

Mohd. Ismail Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-22-2001

Reported in : 2001(2)AWC1238; (2001)2UPLBEC1257

Judge : A.K. Yog, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 16369 of 1999

Appellant : Mohd. Ismail

Respondent : State of U.P. and Others

Advocate for Def. : P.K. Bisaria, ;S.C.

Advocate for Pet/Ap. : Z. Jilani, ;J.R. Khan, ;Vinod Sinha, ;S. Prakash and ;A.K. Chaturvedi, Advs.

Judgement :

A. K. Yog, J.

1. Petitioner, Mohd. Ismail, had applied against the advertisement issued by the respondents in the year 1989 in order to be considered for appointment as 'Urdu Teacher'. Petitioner was selected and appointed as Urdu Teacher in pursuance of the selection process initiated on the basis of said advertisement. However, an

order dated 21.10.1985 (Annexure-8 to the writ petition) was issued cancelling his appointment as 'Urdu Teacher' on the basis of certain Government Orders prescribing minimum qualification and holding that petitioner did not possess the same.

2. Feeling aggrieved petitioner approached this Court by filing present petition. Several other persons who were similarly and identically situated as the petitioner had filed several petitions (enumerated in paragraph 25 of the petition). Petitioner apprehended that his appointment may be cancelled without opportunity or notice even that he possessed requisite minimum qualification.

3. Petitioner was not allowed to work from 21.10.1985 under impugned order (Annexure-8 to the writ petition). Judgment and order dated 22nd January, 1986 passed by Division Bench of this Court in C.M.W.P. No. 17910 of 1985, Zahid Husain v. State of U. P. and another, annexed with the affidavit, filed in support of Misc. Stay Application No. 15871 (w) of 1989, shows that similar petitions were dismissed.

4. Feeling aggrieved, those petitioners approached Supreme Court, challenged said judgment and order before the Supreme Court by filing appeal along with special leave petition. The Supreme Court granted special leave and directed the respondents to appoint those appellants subject to availability of sufficient number of vacancies and further to consider the question of payment of salary to those appellants for any period for which they had worked and the question of payment of back wages with effect from their services were terminated/ceased. The appeals were, accordingly, disposed of.

5. Present petition, which was initially filed at Lucknow Bench of this Court, was sent to Allahabad, as Lucknow Bench had no jurisdiction to entertain the same since the matter related to district Ghaziabad.

6. Learned counsel for the petitioner relying upon the aforementioned judgment of the Apex Court dated 26th July, 1989 (Annexure-13 to the affidavit filed in support of Civil Misc. Stay Application No. 15871 (w) of 1989] submits that present petitioners is also identically placed and this petition is also based on similar facts

as the case of the appellants before the Supreme Court.

7. Learned standing counsel had taken time to study the matter on the last occasion and case was directed to be listed today. Learned standing counsel Sri P. K. Bisaria, submits that case of the present petitioner is similar and identical that of the appellants before the Supreme Court, whose matters were disposed by means of above mentioned judgment of the Supreme Court dated 26th July, 1989 and reproduced here for ready reference :

'Special leave is granted in all the matters. Heard learned counsel for the parties.

The respondents are directed to appoint the appellants to the post of teachers provided there are sufficient number of vacancies. The respondents shall also consider the question of payment of salary to these appellants for any period for which they had worked and also the question of payment to them of back wages with effect from the date their services were terminated or they ceased to be in employment.

The appeals are disposed of accordingly. There will be no order as to costs.'

8. Consequently, this petition is also disposed with a direction to appoint the petitioner on the post of 'Assistant Teacher Urdu' provided 'vacancy' is available on such a post and such post is still continuing in district Ghaziabad.

9. Taking into account as well as interest of the State, it is directed that no payment shall be made for the period petitioner has not worked. It will be noted that Supreme Court made certain directions for considering the question of back wages etc. since those appeals had come up before the Apex Court in the year 1989. Back wages cannot be claimed automatically as held by Apex Court and this Court and taking into account the interest of the educational institution particularly and that of the State in general, in my opinion, it will not be a sound exercise under Article 226. [Constitution of India](#) to direct the respondents to pay salary to the petitioner for the period during he has not worked.

10. The petition is, accordingly, disposed of.

11. There will be no order as to costs.

12. Petitioner may approach the concerned authority along with certified copy of this order within six weeks from today, if such a representation along with certified copy of this order is filed within the time stipulated above, the concerned authority shall pass appropriate orders in the light of the observations made above within three months from the date of receipt of certified copy of this order.

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