

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 25<sup>th</sup> OF JANUARY, 2023**

**FIRST APPEAL No. 12 of 1994**

**BETWEEN:-**

1. NEW EDUCATION SOCIETY, NAVEEN VIDYA BHAWAN BUILDING, NAPIER TOWN, JABALPUR THROUGH THE ADMINISTRATOR SHRI ASHOK JHA ADVOCATE (MADHYA PRADESH)
2. THE SECRETARY, NEW EDUCATION SOCIETY, NAVEEN VIDYA BHAWAN NAPIER TOWN JABALPUR THROUGH THE ADMINISTRATOR.
3. THE PRINCIPAL NEW EDUCATION SOCIETY, LAW COLLEGE, JABALPUR.

**.....APPELLANTS**

***(BY SHRI MANOJ SHARMA – SENIOR ADVOCATE WITH SHRI SIDDHARTH PATEL - ADVOCATE)***

**AND**

**K.K.NAGARIYA, S/O LATE SHRI L.P.NAGARIYA AGED ABOUT 45 YEARS, LECTURER, N.E.S. LAW COLLEGE, NAPIER TOWN, JABALPUR (MADHYA PRADESH) (DEAD) THROUGH LEGAL REPRESENTATIVES :-**

- A. SMT.ARCHANA NAGARIYA, WD/O LATE K.K.NAGARIYA, AGED ABOUT 63 YEARS,
- B. KU.AVNI NAGARIYA, D/O LATE K.K.NARGARIYA, AGED ABOUT 22 YEARS, BOTH R/O D-10, SADBHAWANA VIHAR, NAPIER TOWN, JABALPUR.

**.....RESPONDENTS**

***(BY SHRI MUKHTAR AHMAD - ADVOCATE)***

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*This appeal coming on for hearing this day, the court passed the following:*

### **JUDGMENT**

1. This First Appeal under section 96 of the CPC has been filed against the judgment and decree dated 14.12.1993 passed by 8<sup>th</sup> Addl. District Judge, Jabalpur in Civil Suit No.74-A/1989 by which the suit filed by the plaintiff late K.K.Nagariya has been decreed.
2. The present respondents are the legal representatives of the original plaintiff.
3. The facts necessary for disposal of the present appeal in short are that the plaintiff filed a suit on the ground that he was working on the post of Lecturer in the New Education Society, defendant no.1. The defendant no.1 is a registered society and is running various colleges and schools. The governing body of the society was superseded and an Administrator was appointed by the Govt. The society is running a law college and is affiliated by R.D.V.V. and is governed by the M.P. University Adhiniyam. The plaintiff is the holder of LLM degree and he was appointed by the defendant no.1 on the post of Lecturer after due selection. By order dated 2.8.1979 he was appointed on the post of full time Lecturer for a period of 3 months. Thereafter, again on 27.1.1980 an advertisement was issued for appointment of full time Lecturer and the plaintiff also submitted his application form and accordingly, he was selected by the Selection Committee on the post of full time Lecturer/regular Lecturer on the regular pay-scale fixed by the State Govt. Thus, it was claimed that the plaintiff was working from 6.8.1979 on the pay-scale of Rs.620-1300/-. Considering the

efficiency of the plaintiff, he was sent on deputation to the Law Department on the post of Assistant Law Officer by order dated 4.8.1988. At the time of relieving the plaintiff had given an application to the defendant no.1 that his lien on the post of Lecturer may be maintained and accordingly defendant no.3 accepted his prayer and a relieving order was passed. Thus, even after going on deputation it was claimed that the plaintiff maintained his lien in the defendant society. At the time of deputation, the plaintiff was in the pay-scale of Rs.1020/- and was entitled for the pay-scale of U.G.C. After his repatriation he sought permission from the defendant for his joining on the basis of Last Pay Drawn certificate. It was his case that after his repatriation he was entitled for the same pay-scale which was fixed by the State Govt. but the defendants did not pay him the pay-scale and did not fix the pay-scale and the plaintiff is under impression that the defendant may terminate his service and accordingly a suit was filed for payment of salary as per U.G.C. pay-scale as well as the declaration of letter dated 16.8.1989 as null and void as well as for permanent injunction for restraining the defendants from terminating his service.

