

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5628 OF 2018

(Arising out of Special Leave Petition (Civil) No.28895 of 2017)

District Basic Education Officer Allahabad

.....Appellant

VERSUS

Sushila Jaiswal (Dead) through her Lrs and Ors.

..... Respondents

JUDGMENT

Uday Umesh Lalit, J.

Leave granted.

2. This appeal challenges the decision dated 21.03.2017 passed by the High Court of Judicature at Allahabad dismissing Special Appeal (Defective) No.374 of 2015 preferred by the appellant herein.

3. The Institution named “Junior High School, Dandupur, Chaka, Allahabad” is an Institution recognized under UP Basic Education Act, 1872 and its staff receives salary under the provisions of UP Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978. 1st

respondent-Sushila Jaiswal (since deceased, represented by her legal representatives) was initially appointed as Assistant Teacher in a Primary School on the basis of appointment letter dated 12.06.1979.

4. 1st respondent was thereafter promoted on 26.06.2000 in upper Primary Institution, Dandupur, Chaka, Allahabad. She was on medical leave from 25.11.1999 to 30.06.2000 and later from 01.08.2001 to 05.09.2002. When 1st respondent came back on 06.09.2002, she was not allowed to join. By order dated 19.10.2002 the appellant requested Chief Medical Officer, Allahabad to examine 1st respondent and to provide medical report regarding her fitness. Despite such clear requisition, no medical report was received. The request was reiterated by the appellant vide further letters dated 30.10.2002 and 25.11.2002. It appears that 1st respondent thereafter filed Civil Miscellaneous Writ Petition No.14885 of 2006 submitting that she was not being permitted to join the services and prayed for relief of reinstatement as well as for providing arrears of salary. It further appears that no order for

reinstatement or for payment of any salary was passed in said writ petition and said writ petition was later dismissed for default.

5. While compiling list of Teachers who had absented themselves from School for a long period without any authority, the name of 1st respondent was included in such list and consequently notice was issued by the appellant to 1st respondent on 07.10.2009 either to join the services or to explain unauthorized absence. Pursuant thereto, 1st respondent appeared before the appellant on 16.12.2009 but could not explain her absence. By proceeding dated 14.01.2010 the appellant passed following order:-

“In the aforesaid matter, Assistant Basic Education Officer, Chaka and Smt. Sushila Jaiswal were called for hearing on 16.12.2009 in the office of District Basic Education Officer, Allahabad. At the time of hearing Smt. Jaiswal came on walker and assisted by her husband. Looking at her condition, it can be safely concluded that Smt. Jaiswal is unable to stand without the help of another person and walker and that she is not fit for teaching job. Therefore the provisions as given under the Financial Handbook Volume II, part 2 to 4, Rule 18 for persons who are absent for more than 5 years would be applicable and disciplinary actions be taken against Smt. Sushila Jaiswal.

Smt. Sushila Jaiswal is also liable for not producing fitness certificate from the office of Chief Medical Officer, Allahabad to this office and also for absenting herself from her teaching work for more than 5 years, the services of Smt. Sushila Jaiswal, Assistant Teacher, Upper Primary School, Dandupur, Block-Chaka are terminated.”

6. The aforesaid order was challenged by 1st respondent by filing Writ Petition No.18853 of 2010 and the High Court by its order dated 07.04.2010 directed CMO, Allahabad to conduct medical test in respect of 1st respondent and submit a report. The Chief Medical Officer recorded that 1st respondent was suffering from osteoarthritis and could not stand for long period but observed that she was fit for teaching job. Based on this report, the High Court vide its order dated 21.04.2010 directed that 1st respondent be reinstated and in so far as the period of absence was concerned an appropriate order in accordance with law be passed by the appellant.

7. In compliance of the order dated 21.04.2010, the appellant vide order dated 05.05.2010 directed 1st respondent to join services in Junior High School of Lohandi, Block-Karchhana, Allahabad as no post was available in her former School namely Junior High School, Dandupur, Chaka, Allahabad. Accordingly, 1st respondent joined the services on 15.05.2010. On 17.05.2010 an order was passed by the appellant treating the period between 01.08.2001 to 14.05.2010 as period of absence and directed that 1st respondent was not entitled to payment of salary for that period on the basis of “no work no pay” as per the provisions of UP Financial Handbook and concerned rules. 1st respondent who had joined on 15.05.2010 worked till 20.05.2010 whereafter the School closed for summer vacation. It re-opened

on 01.07.2010 and by her application dated 17.07.2010 1st respondent applied for voluntary retirement and retired on 31.07.2010 i.e. much before her normal date of superannuation which was to be 30.06.2011.

