

Anis E. John Vs. State of U.P. and ors.

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SooperKanoon Citation : sooperkanoon.com/483284

Court : Allahabad

Decided On : Jul-10-2009

Reported in : 2009(4)AWC3481

Judge : B.K. Narayana, J.

Appellant : Anis E. John

Respondent : State of U.P. and ors.

Advocate for Def. : Sri. A.D. Saunders

Advocate for Pet/Ap. : Sri. Gajendra Pratap

Disposition : Petition dismissed

Judgement :

B.K. Narayana, J.

1. Heard Sri Gajendra Pratap, learned Counsel for the petitioner, learned standing counsel for the respondents No. 1 to 3 and Sri A.D. Saunders, learned Counsel for the respondents No. 4 and 5.

2. This writ petition has been filed by the petitioner, who claims himself to be the duly appointed Principal of St. Andrew's Intermediate College, Gorakhpur (hereinafter referred to as Institution) for quashing the orders dated 28.2.2007 and

1.3.2007 Annexures-I and II passed by the respondents No. 2 and 3 respectively.

3. By the order dated 28.2.2007 passed by the respondent No. 2 Sri R. B. Singh, respondent No. 5 has been permitted to function as officiating Principal of the Institution and by the order dated 1.3.2007, passed by the respondent No. 3, the signatures of the respondent No. 5 have been attested as officiating Principal of the Institution.

4. A preliminary objection has been raised by Sri A.D. Saunders, learned Counsel for the respondents No. 4 and 5 regarding the maintainability of the instant writ petition on the ground that the petitioner alongwith the alleged Committee of Management of the Institution had earlier filed Civil Misc. Writ Petition No. 16906 of 2007 for quashing the same orders, which are impugned in the instant writ petition and the petitioner had abandoned his challenge to the orders impugned in the said writ petition without obtaining any liberty from the Court to file a fresh writ petition against the said orders as would be evident from the perusal of the order dated 5.4.2007, passed by this Court by which Writ Petition No. 16906 of 2007 was decided and hence the present writ petition which is the second writ petition filed by the petitioner on the same facts and same cause of action on which the petitioner had filed Writ Petition No. 16906 of 2007 is incompetent in view of the provisions of Chapter XXII, Rule 7 of the Allahabad High Court Rules as well as the provisions of Order XXIII, Rule 1 of Sub-rule (4) of Code of Civil Procedure.

5. Opposing the preliminary objection raised on behalf of the respondents No. 3 and 4, learned Counsel for the petitioner submitted that the petitioner had neither got the earlier writ petition filed by him dismissed as withdrawn, nor he had abandoned his claim to the office of Principal by giving up his challenge to the orders impugned in the said writ petition, but had merely made a prayer to the Court at the time of hearing of Writ Petition No. 16906 of 2007 that the Writ Petition No. 16906 of 2007 may be confined to the issue of the management of the Institution alone and all references made in the said writ petition including that in the prayer clause with regard to the office of the Principal of the Institution, may be treated to be deleted from the record as no relief in respect thereto was being pressed. Accordingly, this Court while deciding the Writ Petition No. 16906 of 2007

observed that the said writ petition was finally decided with reference to the management of the Institution alone. The order passed in Writ Petition No. 16906 of 2007 does not prohibit the petitioner from filing a fresh writ petition assailing the orders, which were impugned in the said petition. Since the petitioner had neither got the aforesaid writ petition dismissed as withdrawn nor he had abandoned his claim to the office as Principal and his challenge to the impugned orders and as such he was not at all required to obtain any liberty from the Court for filing a fresh writ petition for the relief claimed in Writ Petition No. 16906 of 2007.

6. I have heard learned Counsel for the parties on the preliminary objection raised by the learned Counsel for the respondents No. 3 and 4 and have also perused the records.

7. Chapter XXII, Rule 7 of the Allahabad High Court Rules reads as under:

No second application on same facts--Where an application has been rejected, it shall not be competent for the applicant to make a second application on the same facts.

8. Order XXII, Rule 1 of Sub-rule (4) of Code of Civil Procedure is reproduced hereinbelow:

1. Withdrawal of suit or abandonment of part of claim.--(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:.

(3) Where the Court is satisfied--

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of the claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff--

(a) abandons any suit or part of claim under Sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in Sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

9. A plain reading of the above noted provisions indicates that before the preliminary objection regarding maintainability of the present writ petition raised by the respondents No. 4 and 5 can be sustained, the respondents No. 4 and 5 have to establish that the earlier writ petition was filed by the petitioner on the same facts as the present writ petition and that the statement made on behalf of the petitioner before this Court at the time of hearing of the earlier Writ Petition No. 16906 of 2007 to the effect that no reliefs claimed in the said writ petition with regard to the office of the Principal of the Institution were being pressed, which finds mention in the order of this Court dated 5.4.2007 by which the Writ Petition No. 16906 of 2007 was decided, amounted to abandonment by the petitioner of his claim to the office of the Principal of the Institution by him as raised in the said writ petition.

10. It is true that the provisions of the Code of Civil Procedure do not apply to the proceedings under Article 226 of the Constitution of India, but the principles underlying the different provisions of the Code of Civil Procedure have been applied by the Courts in their wisdom to writ petitions also.

11. It is not disputed that the Writ Petition No. 16906 of 2007 was filed by the petitioner alongwith the alleged Committee of Management of the Institution for quashing the orders, which are impugned in the instant writ petition also and when the Writ Petition No. 16906 of 2007 was taken up for hearing, a categorical statement was made on behalf of the petitioner that no relief claimed in Writ Petition No. 16906 of 2007 in respect of the office of the Principal of the Institution

was being pressed and acting upon the said statement this Court while deciding the Writ Petition No. 16906 of 2007 confined itself to the dispute of Management of the Institution alone. This fact is clearly borne out from the perusal of the order dated 5.4.2007 by which the Writ Petition No. 16906 of 2007 was decided. The effect of the order dated 5.4.2007, passed in Writ Petition No. 16906 of 2007 in the opinion of this Court was that by the said order the petitioner was permitted not to press the reliefs claimed by him in the said writ petition with regard to the office of the Principal of the Institution, which had the effect of the petitioner abandoning his claim to the office of the Principal of the Institution as well as the challenge to the orders impugned in the said writ petition which are being assailed in the instant writ petition also. There is nothing on record, which may indicate that this Court while permitting the petitioner not to press the relief claimed by him in Writ Petition No. 16906 of 2007 had granted any liberty to the petitioner to file a fresh writ petition against the orders challenged in the writ petition, i.e., orders dated 28.2.2007 and 1.3.2007.

12. Learned Counsel for the petitioner has failed to show that the present writ petition has not been filed on the same facts as the earlier writ petition. The submission made by the learned Counsel for the petitioner refuting the preliminary objection raised on behalf of the learned Counsel for the respondents Nos. 4 and 5 is without any merit.

13. For the aforesaid reasons, this Court is of the view that the preliminary objection raised by the respondents Nos. 3 and 4 has force. The petitioner abandoned his challenge to the orders impugned by him in writ Petition No. 16906 of 2007 without obtaining any permission from the Court to file a fresh writ petition challenging the orders assailed by him in the earlier writ petition. The present writ petition being the second writ petition on the same facts is not competent in view of the provisions contained in Chapter XXII, Rule 7 of the Allahabad High Court Rules and the principles laid down under Order XXIII, Rule Sub-rule (4)(b) of the Code of Civil Procedure.

14. The writ petition is accordingly dismissed as not maintainable. However, there shall be no order as to costs.

