

Katori Devi Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-25-2010

Judge : Pradeep Kant and; Ritu Raj Awasthi, JJ.

Appellant : Katori Devi

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Manish Kumar, Mr. Manish Kumar

Disposition : Appeal dismissed

Judgement :

Ritu Raj Awasthi, J.

1. Heard Sri Manish Kumar, learned Counsel for the appellant as well as Mrs. Sangeeta Chandra, Additional Chief Standing Counsel, Govt. of U.P. and perused the records.
2. The special appeal has been filed against the impugned judgment and order dated 13.08.2002 passed in Review Petition No. 105/2001 as well as judgment and order dated 21.05.2001 passed in Writ Petition No. 5004 (SS) of 1998.
3. As per the appellant she was initially appointed in the year 1964 and worked in various institutions viz Kanya Junior High School, Adeeng, Tehsil & District Mathura Kanya Primary Pathshala, Sureer, Tehsil Math, District Mathura, Rajkiya

Kanya Kramottar Pathshala Dhangaon, Tehsil and District Mathura, Kanya Junior School, Sunaich, Tehsil Govardhan, District Mathura up to 30.06.1966 thereafter the appellant was sent for training in Rajkiya Dayawati Modi Prashikshan Mahavidyalaya, Modi Nagar where she underwent the teacher training for about two years i.e. up to April, 1968.

4. It is submitted that in September, 1968 after the completion of the training, the appellant was appointed as Head Mistress in Rajkiya Kanya Junior High School, Baldev, District Mathura. Barely a month after the appointment her services were terminated on 31.10.1968. However, in the year 1970 she was again appointed as Assistant Teacher and posted in Rajkiya Kanya Higher Secondary School, Tugna, District Meerut where she worked up to 17.03.1971. After a break of about six months, she was again appointed in September, 1971 as Assistant Teacher in Govt. Girls Higher Secondary School, Lalgari, District Etah. In July, 1972 she was transferred from Lalgahi to Jalesor but she was not allowed to stay there for long and only a month after she was transferred to Danapur, District Mirzapur and again from Danapur to Mahoba where her services were terminated on 14.05.1973 then she worked as Assistant Teacher in Government Girls Inter College, Moradabad from 09.11.1974 to 25.05.1975.

5. According to petitioner's counsel, feeling aggrieved with the arbitrary and illegal action of the departmental authorities, she resorted agitational means and went on hunger strike at different intervals during the period from 04.01.1982 to 27.02.1996 on different places namely Mathura, Agra and Lucknow.

6. During the time of President's rule in the State of Uttar Pradesh on 22.02.1996, the Secretary, Secondary Education wrote a letter to the Director, Secondary Education that the His Excellency the Governor of U.P. has been pleased to extend the service tenure of the appellant for two years and thereafter on 26.02.1996 the Deputy Director, Education issued the appointment letter giving re-appointment to the appellant for two years till she attain the age of 60 years. It has been submitted that the aforesaid facts are clear from the perusal of the orders dated 22.02.1996 and 26.02.1996 which are annexed as Annexure CA-1 and CA-2 to the counter affidavit filed by the opposite parties.

7. It has been further submitted that on 27.02.1996, His Excellency the Governor of U.P. in exercise of its power under the President's rule passed an order in favour of the appellant to the effect that the appellant shall be given the dues after attaining the age of superannuation i.e. 60 years and the pension be also sanctioned to the appellant, the order dated 27.02.1996 is annexed as Annexure CA-3. There is a specific direction that the dues shall be paid to the appellant treating her to be in service since the year 1968. Necessary orders for payment of dues and pension etc. shall be passed by the Director, Secondary Education giving her the continuity of service. However, the State Government did not comply the said orders and neither the dues were paid to the appellant nor she was provided any pension.

8. It has been further urged by the counsel for the appellant that the pension papers of the appellant were also submitted by the Headmistress of the Rajkiya Kanya Uchchater Madhyamik Vidyalaya, Baldev, District Mathura after approval from the District Inspector of Schools (D.I.O.S.) Mathura who had also written a letter dated 21.06.1997 to the Joint Director of Education for forwarding the same to the higher authorities. By letter dated 22.07.1996, the DIOS, Mathura had informed the Deputy Director of Education that the bill relating to the appellant towards her dues for an amount of Rs. 4,17,039/- has been submitted and it may be approved. In this regard several reminders were also sent by the D.I.O.S. as well as the Regional Deputy Director, Secondary Education for approval of the bills relating to the dues of the appellant.

9. It is submitted that Director, Secondary Education had also written a letter dated 26.02.1999 to the D.I.O.S. to pay all the dues in the new pay scale to the appellant and on 16.11.2004, the D.I.O.S. had even directed the Headmistress of the institution where the petitioner had worked till attaining the age of 60 years to again submit pension papers of the appellant. The District Magistrate, Mathura by letter dated 26.09.2006 had also informed the Secretary, Secondary Education that the bills for payment of dues of the appellant have been submitted but till date, they have not been approved and payment has not been made to the appellant.

