

CASE NO.:
Appeal (civil) 5773 of 2007

PETITIONER:
DISTRICT BASIC EDUCATION OFFICER

RESPONDENT:
DHANANJAI KUMAR SHUKLA AND ANR

DATE OF JUDGMENT: 07/12/2007

BENCH:
S.B. SINHA & G.S. SINGHVI

JUDGMENT:
J U D G M E N T
[Arising out of SLP(C) No.12168/2006]
S.B. Sinha, J.

Leave granted.

Respondent No.1 was appointed as a Headmaster in a recognised school.

Recruitment to the post of Headmaster concededly is governed by the statutory rules framed under Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978. Rule 6 of the said Rules reads:

\0236. Disqualification.- (1) No person who is related to any member of the Management shall be appointed as Headmaster or Assistant Teacher of a recognised school.

(2) For the purposes of this rule, a person shall be deemed to be related if he is related to such member in any one of the following ways, namely-

- (i) Father or mother;
- (ii) Grandfather, Grandmother;
- (iii) Father-in-law, mother-in-law;
- (iv) Uncle, aunt, maternal uncle, maternal aunt;
- (v) Son, daughter, son-in-law, daughter-in-law;
- (vi) Brother, sister;
- (vii) Grandson, grand-daughter;
- (viii) Husband, wife;
- (ix) Nephew, niece;
- (x) Cousin;
- (xi) Wife's brother, or wife's sister, wife's brother's wife, sister's husband;
- (xii) Brother's or cousin's wife.\024

The post of Headmaster inter alia fell vacant in Janta Adarsh Madhyamic Vidyalaya, Newada Khurd, Kalan, Etawah. An advertisement therefor was issued by the manager of the said school. In purported response to the said advertisement the respondent No.1 filed an application before the manager of the school praying for his appointment. The manager by a letter dated 18.8.1998 asked for approval thereof from the District Education Officer, Etawah.

It appears the father of respondent No.1, who was the manager of the said school on the relevant date, sought for leave from the President of the Managing Committee of the said school stating:

\023Respectfully it is submitted that there appears to be unavoidable pain in the knee of the applicant due to which he is facing a lot of difficulty in moving.

Unless applicant completely becomes healthy from the physical point of view till then Shri Om Narain Tiwari Deputy manager will take the charge and responsibility of the post of Manager. After getting alright, applicant will again assume the charge of the post of the Manager and will do the work approximately two months time can be taken for the applicant becoming healthy.\024

He handed over charge to one Om Narain Tripathi on 21st August, 1998. Respondent No.1 thereafter was recommended for appointment by the Selection Committee and was appointed in terms thereof on adhoc basis.

Inter alia on the premise that despite such appointment Respondent No.1 was not paid his salary, he filed a writ petition before the Allahabad High Court which was marked as Writ Petition NO.24957/1999. By an order dated 16.6.1999 the High Court directed the appellant to continue the respondent No.1 on the said post as also pay his due salary.

A special appeal was filed thereagainst and the said interim order was vacated.

For the reasons best known to the authorities of the appellant, however, no counter affidavit was filed in the writ petition. The said writ petition was, therefore, allowed. Thereafter, an application for recalling of the said order was filed which was also dismissed. A special appeal thereagainst has been dismissed by a Division Bench of the High Court opining that as the appellant did not file any counter affidavit, the principles of Order 8 Rule 5 of the CPC would apply and thus all the statements made in the writ petition would be deemed to have been admitted.

Mr. Shrish Misra, learned counsel appearing on behalf of the appellants would submit that in view of the fact that the respondent was appointed contrary to the provisions of the Rules, the same being a nullity, the impugned judgments are wholly unsustainable.

Dr. J.N. Dubey, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that not only the questions raised in the special leave petition were not raised before the High Court, but also in view of the fact that appropriate authority has granted approval to the appointment of respondent No.1, the impugned judgment should not be interfered with.

Relationship between Anand Kand Shukla and the respondent is not in dispute being father and son. It also stands un rebutted that Anand Kand Shukla went on leave at the relevant point of time on the ground that he was having pain in the knee.

We would proceed on the basis that the High Court might have been justified in proceeding ex-parte but then it should have kept in mind the principles underlying Order 8 rule 5 of the CPC, (assuming that the provisions of the CPC are applicable in terms of the High Court rules framed by the High Court of Allahabad despite Section 141 of the CPC), that not only despite non-filing of the written statement a Court of law may call upon the plaintiff to prove his case but also there cannot be any doubt whatsoever, that no relief can be granted by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India which would be contrary to law.

As basic foundational fact stands admitted before us, we are of the opinion that the judgment of the High Court cannot be sustained. The appointment of Respondent No.1 being contrary to the mandatory provisions as contained in Rule 6 of the Rules, the same was a nullity. An appointment which was per se illegal could not have been directed to be leglised only because the appellant did not file its counter affidavit. It did not admit the respondent's claim. The question involved in the writ petition was a legal question. As indicated hereinbefore, the foundational facts are undisputed.

Rules of pleading contained in the Code of Civil Procedure do not cover questions of law. If a fact stands admitted the same in terms of Section 56 of the Indian Evidence Act need not be proved. Only because such a question was not allegedly raised before the High Court, this Court could not shut its eyes to the legal position. Yet again only because an illegality has been committed, this Court would not allow its perpetration. Respondent's father was on leave for a temporary period. He thereby did not cease to be the Manager of the school. It is apparent that he went on leave only for defeating the statutory provisions. Such an act amounts to fraud on the administration.

We, having regard to the facts and circumstances of the case, are of the opinion that whether in law or in equity, it would be wholly improper to permit respondent No.1 to continue to act as a Headmaster.

For the reasons aforementioned, this appeal is allowed and the impugned judgments are set aside. The writ petition filed by respondent No.1 shall stand dismissed. However, in the facts and circumstance of the case, there shall be no order as to costs.

JUDIS