

Reserve

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

T.A. 521/89

C.S. No: 381/1975

File No:

Date of decision: 28.4.95

late R. S Yadan

PETITIONER

ADVOCATE FOR THE
PETITIONER

VERSUS

401/895

RESPONDENTS

ADVOCATE FOR THE
RESPONDENTS

COKEAN

The Hon'ble Mr. S. Das Gupta, A.M.

The Hon'ble Mr. T. C. Verma, J.M.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether to be circulated to all other Bench?


SIGNATURE

MANISHA

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 28.4.95

T.A. No: 52 of 1989 In O.S. 381 of 1975

Late R.S.Yadav Applicant.

By Advocate Shri G.D.Mukherji

Verses

The Union of India & Ors.

..... Respondents.

By Advocate Km. S.Srivastava

* * * *

C O R A M

Hon'ble Mr. S.Das Gupta, Member-A
Hon'ble Mr. T.L.Verma, Member-J

O R D E R

By Hon'ble Mr. T.L.Verma, Member-J


Late R.S.Yadav was appointed as Instructor under the NFC Programme and was posted in J.S.Hindu Inter College Amroha in the District of Moradabad at the relevant time. The college reopened on 8.7.1973 after the summer vacation. The applicant, it is stated, attended his duties on 8/9.7.1973. He applied for leave from 10th July 1973 to 14th July 1973 on the ground of illness of his wife. He had enclosed medical certificate in support of the illness of

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his wife with the application. The application for leave was sent under registered cover but the Principal refused to receive the same. He thereafter, sent application for leave from 15.7.1973 to 29.7.1973 through the Principal J.S.Hindu to Dy. Director, Inter College, Amroha. On refusal of the Principal to receive the registered letter containing leave application of the applicant, the applicant sent application for leave from 23.7.73 to 14.8.73 to Deputy Director Education Lucknow. The Deputy Director Education, however, returned his leave application in original and advised him to submit the same to the concerned District Inspector of Schools. Thereafter, the applicant sent an application for leave on 10.8.73 to the District Inspectors of Schools Moradabad. The District Inspector of Schools Moradabad is stated to have informed the applicant that he has been transferred to Sitapur and as such he should apply for leave to the District Inspector of Schools, Sitapur. As advised by District Inspector of Schools Mohadabad, the applicant made an application for leave from 16.9.73 to 30.9.73 and also forwarded the leave applications returned in original by District Inspector of Schools Moradabad. The District Inspector of Schools Sitapur asked the applicant to indicate to him the nature of leave applied for.

2. It is stated that the Principal, J.S.Hindu Inter College, Amroha neither took

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charge from the applicant of the post of Instructor nor issued any relieving letter despite ~~made~~ repeated request made in writing. It is further stated that because of the omission on the part of the Principal, to take over charge from the applicant and issue relieving letter, the applicant was compelled to file applications for extention of his leave from time to time. The applicant also wrote to the District Inspector of Schools Sitapur that he was willing to join to do if permitted / so, without relieving letter being produced by him. The applicant was neither issued relieving letter nor informed by the District Inspector of Schools, Sitapur that he will be allowed to join even without relieving order. The applicant was also not paid salary from the month of July 1973 to August, 1974 amounting to Rs. 4,788/-. He, therefore, sent notice under Section 80 CPC for payment of the salary within 2 months from the date of notice failing which the applicant will be compelled to move the Court for issuing appropriate directions in the matter. The respondents, it is stated, despite the notices under Section 80 CPC sent through Lawyer, failed to make payment of the salary. The applicant, therefore, filed suit No. 381/1975 in the Court of Civil Judge, Moradabad on 6.11.1974.

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3. The applicant died on 15.1.1983 during the pendency of the suit. In his place, his widow Smt. Dayavati has been substituted.

+ Respondent

4. Respondents No. 4, the District Inspector of Schools Moradabad have appeared and contested the suit by filing ^{before} written statement. According to the contesting respondents, the applicant was transferred from J.S.Hindu Inter College Amroha to Sitapur vide letter No. NFC(Ma)/4483-4362/3/V 9/73-74 dated 29.6.73 and was relieved from J.S.Hindu Inter College Amroha on 3.7.1973. It is said that, despite the fact that the applicant had been transferred and relieved from J.S.Hindu Inter College, Amroha, he did not join at Sitapur. It is said that the applicant had full knowledge of his transfer from Amroha to Sitapur. In addition to the above, ~~xxxxxxxxxxxxxx~~ The applicant was informed by the Principal J.S.Hindu Inter College Amroha and the District Inspector of Schools Moradabad that he has been transferred. The District Inspector of Schools Sitapur also, it is said, had informed the applicant that he had been relieved from Amroha. In view of the above facts, according to the respondents, the applicant had no valid reason for not joining his new place of posting on the ground that he had neither been served with the transfer order nor had been relieved of his post. His absence from 3.7.1973 therefore, it is

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stated, was unauthorised and as such he is not entitled to any pay for the period during which he remained absent after his transfer from Amroha.

