
(2014) 04 AHC CK 0140

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11519 of 2012

Abhay Kumar Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Citation : (2014) 5 ADJ 98 : (2014) 5 ALJ 387 : (2014) 3 ESC 1469 : (2014) 2 UPLBEC 1687

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : B.C. Rai, Deepak Kumar Pandey, J.K. Pandey and Prakash Padia, Advocate for the Appellant; G.K. Singh, Irshad Ali, J.N. Maurya and V.K. Singh, Advocate for the Respondent

Final Decision : Allowed

Judgement

B. Amit Sthalekar, J.—The petitioner in this writ petition is aggrieved by the Notification dated 7.12.2009 issued by the, Secretary, U.P. Secondary Education Services Selection Board, Allahabad in so far as it pertains to Sri Shiv Mangal Singh Inter College, Beruabari, Ballia as also the order of the District Inspector of Schools, Ballia (hereinafter referred to as the DIOS) dated 2.1.2010 and the joining report dated 4.1.2010 in respect of the respondent No. 5, Dr. Shatrughan Singh on the post of Principal of Sri Shiv Mangal Singh Inter College, Beruabari, Ballia. The facts of the case, in brief, are that there is an Institution known as Sri Shiv Mangal Singh Inter College, Beruabari, Ballia (hereinafter referred to as the College), which is a duly recognized and aided Educational Institution governed by the provisions of the U.P. Intermediate Education Act, 1921 and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. The case of the petitioner is that he was appointed as Lecturer in the College on 15.1.1981 and at present he is the senior most Lecturer in the Institution. On 30.6.2008 one Shyama Singh, who was the senior most Lecturer and Officiating Ad hoc Principal of the Institution, retired from

service. As a result, the post of Principal fell vacant. A requisition was made to the U.P. Secondary Education Service Selection Board, Allahabad for filling up the post of Principal in the said College. The Board issued Advertisement No. 1/2008 for making appointments on the post of Principal in several Colleges including the college in question. One Rajendra Singh and the petitioner were called for interview by the U.P. Secondary Education Service Selection Board, Allahabad. The result of the selection was notified on 7.12.2009 and the following candidates were recommended for appointment:

(i) Dr. Shatrughan Singh (Respondent No. 5), Lecturer, Paramhansh Inter College, Majhwali, Ballia.

(ii) Dr. Hare Ram Pandey, son of Shri Triveni Pandey, Mohalla Misra Mewari, District Ballia.

(iii) Shri Shyam Jeet Singh Yadav, Lecturer, Yugal Bihari Inter College, Rameshwar, Varanasi.

2. In the College in question the respondent No. 5, Dr. Shatrughan Singh was recommended as a selected candidate as he was working as Lecturer in the Paramhansh Inter College, Majhwali, Ballia, but a serious question arose with regard to the very appointment of respondent No. 5 on the post of Lecturer in the Paramhansh Inter College, Majhwali, Ballia on the ground that the approval to the appointment of the respondent No. 5 in the Paramhansh Inter College was issued by one Sri Lakhan Singh, who at the relevant point of time, was the Finance and Accounts Officer in the office of the District Inspector of Schools, Ballia.

3. In para. 13 of the writ petition it is also stated that in respect of the appointments made and approval granted by Sri Lakhan Singh in District, Ballia disciplinary proceedings were also initiated against him. In the disciplinary proceedings Sri Lakhan Singh gave a reply denying having granted any approval to the appointment of the respondent No. 5. The reply of Sri Lakhan Singh dated 22.2.1991 has been filed as Annexure-2 to the writ petition in which, Lakhan Singh has clearly stated that the charge of the office of District Inspector of Schools was with him for 20 days during the period the then DIOS was on medical leave but during his tenure he never made any appointment of any teacher or staff in any Institution in District-Ballia nor did he issue any approval in favour of any teacher or staff and that if any such approval is being used in his name the same is forged.

4. In pursuance of the statement given by Sri Lakhan Singh, he was placed under suspension by order dated 20.4.1993 passed by the Additional Director of Education (Secondary) Allahabad. Subsequently by an order dated 12.12.1997 also passed by the Additional Director of Education (Secondary), Allahabad the said Lakhan Singh was reinstated in service.