10. Mr. Manish Kumar, learned Counsel for the appellant argued that under Section 9 of the U.P. Intermediate Education Act, 1921 the State Government has been empowered to take immediate action and under Chapter III of Regulation 21 of U.P. Intermediate Education Regulations, the extension of services can also be granted/directed by the State Government. As such, there is no reasonable basis or justification for the State Government to deny the payment of dues treating the appellant in continuous service till she attained the age of 60 years and pay the pension etc.

11. Mr. Manish Kumar has further submitted that noting dated 15.10.1996 of the State Government can not be termed as an order. Neither His Excellency the Governor of U.P nor the State Government has ever taken any decision to recall its earlier order dated 27.2.1996, which is still in existence and as per the settled law, the sub-ordinate officers are bound to maintain the sanctity of the order passed by His Excellency The Governor and follow the same.

12. The learned Counsel for the appellant has submitted that payment of Rs. 3.25 lacs made to the appellant was infact given under the Chief Minister's Relief Fund. The said amount of Rs. 3.25 Lacs is not in pursuance of the order of His Excellency the Governor of U.P dated 27.2.1996 meaning thereby that till date no payment towards the service benefits has been given to the appellant and the appellant has been put to undue harassment due to arbitrary and wrong act of the opposite parties.

13. As the opposite parties had denied to pay the dues and pension to the appellant, feeling aggrieved the appellant had approached this Court by filing writ petition No. 5004/1998 (S/S) with a prayer to quash the order dated 21.11.1997, 22.2.1996 & 26.2.1996 and direct the opposite parties to treat the period of two years after attaining the age of 58 years as extension of service instead of treating it as re-appointment and the services rendered by her from 1968 till January, 1997 may be treated as continuous in view of the orders passed by His Excellency the Governor of U.P. It was further prayed that she may be granted L.T. Grade from 1973 and promotional pay scale after completion of 12 years of service and further be granted selection grade after completion of 16 years of service and all other

consequential service benefits. The said writ petition was decided by judgment and order dated 21.5.2001, wherein the learned Single Judge had come to the conclusion that the petitioner was not entitled to claim pension, payment of salary including revised salary in the revised pay scale for the period she was not in service, promotion in L.T. Grade and benefit of her reappointment after she attained 58 years of age.

14. Thereafter the appellant had filed Review Petition No. 105(W) of 2001 for the review of the judgment and order dated 21.5.2001 passed by the learned Single Judge in Writ Petition No. 5004/1998(S/S). Review petition was dismissed by a detailed order dated 13.8.2002.

15. Feeling aggrieved the appellant has filed the present appeal challenging the judgment and order dated 21.5.2001 and judgment and order dated 13.8.2002.

16. Mrs. Sangeeta Chandra, learned Addl. Chief Standing Counsel on the basis of the instructions and counter affidavit filed by the opposite parties submitted that during the period from 1968 till 1997, the appellant had worked at various institutions at certain intervals and her services were terminated several times due to her misbehaviour with students and employees. In spite of her adamant attitude which may have led to major punishment, the authorities had adopted sympathetic attitude towards her and she was given several opportunities to improve her conduct and behaviour, however, the appellant did not perform her work and duty properly, due to which her services were terminated time and again. The appellant used to sit on 'Dharna/Anshan' demanding that she be given continuity in service from 1968 to 1995. It appears that taking a humanitarian approach, His Excellency the Governor of U.P gave a direction for her re-appointment. The date of birth of the appellant is 8.1.1937 and if she would have been given appointment after 1995, she would have reached the age of superannuation of 58 years on 8.1.1995. Taking into account this difficulty the appellant was given a re-appointment for two years and she worked till June, 1997. Hence the period of service of two years i.e. after attaining the age of 58 years till the age of 60 years was the service on re-employment.

17. It has been further submitted by learned Addl. Chief Standing Counsel that the petitioner was in the habit of sitting at 'Dharna' and she again sat on Dharna demanding that her re-appointment be treated as continuous/extension of service on the basis of oral assurance given to her by the then His Excellency the Governor of U.P. It was in this background that Principle Secretary to His Excellency the Governor of U.P. had passed the order dated 27.2.1996 directing the authorities to pay dues to the appellant treating her to be in service since 1968 and pay her pension etc.

18. That however, no orders were passed by the authorities regularizing the services of the appellant for the period she had not worked. Moreover, no orders were passed by His Excellency the Governor of U.P. or for that purpose any other authority to relax or ignore the relevant rules pertaining to the payment of pension etc. to the appellant. It has been informed by the State that the payment of Rs. 3.25 lacs paid to the appellant was from the ex-gratia relief fund and not towards her alleged dues and pension. It is also submitted by the learned Addl. C.S.C. that the bill for payment of dues for the amount of Rs. 4,17,039/- was wrongly prepared and the same was returned by the Accountant General (A & E), U.P., Allahabad.