5. The further case of the respondents is that the Government of India has taken a policy decision to abolish all the posts of NDS Instructors w.e.f. 1.11.1976 and notices of the termination was issued to the applicant. The State of U.P. issued offer for appointment for absorptions in the State Service of such of the Instructors who opted for appointment in the State service. It is stated that the applicant failed to send his acceptance of the offer and to resume duty by 31.10.1976 and accordingly, his services stood terminated w.e.f. 1.11.1976.

6. The Civil Judge, Moradabad ~~however~~, transferred the case to State Administrative Tribunal for disposal. The State Administrative Tribunal ~~then~~ transferred the case to Civil Judge Moradabad stating that the case did not fall within the jurisdiction of the State Administrative Tribunal. The Civil Judge Moradabad ^{then} ~~has~~ referred this case to this Tribunal under Section 29 of the Administrative Tribunal's Act for disposal. In this way, this case has remained pending for more than 22 years. In view of the ~~unresolved~~ history of this case, we are not in a position

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7. We have heard the learned counsel for the parties and perused the record. The respondents have filed order dated 29.6.1973 whereby the applicant, along with 34 others has been transferred from Amroha to Sitapur. All the officers transferred by this order have been directed to inform the Director of Education U.P. of their having taken over charge at the new places of their postings. Letter dated 3.7.1993 from the Principal J.S.Hindu Inter College Amroha addressed to the applicant has also been filed to show that the applicant has been relieved of his post. The applicant, it seems, filed a representation to the Deputy Director NFC Directorate of Education Lucknow for staying his transfer. The representation is dated 16.8.1973. The representation filed by the applicant thus, leaves no room for doubt that the applicant had knowledge of his transfer from Amroha to Sitapur. From the material on the record, it is absolutely clear that the applicant did not join his new place of posting on the ground that he had been given relieving letter.

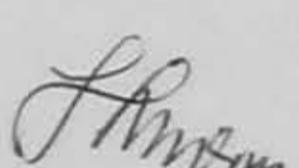
It has already been seen that the Principal by his letter dated 3.7.76, had informed the applicant that he had been relieved from his post consequent upon his transfer to Sitapur. He applied for

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leave from 10.7.1973 on-wards. From the correspondence filed by the applicant, it appears that he had been informed by the concerned authorities that his service book, L.P.C. etc. had been sent to the District of Schools Sitapur and as such leave applied for shall be sanctioned by the District Inspector of Schools Sitapur and he was accordingly advised to get in touch with him. The District Inspector of Schools ^{Sitapur} by his letter has requested the applicant to indicate the nature of leave applied for. The applicant, as would appear from letter No. C 14013/35/75-NFC dated 28.12.1976 from Government of India to the applicant that he failed to indicate the nature of leave he had applied for, accordingly, the period of absence from the date of his being relieved from his post by Principal J.S.Hindu Inter College, Amroha till the date of abolition of the post has not been regularised. There is nothing before us to show as to the nature and the period leave due and admissible to the applicant. Since the applicant, as is clear from the facts on the record, has deliberately avoided joining the post at the place of his transfer. His absence from duty, ~~xxxxxx~~, cannot be treated as authorised as may entitle him to pay and allowances. The period of absence of the applicant can be regularised only after the competent authority sanctions leave due and admissible to him.

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7. In the facts and circumstances of the case discussed above, relief as claimed for by the applicant can-not be given. We may however, note that since the applicant has died and the only ground for not passing order on the applications for leave filed by the applicant is that he had not indicated the type of leave he had applied for, we deem it fit and proper to dispose of this application with a direction to the respondents to consider the desirability of disposing of the leave applications filed by late R.S.Yadav and adjust the period of absence against leave due and admissible and pay the emoluments accordingly to his widow who has been substituted in his place. There will be no order as to costs.


Member-J


Member-A

/jw/