5. In the meantime a Writ Petition No. 49460 of 2009, Kaushal Kumar Rai v.

State of U.P. and others, has been filed in the High Court, in which the learned Single Judge by his order dated 16.9.2009 directed setting up of an enquiry regarding all the appointments made and approval granted by the said Lakhan Singh in his capacity as DIOS, Ballia. In pursuance of the order of the High Court, the DIOS passed an order on 13.11.2009 stopping the payment of salary of respondent No. 5 including some other persons. The result was that a serious dispute arose with regard to the initial appointment of the respondent No. 5 as Lecturer in the Paramhansh Inter College, Majhwali, Ballia. However, in pursuance to the selection notification dated 7.12.2009 issued by the Selection Board, the DIOS issued a letter of appointment dated 2.1.2010 appointing the respondent No. 5 as Principal in the College in question and in pursuance of the order dated 2.1.2010 the respondent No. 5 has also given his joining in the College on 4.1.2010. Hence the present writ petition.

6. The delay in filing the writ petition has been explained by the petitioner by stating that one Rajendra Singh had earlier filed Writ Petition No. 921 of 2010 questioning the selection of the respondent No. 5 as Principal in view of the selection notification dated 7.12.2009 but subsequently for reasons best known to Shri Rajendra Singh, he made a request to the Court for dismissing the writ petition as withdrawn and the said writ petition was dismissed as withdrawn and the petitioner had no knowledge of the dismissal of the writ petition on 22.2.2010. However, it is submitted that the appointment of the respondent No. 5 has been obtained by practicing fraud and on the facts stated in this writ petition, the petitioner herein has questioned the selection notification dated 7.12.2009 as well as the appointment order and joining report of the respondent No. 5 dated 2.1.2010 and 4.1.2010 respectively. When the case came up for admission, it was directed to be put up on 12.3.2012 alongwith connected Writ Petition No. 49460 of 2009, 49750 of 2009, 49748 of 2009, 49600 of 2009.

7. On 12.3.2012 the learned Single Judge has noted that the DIOS in pursuance of the order of the Court dated 16.9.2009 passed in Writ Petition No. 49460 of 2009 had directed the respondent No. 5 to produce all the relevant records to establish the legality and validity of his appointment as Teacher in the Paramhansh Inter College, Majhwali, Ballia and it was further directed that till then salary would not be paid to the respondent No. 5. It has also been noted that in spite of the order of the DIOS, the DIOS on 2.1.2010 approved the appointment of the respondent No. 5 as Principal in the College in question. Thereupon the Court taking cognizance of the facts issued notices to the authorities and till then directed that payment of salary shall not be made to the respondent No. 5 on the post of Principal.

8. On 5.9.2013 the Court framed three questions for determining the legality or otherwise of the appointment of the respondent No. 5, one of the questions being "as to how could Lakhan Singh act as the DIOS and who had authorised him to discharge the duties and responsibilities of District Inspector of Schools, Ballia for the relevant period and under which statutory provision." When no

response was filed on behalf of State to the queries made by the Court, the Court by its order dated 14.11.2013 directed the respondent No. 1, Secretary, Department of Secondary Education, U.P. Lucknow to file his personal affidavit. In response thereto an affidavit has been filed by Sri Jitendra Kumar, Secretary, Secondary Education, U.P. Lucknow on 12.12.2013 and a counter-affidavit has also been filed on behalf of respondent No. 5, During this period aggrieved by the order of the Court dated 12.3.2012 by which the payment of salary of the respondent No. 5 has been stopped, the respondent No. 5 filed Special Appeal No. 660 of 2012 which was dismissed by a Division Bench of this Court by order dated 20.12.2012. Aggrieved by the aforesaid order, the respondent No. 5 filed SLP (Civil) No. 34732 of 2012 and the said SLP was disposed of with a request to the learned Single Judge to consider the application of respondent No. 5 dated 8.5.2012 for vacation of the interim order dated 12.3.2012.

9. I have heard Sri Prakash Padia, learned counsel for the petitioner, Sri V.K. Singh, learned counsel for the respondent No. 5, Sri J.N. Maurya, learned counsel for the respondent" No. 2 and the learned Standing Counsel for the respondents No. 1 & 3.

10. Sri Prakash Padia, learned counsel for the petitioner has referred to an application dated 22.2.1991, copy of which has been filed as Annexure-2 to the writ petition submitted by Sri Lakhan before the Senior Finance and Accounts Officer (Secondary) Directorate of Education, U.P., Allahabad, in which he has categorically admitted that he was given the charge of the post of DIOS for 20 days during the period when the DIOS, Ballia was on medical leave but during this period he has never made any appointment or granted approval to the appointment of any teacher or staff of any College in District, Ballia and if any person is using any document showing his signature as approval the same is a fraudulent document and the payment of salary of such person should be stopped.

