

CASE NO.:
Appeal (civil) 3511 of 1997

PETITIONER:
SHIV KUMAR TIWARI (DEAD) BY L.RS.

Vs.

RESPONDENT:
JAGAT NARAIN RAI & ORS.

DATE OF JUDGMENT: 20/11/2001

BENCH:
S. Rajendra Babu & Doraiswammy Raju

JUDGMENT:

RAJU, J.

This appeal has been filed against the judgment of a Division Bench of the Allahabad High Court dated 14.2.1995 in Special Appeal No.88 of 1995, affirming the decision of a learned Single Judge of the said Court dated 16.1.1995 in C.Misc.W.P. No.9255 of 1979, connected with W.P. No.17209 of 1992, whereunder the Writ Petition filed by Jagat Narain Rai (first respondent herein) challenging the order of the Deputy Director of Education Vth Region, Varanasi, directing termination of his services as Lecturer in Mathematics and payment of salary and arrears to Shiv Kumar Tiwari (the original appellant in this case since died), came to be allowed and the Writ Petition filed by the deceased appellant came to be dismissed.

The original appellant, Shiv Kumar Tiwari (hereinafter referred to as the appellant), was appointed as a Teacher in Mathematics on 18.9.1969 in D.A.V. Intermediate College (hereinafter referred to as the College) and the District Inspector of Schools, the Competent Authority, accorded approval of the appointment only for Academic Session 1969-70. For subsequent Academic Sessions 1970-71 and 1971-72 and 1972-73 also appointments afresh and approvals likewise were said to have been granted. At the end of the same, when the College Management issued a Notice on 19.5.1973 that his term was expiring on 30.6.1973, the appellant filed a Civil Suit Case No.108 of 1973 before the IInd Additional District Munsif and the said Court, by a Judgment dated 25.5.1979, declared the appellant to be permanent Lecturer of the College in question and, therefore, the Notice dated 19.5.1973 is illegal and void. It is to be noticed at this stage that neither the State nor any authorities of the Education Department or the first respondent herein, who by then came to be appointed as Lecturer in Mathematics on 6.9.1973, were ever made parties to the said suit and admittedly only the College and the Management were made parties. On a representation made by the appellant to the Deputy Director of the Circle, without even affording an opportunity to the first respondent, an order dated 9.11.1979 came to be passed that in view of the judgment of the Civil Court the appellant became the permanent Lecturer and the services of the first respondent are not only to be terminated but the salary, etc., have to be paid to the appellant. It is at this stage that the first respondent challenged the orders of the authority dated 9.11.1979 in CMWP No.9255 of 1979 and the appellant also filed W.P. No.17209 of 1992 for payment of his salary. The Writ Court not only stayed the order dated 9.11.1979 on 16.11.79 but confirmed the stay also on 23.2.1981.

Both the above Writ Petitions, which involved identical issues for determination, were considered together by a learned Single Judge and while

allowing the Writ Petition of the first respondent, the one filed by the appellant came to be dismissed, as indicated above, holding as follows :-

a) That the letter of appointment for the post could be issued only after grant of approval by the District Inspector under Section 16F of the U.P. Intermediate Education Act, 1921 and the approvals were as a fact being granted for each of the Academic Years 1969-70, 1970-71, 1971-72 and 1972-73. The appellant was aware of those facts and he was also making applications every year for the purpose and, therefore, was fully aware that his appointment was on temporary basis. No approval of any appointment of the appellant for the period subsequent to 30.6.1973 was granted by the Competent Authority.

b) Though the appellant was aware of the advertisement in newspaper inviting applications and selection proceedings were going on he did not challenge the selection process, nor impleaded the first respondent who was appointed on 6.9.1973 to the post or the Authorities of the Education Department to the Suit C.S. No.108 of 1973 but only impleaded the College represented by the office bearers. Therefore, the decree passed in the said Suit is not binding on the first respondent or the Education Department of the Government.

