running from a date when any claim of the petitioner's can be said to have been rejected. In the present case, the relief claimed is in the nature of mandamus

which is on the basis of the rights accrued to the petitioner from the order dated 19.12.1981 passed in an appeal in his favour setting aside an order of termination. For the purpose of claiming that an order passed in favour of the petitioner should be implemented whether the limitation would start running from the date of the order. This Court is of the opinion that no such limitation can be alleged to run from 19.12.1981 which was an order in favour of the petitioner. The petitioner is not challenging the order. Latches, if alleged, also require consideration whether a party has approached the writ court within a reasonable time. Reasonable time has to be adjudged from the facts and circumstances of each case. In the present case, the petitioner has come up before the writ court claiming that his legal rights are being violated which require to be corrected by the respondents. According to the petitioner, he has been representing repeatedly to the authorities. It is true that mere making of representations repeatedly cannot lead to a conclusion that this time of 12 years spent by the petitioner would come within the ambit of a reasonable time. The record indicates that at least from the year 1990, the authorities have responded to the representations of the petitioner for being reinstated in pursuance of the appellate order dated 19.12.1981. Once the authorities responded to the pleas of the petitioner and the Principal of the institution herself sought further directions from the authorities in the year 1990, it cannot be said that this writ petition was filed after 12 years inasmuch as the authorities were considering such claim of the petitioner and making communications with respect to the directions on the same. It was when the petitioner found that no action is being taken by any of the authorities to reinstate him that the petitioner has approached this Court in the year 1993. The decisions cited by learned Counsel for the contesting respondents on the question of latches are all related to assailing an order and not for enforcement of a right matured with a petitioner by virtue of an appellate order. Consequently, the facts and circumstances of the present case being totally distinguishable, no benefit of the aforesaid judgements can be given to the contesting respondents.

17. In view of the aforesaid circumstances, the relief claimed by the petitioner is to be granted to him. However, since admittedly he has not been reinstated since 19.12.1981 till date and nearly 27 years have elapsed (15 years during pendency of this writ petition) and further that after the order dated 19.12.1981 another incumbent has been appointed on the post of Class IV employee and has been paid salary from the State Exchequer, the question whether the petitioner is entitled to any back salary should be considered not by this Court but by the District Inspector of Schools, Mirzapur since the appellate order dated 19.12.1981 passed by the appellate authority in the appeal filed by the petitioner has been found to be genuine. The petitioner is entitled to be reinstated as a Class IV employee of the institution and be paid his salary month-to-month. Insofar as the arrears of salary is concerned, the District Inspector of Schools, Mirzapur may take a decision in accordance with law after giving an opportunity of hearing to all the parties and

considering the circumstance whether the post in question was filled up in accordance with law and such incumbent has worked all these years and his appointment has not been challenged nor he is a party to this writ petition.

18. With the aforesaid directions, this writ petition stands finally disposed of. No order is passed as to costs.