11. Sri Padia further submits that the case of Dr. Shatrughan Singh, respondent No. 5 was that he was appointed as Lecturer in the Paramhansh Inter College, Majhwali, Ballia under the authority of Sri Lakhan Singh and therefore, the very appointment of the respondent No. 5 was fraudulent, illegal and an invalid appointment, therefore, his subsequent appointment as Principal in the College in question was also an illegal and invalid appointment.

12. In the counter-affidavit Sri V.K. Singh, learned counsel appearing on behalf of respondent No. 5, on the other hand, referred to Annexure-1 to the counter-affidavit, which is a letter dated 20.12.1990 which is the recommendation of names of candidates selected as Lecturer and Assistant Teacher, L.T. Grade was forwarded by the Paramhansh Inter College, Majhwali, Ballia regarding selection of the respondent No. 5 as Lecturer Sanskrit by Sri Lakhan Singh, as Authorised Controller of the Paramhansh Inter College has been approved by the same Lakhan Singh as DIOS, Ballia and thereafter another letter filed as Annexure-2 to the counter-affidavit also dated 20.12.1990 also issued by Lakhan Singh as

Authorised Controller appointing the respondent No. 5 as ad hoc Lecturer with a further direction to report for joining within 7 days. A perusal of these letters would show that they have all been issued under the name of the one and same Lakhan Singh. The first letter approving the selection of respondent No. 5 as Lecturer Sanskrit has been signed by Lakhan Singh in his capacity as DIOS, Ballia the second letter also dated 20.12.1990, Annexure-2 to the counter-affidavit has been issued by Sri Lakhan Singh in his capacity as the Authorised Controller of the Paramhansh Inter College, Majhwali, Ballia. Thus, it appears that during this period he was the Authorised Controller in the control of the management of the Paramhansh Inter College, Majhwali, Ballia and that Lakhan Singh was the Authorised Controller of the Paramhansh Inter College, Majhwali, Ballia who had prepared the select list which was forwarded by him to the DIOS for grant of approval to the selection of Dr. Shatrughan Singh, respondent No. 5 as Lecturer Sanskrit and at the same time it was Lakhan Singh, who in his capacity as DIOS also granted approval to the said select list. This approval granted on 20.12.1990 by Sri Lakhan Singh, as DIOS to the selection of the respondent No. 5 as Lecturer Sanskrit in the Paramhansh Inter College, Majhwali, Ballia on the face of it appears to be an act of fraud in view of the own admission of Lakhan Singh dated 22.2.1991, filed as Annexure-2 to the writ petition, wherein, Lakhan Singh has admitted that he had the charge of the post of DIOS for 20 days during the period when the then DIOS was on medical leave but during this period of 20 days he had never made any appointment or granted approval to any appointment of any teacher or staff of any College in the District-Ballia and that, if any person is using his name for such appointment or approval the same is a forged and fabricated document and no salary should be paid to such person.

13. Thus, in view of the specific denial letter of Sri Lakhan Singh dated 22.2.1991 the claim of respondent No. 5 having been appointed as Lecturer Sanskrit in the Paramhansh Inter College, Majhwali, Ballia and approval granted by Sri Lakhan Singh in his capacity as DIOS on the face of it is a fraudulent claim and does not stand the test of scrutiny by this Court.

14. In pursuance of the directions of this Court, a personal affidavit has also been filed by Sri Jitendra Kumar, Secretary, Secondary Education, respondent No. 1 on the question as to how Lakhan Singh was allowed to function as DIOS and whether a Finance and Accounts Officer in the Office of DIOS can function as DIOS. In para. 3 of the affidavit filed by the Secretary, Secondary Education, U.P. it has been stated that there is no document available on record to show that Sri Lakhan Singh was given officiating charge of DIOS. It is also stated that there is no document on record to show that Sri Lakhan Singh was given charge of DIOS and it is not clear as to how, when, whether and from whom Lakhan Singh took over the charge of DIOS, Ballia.