8. In the meantime, 1st respondent had filed Writ Petition No.30948 of 2010 in the High Court challenging the aforesaid order dated 17.05.2010. Said writ petition was disposed of by the High Court on 25.05.2010 giving liberty to 1st respondent to make a representation ventilating her grievances which were then to be looked into and to be dealt with by passing a reasoned speaking order. A representation so preferred by 1st respondent was dealt with by Secretary, Department of Basic Education, and by communication dated 29.04.2011 the representation was rejected. It was observed,-

“The report of the Basic Education Officer, Allahabad and the representation of the petitioner received through the Director Education (Basic) and after examining them, it is found that Smt. Jaiswal continuously absented herself from her teaching job from 01.08.2001 to 14.05.2010 and during this period, she did not make any serious effort. Therefore, there is no logic in paying the salary for the period between 01.08.2001 to 14.05.2010, when she had absented herself from the work. In the Financial Hand Book Volume-II, Part 2 to 4 and Rule 18 also the theory of no work no pay has been described. Therefore on the basis of aforesaid rules and the circumstances described above, the representation of the petitioner is rejected and matter is disposed of.

9. The aforesaid communication was challenged by 1st respondent by filing Writ Petition No.30513 of 2011 which was allowed by Single Judge of the High Court vide order dated 10.03.2015. The Single Judge set aside the communication dated 29.04.2011 and directed that 1st respondent was entitled to arrears of salary with effect from 06.09.2002 till the date she resumed her duties i.e. till 15.05.2010 with 8½ % interest thereon, if paid within three months. If the amount was not paid within three months, 1st respondent was held entitled to interest at the rate of 12%. She was also awarded costs quantified at Rs.20,000/-. The order of the Single Judge was put in challenge by the appellant by filing Special Appeal (Defective) No.374 of 2015 and by its order dated 21.03.2017, which is presently under appeal the Division Bench of the High Court dismissed said special appeal.

10. While issuing notice, this Court stayed the operation of the judgment and order under appeal, whereafter pleadings were exchanged. We heard Mr. Rakesh Mishra, learned Advocate for the appellant while the legal representatives of 1st respondent were represented by Mr. Sanjay Singh, learned Advocate. It was contended by the appellant that after 31.07.2001 1st respondent had worked only for a period of 36 days but under the orders of the High Court she was to be paid salary for the entire period from 06.09.2002 till 15.05.2010. It was further submitted that the Department had

regularly been paying the pension to 1st respondent from her retirement on 31.07.2010.

11. The facts on record are clear that despite the requisition dated 19.10.2002 by the appellant requesting Chief Medical Officer, Allahabad for medically examining 1st respondent to certify her fitness and subsequent requests, no such report was sent to the Department. The writ petition filed by 1st respondent in the year 2006 was dismissed for non-appearance and no further steps were taken to revive the petition. When 1st respondent appeared before the appellant, the order dated 14.01.2010 records that she was unable to stand on her own and she was not fit for teaching job. It is true that pursuant to the order issued by the High Court, a medical test was conducted by Chief Medical Officer, Allahabad who found 1st respondent to be unable to stand on her legs for long but found her to be capable of teaching. In accordance with the orders issued by the High Court 1st respondent was ordered to be reinstated and did join the Institution on 15.05.2010, shortly whereafter there was a summer break. After she re-joined on 01.07.2010, within few days she applied for voluntary retirement. These facts certainly indicate the physical discomfort and disinclination on part of 1st respondent. The facts further show that right from 2002 no serious effort was made by 1st respondent to pursue her legal rights. The first action

in point of time was in the year 2006 which culminated in dismissal of writ petition in default. In the face of these facts, the order passed by the appellant holding 1st respondent not to be entitled to any salary in respect of period of absence was correct and justified. The effect of the orders passed by the High Court, on the other hand, is that 1st respondent is to be paid salary for nearly 10 years when in reality she had actually worked for only 36 days during that period. She herself sought pre-mature voluntary retirement and was allowed to retire and was extended all retired benefits.

12. Considering all these facts and circumstances, the orders passed by the Single Judge and the Division Bench in the present matter, in our view are unsustainable and erroneous. We therefore allow this appeal, set aside the Judgment and Order under appeal and dismiss Writ Petition No.30513 of 2011. No costs.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

New Delhi,
May 17, 2018

ITEM NO.1501

COURT NO.9

SECTION XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 28895/2017

(Arising out of impugned final judgment and order dated 21-03-2017 in
SAD No. 374/2015 passed by the High Court Of Judicature At Allahabad)

DISTRICT BASIC EDUCATION OFFICER ALLAHABAD

Petitioner(s)

VERSUS

SUSHILA JAISWAL (DEAD) THROUGH HER LRS & ORS.

Respondent(s)

Date : 17-05-2018 This petition was called on for hearing today.

For Petitioner(s) Mr. Rakesh Mishra, AOR

Ms. Roopali Chaturvedi, Adv.

For Respondent(s) Mr. Rajeev Singh, AOR

Hon'ble Mr. Justice Uday Umesh Lalit pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Arun Mishra and His Lordship.

Leave granted.

Appeal is allowed in terms of the Signed non-reportable Judgment.

(NEELAM GULATI)

COURT MASTER (SH)

(JAGDISH CHANDER)

BRANCH OFFICER

(SIGNED JUDGMENT IS PLACED ON THE FILE)