c) Since the appellant has not challenged the selection process undertaken in 1973 and the appointment of the first respondent the appellant has no right to oppose the payment of salary to the first respondent.

d) Since the decree passed by the Civil Court was only against the College and the President of the Society and the Manager of the College in their individual names, it only binds them and if they have allowed him to function as a Lecturer, they alone are liable to pay the salary personally and it is open to the appellant, if so advised, to proceed against them.

e) The appellant did not as a fact function as Lecturer between 7.8.1973 and 16.6.1979 and the District Inspector of Schools did not agree to pay salary to the appellant. Though the Deputy Director passed an Order on 9.11.1979, the same was stayed by the High Court on 16.11.1979 and the same was confirmed and in force till the main Writ Petition was allowed. It is not clear as to whether the Management of the Institution permitted the fifth respondent (the appellant herein) to function as Lecturer.

The appeal filed by the appellant also came to be dismissed by the Division Bench, also for the reason that in view of the decision in Executive Committee of Vaish Degree College, Shamli & Ors. Vs. Lakshmi Narain & Ors. [AIR 1976 SC 888] followed by the High Court in Agarwal Digambar Jain Samiti, Moti Katra, Agra Vs. Sri Badri Prasad Srivastava [1984 UPLB & EC page 638] no declaratory suit of the nature could have been filed and the decree of the Civil Court is not relevant. Hence, this appeal.

Heard S/Shri K. R. Nagaraja and R.S. Hegde for the appellant, Shri Sunil Gupta for the first respondent and Ms.Alka Agrawal and Mr.Sarvesh Bisaria and Mr. P.P. Singh for the other respondents. Apart from submitting arguments, on taking permission the counsel for the appellant as well as respondents 4 and 5 (the College Management) have filed written submissions separately but in

substance taking almost identical stand, in their attempt to meet the case of the first respondent and the Education Department. The stand taken in the written submissions filed seems to have been more in desperateness than on the basis of any principle of law or reason. The appellant and the Management of the College seem to have acted not only in lethargy but also with wishful and selfish aims of their own and, therefore, could not either justifiably attempt or legitimately succeed to throw any blame upon the first respondent or the Departmental Authorities for the woes or ills brought upon themselves by their own conduct.

There is no controversy that the Institution had only one sanctioned post of Lecturer in Mathematics as on date and if the work load and sanctioned strength really required more than one they should have moved the Competent Authorities in accordance with law and obtained proper sanction for more than one. The learned Single Judge in the High Court has adverted to certain facts, stated to be on the basis of records, that the Competent Authority has not only been according approval of the appellant on temporary basis, academic year-wise, but the Management had been calling for applications and the appellant had been applying every time and it is only in 1973 when his period was about to expire, the appellant moved the Civil Court for relief taking altogether a different stand. Though the appellant should have known there could not have been any appointment for any period or duration without the approval of the Competent Authority and the relief sought for involved a decision on the exercise of powers already made and to be made thereafter by such authorities, the appellant did not care to implead the Department in the suit or even the first respondent in the pending suit when he came to be appointed, as admitted in para 2 of the written submissions of the Management, In the meanwhile, the respondent No.1, Shri Jagat Narain Rai, had been appointed by a regular selection process by an order dated 06.09.1973 after obtaining the approval of the Department he was appointed regularly and also as conceded in Para III of written submissions on behalf of the appellant. At the same time it cannot also be disputed that the respondent Shri Jagat Narain Rai has also worked as a Mathematics Lecturer with effect from 6th September, 1973. It is also undisputed that there is only one sanctioned post of Mathematics Lecturer against which two persons have been working with full work-load. The least said about the manner of consideration and disposal given in the judgment of the Civil Court in Suit No.108 of 1973 is better. Such a Judgment could not be pressed into service to the detriment of the rights of the first respondent and it requires no serious exercise to place on record the position of law that the judgment/decreed/order of Courts or any other authority binds only the parties to it, or their privies when it concern the rights of parties and such proceedings purport to be adjudicate also rights of contesting parties by means of an adversarial process. Even assuming that the communication of the Deputy Director proceed to accept its binding nature it could not have been legitimately made to the detriment and prejudice of the first respondent and it is futile for the appellant or the Management to base any right on that alone. The plea that the Department or the first respondent should have filed an appeal, though not parties to the suit, at any rate, does not lie in the mouth of either the appellant or the Management to be taken. Though it would have been open to them to file an appeal with the leave of the Court, there is no duty or obligation cast on them to do on pain of distress when in law they could also legitimately ignore, as not affecting them. The judgment of the Civil Court in Suit No.108 of 1973 has no value or merit for asserting any claim or right against the first respondent or the officers of the Education Department.

