

CASE NO.:
Appeal (civil) 2945 of 2006

PETITIONER:
STATE OF U.P. & ORS.

RESPONDENT:
LAXMI SHANKER GUPTA

DATE OF JUDGMENT: 13/07/2006

BENCH:
Dr. AR. LAKSHMANAN & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(arising out of SLP(C)No.21143 of 2003)

Dr. AR . Lakshmanan, J.

Leave granted.

This appeal is directed against the final judgment and order dated 31.3.2003 passed by the High Court of judicature at Allahabad in Civil Misc. Writ Petition No.9346 of 2001. The prayer before the High Court by the respondent herein was that his services in Tinsukia Degree College, Assam as Hindi Lecturer be added to the services rendered at Mahatma Gandhi Kashi Vidyapith, Varanasi for calculating to his post retiral benefits. The learned counsel for the petitioner before the High Court relied upon a Division Bench decision of Lucknow Bench of the said court in the case of Dr. Shankar Sahai Srivastava versus State of U.P.& ors. decided on 7.12.1999. The Division Bench of the High Court following the said decision allowed the writ petition filed by the respondent herein and directed that the respondent's service in Tinsukia Degree College, Assam shall be added to his service rendered in Mahatma Gandhi Kashi Vidyapith, Varanasi. A further direction was given to the authorities to refix the pension within two months and the arrears of his pension be paid within the same period.

Our attention was also drawn to the order passed by the Allahabad High Court in Dr. Shankar Sahai Srivastava versus State of U.P.& ors. The said order dated 7.12.1999 reads thus:

"LUCKNOW

Dated : 7.12.1999

Hon'ble M. Katju, J.
Hon'ble U.K. Dhaon, J.

Heard. Petitioner has retired as Professor in Department of Sociology in Kashi Vidyapith Varanasi, which is a University. He is claiming that his earlier services in other Institutions be added to his service in Kashi Vidyapith.

We dispose of this Writ Petition which the direction that petitioner's pension be recalculated in accordance with statute 15.05 of Kashi Vidyapith within two months of production of certified copy of this order

before the authority concerned. Payment will be made accordingly to the recalculation."]

A perusal of the said order would show that there was absolutely no discussion by the Bench as to why the said direction in regard to the petitioner's pension was issued. The order, in our opinion, is non-speaking.

Aggrieved by the said order, the State of U.P. & ors preferred special leave petition before this Court, which was dismissed by this Court on 27.9.2000 on the ground of delay in approaching this Court. The special leave petition was not disposed of by this Court on merit. In the impugned order also, except adopting the reason given by the order dated 7.12.1999, no other reason was given by the Division Bench. Before us, several legal contentions have been raised by Dr. R.G. Padia, learned Senior Counsel for the State and also countered by Mr. Rohan Thanavi, learned counsel for the respondent. In our opinion, the matter required detailed investigation with reference to Section 33 of the Uttar Pradesh State Universities Act, 1973 and also with reference to the General Order issued under reference no.2148/Pandrah/15/1983-46(14)/83 dated 24.12.1983. In our view, Regulation 15.05 of the Statute of the University is also required to be considered for determining the claim of the respondent herein. We, therefore, remit the matter to the High Court and restore the Civil Misc. Writ Petition no.9346 of 2001 and request the High Court to dispose of the writ petition within six months from the date of production of copy of order of this Court by either party.

In view of the remittal order now passed by us, we set aside the order dated 31.3.2003 passed in Civil Misc. Writ Petition no.9346 of 2001. Both parties are at liberty to file additional pleadings and documents before the High Court. The question of law is also left open.

The Appeal is accordingly disposed of with no orders as to costs.