

Ghanshyam Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-21-2010

Judge : R.K. Agrawal; A.P. Sahi, JJ.

Appeal No. : Special Appeal Defective No. 943 of 2010

Appellant : Ghanshyam

Respondent : State of U.P. and Others

Judgement :

1. This is an Appeal questioning the correctness of the judgment of the learned single Judge dismissing the writ petition filed by the appellant and upholding the order of the District Inspector of Schools dated 7.8.2010.

The appellant was appointed as an Assistant Teacher in Baba Vasudev Das Inter College, Alinagar, District Sant Kabir Nagar, on ad hoc basis on account of a short term vacancy having arisen due to the permanent incumbent of the post Sri Dashrath Prasad upon being promoted as ad hoc Principal. The said Sri Dashrath Prasad was promoted w.e.f. 1.7.1996 where after he functioned as ad hoc Principal and his resultant vacancy, which was a short term vacancy, came to be filled up by the ad hoc appointment of the appellant.

1. The appellant had earlier filed a writ petition, being Civil Misc. Writ Petition No.9672 of 2002, which was disposed of on 23.1.2004 and in pursuance of the said judgment the District Inspector of Schools passed orders on 29.5.2004

ensuring payment of salary to the appellant. The appellant was continuing in service as an ad hoc teacher and accordingly received salary.

2. Sri Dashrath Prasad, who was working as ad hoc Principal, and against whose substantive post the appellant had been appointed as Assistant Teacher, superannuated on 30.6.2008. The effect thereof was that the vacancy, against which the appellant had been appointed, stood converted into a substantive vacancy w.e.f. 1.7.2008 onwards.

3. It appears that on certain directions issued by the State Government information was collected by the District Inspector of Schools, including the information in relation to the continuance of the appellant against the post on which he was appointed. The District Inspector of Schools, accordingly, issued a notice on 30.7.2010 calling upon the appellant as well as the Management of the institution to disclose the status of the post. The District Inspector of Schools by order dated 7.8.2010, after hearing the appellant, came to the conclusion that the continuance of the appellant was unwarranted after the post was converted into a substantive vacancy and he also noted the earlier order in favour of the appellant that limited the approval to the appointment of the appellant till the vacancy continued as a short term vacancy and does not get converted into a substantive vacancy.

4. The aforesaid order of the District Inspector of Schools dated 7.8.2010 was made subject matter of challenge in the writ petition giving rise to the present appeal. The learned single Judge relying on the Full Bench judgment of this Court in the case of Pramila Mishra v. District Inspector of Schools, and others, (1997) 2 UPLBEC 1329 and the judgment in Jai Prakash Singh's case, reported in 2009 (2) ESMC 353, dismissed the writ petition holding that once the vacancy was converted into a substantive vacancy, the appellant had no right to continue on the post in question.

5. Sri Ashok Khare, learned Senior Advocate for the appellant, submits that the view taken by the learned single Judge is not correct, inasmuch as, the decision in the case of Smt. Pramila Mishra (supra) by the Full Bench of this Court was rendered in the year 1997 where after certain provisions of the U.P. Secondary Education Services Selection Board Act, 1982 were amended and the provisions

relating to the regularisation of ad hoc appointees against short term vacancies was introduced. On the strength of the aforesaid submissions and relying on the Division Bench judgment in the case of District Inspector of Schools and others v. Diwakar Lal and others, (2000) 3 UPLBEC 2494, Sri Khare submits that the appellant has a right to continue on the post in question or else the very provision relating to regularisation of such appointees would be rendered nugatory. He submits that the intention of the legislature in introducing the regularisation Rules clearly contemplate the continuance of an ad hoc appointee against a short term vacancy even after the post was converted into a substantive vacancy.

6. Learned Standing Counsel, on the other hand, relying on the Division Bench judgment in the case of Surendra Kumar Srivastava v. State of U.P. and others, 2007 (1) ESC 118, submits that the same arguments which are sought to be advanced before this Court in the present appeal, were considered and dealt with and the Division Bench, following the decision in the case of Pramila Mishra (supra) held that the introduction of Section 33-F would not enure to the benefit of any such claimant in view of the binding effect of the judgment in the case of Pramila Mishra (supra). Learned Standing Counsel also relied on another Division Bench judgment of this Court to the same effect in the case of Shashi Pal Rao v. Committee of Management, Manas Inter College, Fatehpur, Deoria, and others, 2010 (7) ADJ 392.

7. Sri Khare, replying to the aforesaid contentions on behalf of the learned Standing Counsel, submitted that the judgment in the case of Surendra Kumar Srivastava (supra) which has been followed later on in the case of Shashi Pal Rao (supra) itself notices the ratio of the decision in the case of District Inspector of Schools v. Diwakar Lal (supra) but has proceeded to hold in paragraph No.19 as follows:

"19. In the circumstances, neither there was any occasion before Division Bench to consider the question as to whether a person appointed on short-term vacancy under the second order is entitled as a matter of right to continue, if subsequently, the vacancy become substantive nor this issue was argued nor decided and the

Court refused to consider this issue in the absence of any pleading or material on record. Hence, it cannot be said to have laid down a law that a person appointed on short-term vacancy may continue even after the short-term vacancy is converted into a substantive vacancy. No doubt in para 15 of the judgment a direction was issued that the incumbent working on ad hoc basis against short-term vacancy would not automatically be thrown out of service in view of Smt. Pramila Mishra (supra) when short-term vacancy becomes substantive and in such a situation, ad hoc appointee should normally be allowed to continue till the regularly selected candidate is available. However, it cannot be said to be a law laid down on the issue since the question was neither raised nor argued nor decided and, therefore, it cannot be said to be a binding precedent on the question."

8. According to Sri Khare, the Division Bench while considering the aforesaid issue, ought to have referred the matter to a larger Bench instead of having held that the earlier judgment in Diwakar Lal's case did not lay down any law on the issue of the continuance of an appointee after a short term vacancy is converted into a substantive vacancy.

9. We are unable to accept the aforesaid argument for the simple reason that the Division Bench in the case of Surendra Kumar Srivastava (supra) went on to further hold that where the language of the Statute is clearly unambiguous, then there is no room for reading and interpreting the provisions which may result in adding words on the assumption that the legislature has left a vacuum that needs to be filled in by judicial interpretation. In our opinion, the Division Bench has rightly adopted that course as the binding effect of Pramila Mishra's case or the subsequent decision following the same has not been diluted so far. The argument as advanced on behalf of the appellant stands squarely answered by the Division Bench in the case of Surendra Kumar Srivastava (supra) and we find no plausible reason to take a different view in respect thereof.

10. Accordingly, we do not find any error in the judgment of the learned single Judge so as to warrant any interference with the same.

11. The appeal lacks merits and is hereby dismissed.

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