That apart, on coming to know of the orders of the Deputy Director dated 9.11.1979, the first respondent filed CMWP No.9255 of 1979 and obtained interim orders of stay on 16.11.1979 and the same was said to have been confirmed also on 23.2.1981. In the teeth of the one only of sanctioned post, there was no justification whatsoever either in law or otherwise for the College Management to have allowed the appellant to continue in service or availed of his services, as they claim and the appellant could not also after the said orders of the High Court legitimately claim to continue in office and worked as he claimed without receiving payment of any kind, as alleged, for such a long period. It is not known with what hopes or aim such things have been allowed to take place by them. There is no rhyme or reason for them now to plead for or claim any equities or throw blame upon others and use it as a cover to make such

claims as cannot be countenanced in a Court of Law. While that be the position, the Management could not take any exception to the order of the learned Single Judge holding that the decree of the Civil Court being only against the Society, its President and Manager by name and if they have permitted him to function, they are liable to pay the salary personally, leaving at the same time liberty with the appellant, if so advised, to proceed against them. It could, therefore, be seen that the said observation became inevitably necessary in the light of the rights declared in favour of first respondent while allowing his Writ Petition and for rejecting as a consequence the Writ Petition filed by the appellant, without granting, at the same time, any relief against the Management. The plea of estoppel sought to be pressed into service by the appellant as well as the College Management against the Department is not only misconceived but has no merit of acceptance when the very order of the Deputy Director choosing to accept the judgment to the detriment of the rights of the first respondent, came to be set aside in the writ proceedings instituted by the first respondent. Such a plea also fails to take into account the vital fact that the authorities of the Education Department, the Deputy Director, could not have legitimately chosen to accept a judgment to which he was not a party when such acceptance has the impact of directly and seriously prejudicing the rights of the first respondent, who was also not made a party to the suit before the Civil Court.

The Division Bench not only affirmed the judgment of the learned Single Judge on the ground that it does not find any infirmity in the order of the learned Single Judge, but chosen to assign a further reason that the declaration of the nature could not also have been granted by the Civil Court in favour of the appellant in view of the decision of this Court in Executive Committee of Vaish Degree College, Shamli & Ors. (supra) followed subsequently by the decision reported in Agarwal Digambar Jain Samiti, Moti Kutra, Agra (supra). For the reasons already stated, we also find that the order of the learned Single Judge is well-merited and does not suffer from any error or infirmity to call for interference either in the hands of the Division Bench or in this appeal. As far as the additional reason assigned by the Division Bench is concerned, the same cannot also said to be incorrect. The decision of this Court in Vaish Degree College case (supra) not only dealt with the character and status of the Institution registered under the Registration of Co-operative Societies Act, but also considered the legality, propriety and desirability of granting a declaration that the contract of service subsists taking into account the provisions contained in the Specific Relief Act, 1963. The Division Bench chose to apply the said part of the decision to the case on hand, and rightly too, on the facts and circumstances of this case.

For all the reasons stated above, we see no merit in the appeal. The appeal shall stand dismissed. The dismissal need not stand in the way of the authorities of the Department if, on their own, they are prepared to give any relief to the College or the Institution keeping in view any of the special circumstances of this case without detriment to the rights of the first respondent. There will be no order as to costs.

J.
(S. Rajendra Babu)

J.
(Doraiswamy Raju)

November 20, 2001.