15. In para. 4 of the affidavit it is stated that sometimes in a case of urgency officiating charge is handed over but there is no provision in the Act nor is there

any Government Order giving officiating charge of the Post of DIOS and there is no order on record to show that Lakhan Singh was given such officiating charge. In para. 5 of the affidavit, it is stated that an enquiry was made from the Directorate and it was informed that Sri Lakhan Singh was working as "Jyest Lekha Parikshak" but thereafter in the office of the DIOS he was working as ad hoc Assistant Accounts Officer under the Niyukti (Raj.)/282/23-2 (16)/89-90 dated 17/20th March, 1990 and the name of Lakhan Singh is at Sl. No. 22 of the select list. So far as the question of giving officiating charge of the office of DIOS to Lakhan Singh is concerned, it is stated that there is no documentary evidence available in the office of the DIOS with regard to the queries raised, in the order dated 14.11.2013. A question and answer chart has been given in para. 6 of the affidavit. With regard to the question No. 1, as to whether the charge of the post of DIOS can be given to anyone and if so, under which rule or Government Order, the reply is that under the U.P. Shaishik Samanya Shiksha Samwarg, Niyamawali, 1992, para. 1 Item-25 it is mentioned that appointment of the DIOS in the Education Department is made by way of promotion on the basis of eligibility. It is specifically stated that the charge of DIOS cannot be given to Accounts Officer in that office. In reply to question No. 2 it is specifically stated that Accounts Officer cannot be given the charge of the Office of DIOS under any Rule or any Government Order. With regard to question No. 3 in respect of Sri Lakhan Singh, the answer is that the Additional Director of Education in his letter dated 21.10.2013 has stated that there is no document on record with regard to the giving of charge of office of DIOS to Sri Lakhan Singh.

16. Paragraphs 3, 4, 5 & 6 of the affidavit filed on behalf of respondent No. 1, Secretary, Secondary Education, Lucknow are quoted below:

3. That in pursuance of the order of this Hon''ble Court dated the report was sought from District Inspector of Schools, Ballia, vide Letter No. 4365/2013-14 dated 17.10.2013 the District Inspector of Schools, Ballia in his report has submitted that Mr. Lakhan Singh was given the officiating charge of District Inspector of Schools. There is no document available which states that Lakhan Singh was given charge of District Inspector of Schools hence the status is not clear as to, when, where and through whom Mr. Lakhan Singh took the charge of District Inspector of Schools.

4. That so far the queries of this Hon''ble Court are concerned. It is relevant to state here that in view of the urgency and vacancy of posts it is some times customary for handing over the officiating charge but there is no provision in the Act or through Government Order regarding giving of officiating charge nor there is record available regarding giving the officiating charge to Mr. Lakhan Singh as well.

5. That from the Directorate it was affirmed that Mr. Lakhan Singh was working as "Jyest Lekha Parikshak" but thereafter in the office of District Inspector of Schools, Ballia he was placed as ad hoc Assistant Account Office vide order Niyukti (Raj.)/282/23-2 (16)/89-90 Dated 17/20th March 1990 and name of Mr.

Lakhan Singh is at serial No. 22 of the list. So far the question of officiating charge of District Inspector of Schools given to Mr. Lakhan Singh there is no documentary evidence available in the office of District Inspector of Schools, Ballia. Photostate copy of Niyamawali 1992 are annexed herewith and marked as Annexure-1 to this affidavit.

6. That the Hon"ble Court vide order dated 14.11.2013 has directed the deponent to file affidavit by 5.2.2013 on the points stated aforesaid. On the basis of the report of District Inspector of Schools dated 17.10.2013, report of Additional Director dated 21.10.2013 and U.P. Shashik Samanya Shiksha Samwarg, Niyamawali, 1992, the details of the quarries and reply thereto are as hereinafter mentioned:

17. There is a supplementary counter-affidavit sworn on 4.7.2012 and another supplementary counter-affidavit filed on behalf of respondent No. 5 sworn on 9.7.2013. So far as the counter-affidavit and the supplementary counter-affidavit filed by Dr. Shatrughan Singh, respondent No. 5 are concerned, Sri Prakash Padia, learned counsel for the petitioner submitted that both the affidavits have been sworn by one Ranjeet Singh, who is shown to be a resident at Holland Hall, Allahabad and the affidavit has been filed as pairokar of respondent No. 5 without disclosing his relationship with the respondent No. 5. The submission is that the allegations against the respondent No. 5 being of a personal nature relating to fraud having been committed in the matter of appointment of respondent No. 5, therefore, the affidavit ought to have been filed by the respondent No. 5 himself meeting the allegations and not through some Ranjeet Singh without disclosing the relationship with Shatrughan Singh, respondent No. 5 and in what capacity he is the pairokar of the respondent No. 5. Since the allegation made in the writ petition as also the facts emerging from the various queries made by the Court relating to the appointment of the respondent No. 5 as being an act of fraud, it was expected that the counter-affidavit and the supplementary counter-affidavit would be filed by the respondent No. 5 himself denying the allegations and thereafter the allegations of fraud by Sri Lakhan Singh in the matter of appointment of the respondent No. 5 remains uncontroverted and undenied but that is not the case here.