4. Defendants no.1 and 3 filed their written statement and claimed that the plaintiff was appointed as Part Time Lecturer and he was getting Rs.300 as monthly honorarium. He was appointed as Assistant Law officer by the Law Department on adhoc basis and the plaintiff did not have any lien in the society. Neither the society had sent the plaintiff on deputation nor any order was passed thereby protecting his lien in the society. It was denied that at the time of joining the Law Department, the pay-scale of the plaintiff was Rs.1020. The salary

payable to a regular Govt. Lecturer is not payable to the plaintiff as the society is not a grant-in-aid society. Thus, the claim of the plaintiff that he is entitled to get pay-scale of Rs.3,000-5,000 was denied. It was further claimed that in view of the poor financial condition of the society, it is not in a position to pay the said pay-scale. The plaintiff is entitled for the similar pay-scale which is being paid to the other similarly situated Lecturers working in the society and accordingly it was prayed that the suit be dismissed.

5. The trial court after framing the issues and recording the evidence decreed the suit and held that the order dated 16.8.1989, Ex.P/1 issued by the defendant society is not binding on the plaintiff and the plaintiff is entitled for the regular pay-scale. It was also directed that the society shall settle the pay-scale of Rs.3,000-5,000/- from the date of his repatriation and from 1.1.1986 his pay-scale of Rs.2,200-4,000/- be fixed and a permanent injunction was also issued that the service of the plaintiff shall not be terminated in an illegal manner and the action shall be taken as per the provisions of Vishwavidyalaya Adhinyam. During the pendency of the appeal, the original plaintiff has expired and the present respondents are his legal representatives.
6. Challenging the judgment and decree passed by the courts below it is submitted by counsel for the appellant that the appointment of the plaintiff as a regular Lecturer by the Administrator is not binding on the society. The plaintiff was not entitled for regular pay-scale. Since the plaintiff was appointed as a part time Lecturer and his services were never regularized by defendant Society, therefore the plaintiff is

entitled for the pay-scale which was being paid to the similarly situated part time Lecturer and the society is not a grant-in-aid society.

7. Per contra, the appeal is vehemently opposed by counsel for the respondents. It is submitted that after the governing body was superseded, an Administrator was appointed and advertisement was issued for appointment of a Lecturer on regular basis. The plaintiff participated in the said selection process and he was accordingly selected. The order of appointment was issued by the Administrator. His lien was maintained by the Administrator. The defendant never challenged the orders passed by the Administrator and they on their own cannot claim that the orders passed by the Administrator are bad in law. Since the plaintiff was appointed as a regular Lecturer, therefore, he is entitled for the similar pay-scale which is payable to the regular Govt. Lecturers. Even otherwise, the Lecturer working in a private college is also entitled to get the same pay-scale which is payable to the Lecturers working in the Govt. College and relied upon the judgments of the Supreme Court in the case of **Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh**, reported in **1992 Supp.(2) SCC 2, State of Bihar and others Vs. Bihar State Workshop Superintendents Federation and others** reported in **1993 Supp (2) SCC 368, Prof. C.D. Tase Vs. University of Bombay and others**, reported in **1989 Supp (1) SCC 273, Prabhakar Ramakrishna Jodh Vs. A.L. Pande, decided on 12.1.1965 in C.A.No.137/1964, Sharadendu Bhushan Vs. Nagpur University, Nagpur and others**, reported in **1987 Supp. SCC 53** and of this Court in the case of **Ravi Madanlal Paliwal Vs. State of M.P.**

**and others** reported in **2000(2) M.P.L.J. 116** and **Amir Patel and others Vs. State of M.P. and others** reported in **2006(3) M.P.H.T. 88.**

8. Heard the learned counsel for the parties.
9. Undisputed fact is that the Governing body of the society was under supersession and the Administrator was appointed. The Administrator issued an advertisement Ex.P3C for the post of Principal as well as for the post of whole time Lecturer. The plaintiff also applied for the post of Lecturer and by order dated 15.4.1980, Ex.P/4C he was informed that the meeting of the Selection Committee for appointment of Full Time Lecturer shall be held on 25.4.1980 and the plaintiff can appear before the committee. Thereafter, on 29.5.1980 Ex.P5C the plaintiff was appointed on the post of Lecturer in the scale of Rs.620-1300 w.e.f. 1.5.1980. The Law Ministry by a letter dated 4.8.1988, Ex.P/6C informed the Principal, N.E.S. Law College that the plaintiff has been appointed as Assistant Law Officer on adhoc deputation basis in the pay-scale of Rs.3000-4500. Accordingly, on 11.8.1988 Ex.P/7C plaintiff prayed for his relieving by maintaining his lien in the college. By order dated 16.8.1988, Ex.P/8C he was relieved and it was also observed that during the period of deputation he will hold his lien of Lecturer from N.E.S. Law College until termination of his deputation. After his repatriation the plaintiff applied before the N.E.S. Law College for permission to join and by letter dated 16.8.1988 Ex.P/11C he was informed that if he is prepared to take old scale of pay which he was getting prior to joining the Law Commission then he can submit his joining report in this College. After submitting his joining the plaintiff moved an application on 1.9.1989, Ex.P/12C to reconsider the

