

A DISTRICT BASIC EDUCATION OFFICER  
v.  
DHANANJAI KUMAR SHUKLA AND ANR.

DECEMBER 7, 2007

B [S.B. SINHA AND G.S. SINGHVI, JJ.]

SERVICE LAW:

C UTTAR PRADESH RECOGNISED BASIC SCHOOLS (JUNIOR  
HIGH SCHOOLS) (RECRUITMENT AND CONDITIONS OF  
SERVICE OF TEACHERS) RULES, 1978:

D *r. 6—Appointment of Headmaster—Disqualification—Being son  
of Manager of the School—HELD: Manager being on leave for a  
temporary period did not cease to be Manager of the School—He went  
on leave only to defeat the statutory provision—Such an act amounts  
fraud on the administration—Whether in law or in equity it would be  
wholly improper to continue the appointment—Equity.*

E CODE OF CIVIL PROCEDURE, 1908:

F *Or. 8 r. 5—Non-filing of written statement—Effect of—HELD:  
Rules of pleading contained in the Code do not cover question of law  
—Under Or. 8 r. 5, despite non-filing of the written statement, a court  
of law may call upon the plaintiff to prove his case—No relief contrary  
to law can be granted by High Court in exercise of its jurisdiction  
under Article 226 of the Constitution—Uttar Pradesh Recognised Basic  
Schools (Junior High Schools) (Recruitment and Conditions of Service  
of Teachers) Rules, 1978—r. 6—Constitution of India—Article 226—  
Evidence Act, 1872—s. 56.*

G **In response to an advertisement issued by a recognized School  
for the post of its Headmaster, respondent no. 1 submitted an  
application. Recruitment to the post of Headmaster was governed  
by the Uttar Pradesh Recognised Basic Schools (Junior High**

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Schools)(Recruitment and Conditions of Service of Teachers) Rules, A  
1978, Rule 6 whereof provided, *inter alia*, that no person related to  
any member of the Management of a recognized school would be  
appointed as Headmaster or Assistant Teacher thereof. Father of  
respondent no. 1, who was the Manager of the School, after seeking  
leave of the President of the Managing Committee on medical B  
ground, handed over charge to the Deputy Manager stating that he  
would resume the charge and responsibility of the post of Manager  
approximately after two months. Meanwhile respondent no. 1 was  
appointed on ad hoc basis. He filed a writ petition in the High Court  
seeking relief of continuation of his services and claiming his salary. C  
Since the appellant-authorities did not file any counter affidavit in  
the writ petition, it was ultimately allowed and the special appeal filed  
by the authorities was dismissed by the Division Bench of the High  
Court holding that as the appellant did not file any counter affidavit  
in the writ petition, the principles of Order 8, Rule 5 CPC would apply D  
and, thus, all the statements made in the writ petition would be  
deemed to have been admitted. Aggrieved, the Education  
Department filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. Principles underlying Order 8 rule 5 of the Code E  
of Civil Procedure, 1908 (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) make it clear  
that not only despite non-filing of the written statement a Court of F  
law may call upon the plaintiff to prove his case but also there cannot  
be any doubt whatsoever, that no relief contrary to law can be  
granted by the High Court in exercise of its jurisdiction under Article  
226 of the Constitution of India. [Para 12] [977-C-D]

1.2. Respondent's father was on leave for a temporary period. G  
He thereby did not cease to be the Manager of the school. It is  
apparent that he went on leave only to defeat the statutory provisions.  
Such an act amounts to fraud on the administration. The appointment  
of respondent no. 1 being contrary to the mandatory provisions as  
contained in rule 6 of the Rules was a nullity and, therefore, could H

A not have been directed to be legalized only because the appellants did not file their counter affidavit. The authorities did not admit respondent's claim. [Para 13 and 14] [977-E-F-H; 978-A]

B 1.3. The question involved in the writ petition was a legal question. Rules of pleading contained in the Code of Civil Procedure do not cover question of law. In the instant case, the basic foundational fact stands admitted. If a fact stands admitted, the same in terms of section 56 of the 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.  
C Having regard to the facts and circumstances of the case, whether in law or in equity, it would be wholly improper to permit respondent no. 1 to continue to act as a Headmaster.

[Para 13 and 15] [977-F-G; 978-A-B]

D CIVIL APPELLATE JURISDICTION :Civil Appeal No. 5773 of 2007.

From the final Judgment and Order dated 5.12.2005 of the High Court of Judicature at Allahabad in S.A. No. 1426/2005.

E Shrish Kr. Misra, Garvesh Kabra and Niranjana Singh for the Appellants

Dr. J.N. Dubey, Anurag Dubey, Meenesh Dubey and Mohan Pandey for the Respondents.

F The Judgment of the Court was delivered by  
S.B. SINHA, J. 1. Leave granted.

G 2. 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:

H "6. 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.

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(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- A

- (i) Father or mother;
- (ii) Grandfather, Grandmother; B
- (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; C
- (vii) Grandson, grand-daughter;
- (viii) Husband, wife;
- (ix) Nephew, niece; D
- (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." E

3. The post of Headmaster inter alia fell vacant in Janta Adarsh Madhyamic Vidyalaya, Newada Khurd, Kalan, Etawa. 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, Itawah. F

4. 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: G

“Respectfully 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. H

A 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.”

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5. 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.

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6. *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.

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

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8. 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.

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9. 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.

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10. 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,

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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. A

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

12. 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. C D

13. 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 legislised 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. E F

14. 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 G H

A went on leave only for defeating the statutory provisions. Such an act amounts to fraud on the administration.

B 15. 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.

C 16. 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.

R.P.

Appeal allowed