18. However, there is another supplementary counter-affidavit dated 9.7.2013, which, however, admits the facts stated in the counter-affidavit of the respondent No. 5 admitting that the DIOS, who was also working as the Authorised Controller of the Institution, namely, Paramhansh Inter College, Majhwali, Ballia had advertised the vacancy in the newspaper but in this affidavit it has not been disputed that Lakhan Singh had officiated as DIOS for 20 days and the select list of the post of Lecturer in the Paramhansh Inter College, Majhwali, Ballia selecting the respondent No. 5 as Lecturer was also prepared by him and forwarded to the DIOS for approval. Thus it is not at all difficult for the Court to come to the uninhibited conclusion as demonstrated from the documents filed as Annexure CA-1 and CA-2 to the counter-affidavit that it was Lakhan Singh who in the

capacity of Authorised Controller of the Paramhansh Inter College, Majhwali, Ballia had prepared the list recommending the name of Dr. Shatrughan Singh, respondent No. 5 for the post of Lecturer Sanskrit and the same Lakhan Singh in his capacity as DIOS, Ballia had also approved the said select list and thereafter again in his capacity as the Authorised Controller of the Paramhansh Inter College, Majhwali, Ballia had also issued the appointment letter to the respondent No. 5 as Lecturer-Sanskrit in the Paramhansh Inter College, Majhwali, Ballia on 20.12.1990. Thus, from the documents on record the fraud played by Lakhan Singh in the selection and appointment of the respondent No. 5 as Lecturer Sanskrit in the Paramhansh Inter College, Majhwali, Ballia is established beyond doubt and it also could not be refuted that it was a collusive fraud between the said Lakhan Singh and the respondent No. 5.

19. The Supreme Court in the case of Ram Chandra Singh Vs. Savitri Devi and Others, in paragraphs 23 and 26 has held as under:

23. An act of fraud on Court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

26. In the case of Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers, , the Supreme Court in paragraph 20 has held as under:

20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct.

20. The Supreme Court in the case of State of Manipur and Others Vs. Y. Tomen Singh and Others, has held as under:

17. If the offers of appointments issued in favour of the respondents herein were forged documents, the State could not have been compelled to pay salaries to them from the State exchequer. Any action, which had not been taken by an authority competent therefore and in complete violation of the constitutional and legal framework, would not be binding on the State. In any event, having regard to the fact that the said authority himself had denied to have issued a letter, there was no reason for the State not to act pursuant thereto or in furtherance thereof. The action of the State did not, thus, lack bona fide.

21. In Tanna and Modi Vs. Commissioner of Income Tax , Mumbai XXV and Others, the Supreme Court in paragraph 19, has held as under:

19. It is, however, also well-settled that fraud vitiates all solemn acts. Fraudulent actions shall render the act a nullity. It would be non est in the eye of the law.

22. The Supreme Court in the Case of State of Chhatisgarh and Others Vs. Dhirjo Kumar Sengar, in paragraphs 17, 18 and 19 has observed as follows:

17. It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered. The principle of natural justice

although is required to be complied with, it, as is well-known, has exceptions. (V.C., Banaras Hindu University and Others Vs. Shrikant, One of the exceptions has also been laid down in S.L. Kapoor Vs. Jagmohan and Others, wherein it was held:

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs.

18. Legality of grant of a valid appointment was dependant upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director, viz., the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practiced on the Department, he could, in our opinion, cancel the same.

19. The respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

23. Having said that if the appointment of the respondent No. 5 on the post of Lecturer Sanskrit was itself based upon fraud and collusion, the same is completely invalid and illegal and his subsequent appointment on the post of Principal by order dated 2.1.2010 is also absolutely illegal and compounded by fraud and therefore, the selection notification dated 7.12.2009 in so far as it relates to the selection of the respondent No. 5 on the post of Principal in the College in question is quashed and the appointment of the respondent No. 5 by order dated 2.1.2010 and his joining report dated 4.1.2010 is also quashed. The writ petition is allowed.