letter dated 16.8.1989 because it would amount to reducing the pay-scale thereby seriously prejudicing his service prospects. Again a representation dated 3.10.1989 Ex.P/14C was made. Although the defendants have claimed that the advertisement as well as the order of appointment of the plaintiff as Full Time regular Lecturer were bad in law; but, they never challenged the said orders. Since the Governing Body was superseded and an Administrator was appointed, therefore, the Governing Body/defendants are bound by the decision taken by the Administrator.

10. The Supreme Court in the case of **M.Meenakshi Vs. Metadin Agarwal (dead) by LRs and others**, reported in **(2006)7 SCC 470** has held as under :-

17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject-matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the letters patent appeal.

11. The Supreme Court in the case of **Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh and others**, reported in **(2016)9 SCC 44** has held as under :-

“54. We are also of the considered view, as held by the Court in *Krishnadevi Malchand Kamathia case* [*Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363], that it is not open either to parties to a lis

or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in *Official Liquidator* [*Official Liquidator v. Allahabad Bank*, (2013) 4 SCC 381 : (2013) 2 SCC (Civ) 619] and *Jehal Tanti* [*Jehal Tanti v. Nageshwar Singh*, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512] cases, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in *Jehal Tanti case* [*Jehal Tanti v. Nageshwar Singh*, (2013) 14 SCC 689 : (2014) 3 SCC (Civ) 512] . In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted.

55. To be fair to the learned counsel for the appellants, it needs to be noticed that reliance was also placed on behalf of the appellants on *Kiran Singh* [*Kiran Singh v. Chaman Paswan*, (1955) 1 SCR 117 : AIR 1954 SC 340] , *Sadashiv Prasad Singh* [*Sadashiv Prasad Singh v. Harendar Singh*, (2015) 5 SCC 574 : (2015) 3 SCC (Civ) 154] , and *Jagmittar Sain Bhagat* [*Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 : (2013) 4 SCC (Civ) 681 : (2013) 2 SCC (L&S) 841] cases to contend that a decree passed by a court without jurisdiction was a nullity and that its invalidity could not be corrected even by the consent of the parties concerned. We are of the considered view that the proposition debated and concluded in the judgments relied upon by the learned counsel for the appellants (referred to above) is of no relevance to the conclusions drawn in the



foregoing paragraph. In our determination hereinabove, we have not held that a void order can be legitimised. What we have concluded in the foregoing paragraph is that while an order passed by a court subsists, the same is liable to be complied with, till it is set aside.

12. Thus, it is clear that if a litigant is of the view that the order which has been passed is an illegal order then he has to challenge the same and unless and until the said order is set aside, no-one can claim that he would not follow the same or the same is not binding on him. It is not the case of appellants that the orders passed by Administrator were void and nullity. Their contention is that the orders passed by Administrator were illegal.
13. In the present case the Administrator after supersession of the Governing Body was looking after the affairs of the Society. He was competent to take decision on behalf of the Society. Advertisement, Ex.P/3C was issued and accordingly the plaintiff was duly appointed as a regular Lecturer. Before leaving for Law Department the plaintiff had also prayed that he may be permitted to maintain his lien in the College which was duly approved by the Administrator. The defendants never challenged the orders passed by the Administrator. Even in the present case, no counter claim was filed thereby challenging the orders passed by the Administrator. Thus, the orders passed by the Administrator are binding on the defendants. Thus the appointment of the plaintiff as a regular Lecturer on a regular pay-scale payable to other Govt. Lecturers cannot be said to be bad in law. Once the appointment of the plaintiff as a regular Lecturer on the pay-scale payable to the Lecturers working in the govt. Colleges is upheld then the natural consequence of payment of regular pay-scale would

automatically follow. The defendants cannot claim that since they are unaided private college, therefore, they will not pay the regular pay-scale admissible to the plaintiff from time to time. The financial condition of the defendant has nothing to do with the service conditions of the plaintiff.

14. Under these circumstances, this Court is of the considered opinion that the trial court did not commit any mistake by decreeing the suit filed by the plaintiff. Accordingly, this appeal fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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