19. Learned Addl. C.S.C. has submitted that the argument raised by the learned Counsel for the appellant that the principal of Parishadiya Junior High School, Mathura had sent a bill of Rs. 4,17,039/- and odd to the Accountant General, U.P., Allahabad for payment on the direction to the various departments officers is belied from the records as available with the respondents. It has been informed by the office of the Accountant General, U.P., Allahabad that a bare perusal of the letter dated 20.5.1997, shows that the said bill was returned as having been sent without authority of Chief Treasury Officer. It was advised that the principal shall first submit the bill with the Chief Treasury Officer and on his approval matter should be looked into by the Senior Account Officer and only thereafter the same could be approved by the Accountant General.

20. Learned Addl. C.S.C. on the basis of the record has submitted that there is a noting dated 15.10.1996 on the files regarding the in-admissibility of pension and arrears of pay etc. to the appellat. The Principal Secretary of the department had

approved the said noting and directed that file to be placed before His Excellency the Governor of U.P. for his approval. The file was placed before His Excellency the Governor of U.P. on 3.11.1996 and His Excellency the Governor of U.P. had approved the noting dated 15.10.1996 made by the then Secretary, Basic & Secondary Education, Sri Alok Ranjan.

21. The Addl. C.S.C. submits that the appellant has infact rendered only 3 years, 3 months and 17 days of actual service during the period 1968 to 1995. After her re-appointment she has rendered service for another two years hence a total period of service is only five and a half years which does not entitle her to qualify for pension as per Government order dated 1.7.1989 issued in this regard. It has been submitted that in view of the aforesaid facts, there is no infirmity or illegality in the judgment and order dated 21.5.2001.

22. The learned Single Judge while considering the review petition had again considered the entire facts and circumstances of the case and relevant records and had come to the conclusion that the appellant is not entitled for the payment of alleged dues and pension. The review petition has rightly been decided by a detailed order dated 13.8.2002.

23. We have considered the various submissions made by the parties and we are of the considered opinion that the appointment given to the appellant in pursuance of the orders passed by His Excellency the Governor of U.P. was the re-appointment for two years as the appellant had attained the age of superannuation of 58 years and she could not have been granted extension of service. So far as the continuation of service from 1968 to 1995 i.e. when the appellant attained the age of superannuation on attaining the age of 58 years or even taking into consideration the period of work in pursuance of orders passed by His Excellency the Governor i.e. till she attained the age of 60 years is concerned, from the records it is evident that the appellant had not continuously worked and there are several breaks in service as her services were terminated several times during the period 1968 to 1995. There is no order for regularizing the period of services for which the appellant have not worked and as such the appellant could not have been given the continuation of service from 1968 to 1995.

24. So far as the letter dated 27.02.1996 of the Secretary to His Excellency the Governor of U.P., informing the Principal Secretary, Education that His Excellency the Governor has ordered for payment of dues and pension treating her to be in service from 1968 till she attains the age of 60 years is concerned it is to be noted that even the order of His Excellency the Governor of U.P. shall be in accordance with law and the relevant rules and such order should be valid and legal. The order which is not in conformity with the rules and regulations cannot be enforced through the Court of law.

25. From the records it is very much clear that there are no orders for regularizing the services of the petitioner for the period during which she had not worked. The Government order dated 01.07.1989 provides the minimum period of 10 years of regular service for a government servant to qualify for pension. His Excellency the Governor of U.P. had not issued any direction to relax the relevant rules or the Government order prescribing the minimum period of service for pension nor had authorized Director of Intermediate & Higher Education or any other authority for that purpose to sanction the pension to the appellant by deviating from such rules.

26. The payment of Rs. 3,25,000 was apparently made to the appellant from ex gratia relief fund which fact has also been admitted by the counsel for the petitioner in his written submissions. The alleged bill of Rs. 4,17,039/- which was said to have been approved by the D.I.O.S. and sent for payment, was not sanctioned by the Accountant General, U.P. and it was returned back with objections. It is also to be noted that by office noting dated 15.10.1996 the Secretary, Basic and Secondary Education, U.P. informed that the appellant is not entitled for payment of pension and arrears of pay etc. The said noting was duly approved by the Principal Secretary and was placed before His Excellency the Governor of U.P. From the record it is evident that His Excellency the Governor of U.P. had approved the said noting on 03.11.1996. In view of above, it is very much clear that the order dated 27.02.1996 of His Excellency the Governor stood cancelled and could not have been given effect to.

27. In view of above, we are of the considered opinion that there is no infirmity or illegality in the judgments and orders under challenge. The special appeal is

devoid of merit and liable to be dismissed. It is hereby dismissed. No order as to cost.

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