

(2006) 12 AHC CK 0104
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 23552 of 1987 and 8798 of 1993

Ajay Kumar Pandey and another

APPELLANT

Vs

District Inspector of Schools, Ghazipur and others

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Citation : (2006) 12 AHC CK 0104

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—These two writ petitions are connected and learned Counsel for the parties jointly agreed that they may be heard together and may be disposed of by a common judgment as the facts are interwoven and failure of one writ petition will entail the success of another.

2. The facts of the case lie in a narrow compass. Dr. M.A. Anwar Intermediate College, District Ghazipur, is a recognized and aided educational institution governed by the provisions of U.P. Intermediate Education Act and regulations framed there under. At the relevant point of time the college was managed by the Authorized Controller appointed under Section 16D (5) of the aforesaid Act.

3. In the present case a dispute arose to fill up the post of Lecturer in Economics. Sri Ajay Kumar Pandey, hereinafter referred to as the petitioner was. appointed as adhoc Lecturer by direct recruitment on the aforesaid post which had fallen vacant due to appointment of Nand Kumar lal as adhoc Principal of the institution. The said appointment was approved by the District Inspector of School (Shri P.C. Shukla) by the order dated 4th December, 1987, Annexure4 to the writ petition. Subsequently the District Inspector of School (Sri P.C. Shukla) by the letter dated December, 1987 cancelled the aforesaid approval on the ground that by granting earlier approval the entire record was not examined. A copy of the said letter has been filed as Annexure5 to the writ petition. Feeling aggrieved against the aforesaid order, Writ Petition No. 23552 of 1987 has been filed. This Court while entertaining the writ petition by way of interim measure by

the order dated 22nd December, 1987 stayed the operation of the impugned order dated 19th December, 1987 and provided that it shall be open to the District Inspector of Schools to make enquiry and pass fresh order after giving an opportunity of hearing to the petitioner.

4. Sri Anwarul Hasan who has filed Writ Petition No. 8798/93 claimed that the aforesaid vacancy should be filled up by way of promotion under the provisions of U.P. Secondary Education Services Commission Removal of Difficulties Order (Second Order), 1981, Staking his claim for promotion on the aforesaid post of Lecturer in Economics Sri Anwarul Hasan filed aforesaid Writ Petition No. 8798/93. He also applied for his impleadment in the Writ Petition No. 23552 of 1987. The said impleadment application after contest was allowed. He was permitted to be impleaded as respondent No. 3 in the said writ petition. It appears that the District Inspector of Schools in pursuant of the interim order dated 22nd December, 1987 as stated above, reconsidered the matter and came to conclusion that the post in question was not covered by 40% promotional quota Rule and was to be filled up by direct recruitment The said order is dated 29th April, 1989. A copy of the said order was filed along with the rejoinder affidavit by the petitioner in his writ petition. On coming to know by passing of such order an application was filed by respondent in Writ Petition No. 9798/93 for amending the writ petition and also for quashing the said order. The amendment application was allowed.

5. Learned Counsel for the petitioner could not dispute the legal proposition that a vacancy to be filled up by adhoc promotion is to be riled up in accordance with the provisions as enshrined in Removal of Difficulties Order (Second Order), 1981. This legal position has been authoritatively laid by the Division Bench of this Court in Charu Chandra Tiwari v. DIOS, 1990 (16) ALR 503.

The relevant portion is reproduced below :

"The word "every vacancy¹ used in subclauses (1) to (4) of Clause 4 of First Removal of Difficulties Order of 1981 are significant. They are emphatic and explicit. They leave no room for doubt that 60% and 40% proportion of direct and promotional appointment has been given up for adhoc appointments. And for very good reason. Adhoc appointment are shortterm appointments. The appointee has no right except to continue till regular selection is made or the shortterm vacancy comes to an end. Why should the senior most teacher otherwise fully qualified be deprived of that benefit. It construction as suggested by the opposite party is accepted it shall destroy the very purpose of Act No. V of 1982 of protecting the interest of teachers of the institution and giving them some security and benefit of their being qualified and senior. The scheme of 40% and 60% has not been adhered to in adhoc promotion obviously because they being temporary promotions they should normally be given to the teachers of the institution who are qualified. Section 18 of the Act No. V of 1982 is silent in this regard, but it has to be construed reasonable and keeping in view the method of adhoc appointment before and after enforcement of the Act. From what has been

stated above, it is clear that any vacancy whether substantive or temporary which is to be filled by adhoc selection has first to be filled by promotion and in absence of availability of a candidate by direct recruitment. There appears no rationale to exclude this method from Section 18 of the Act empowering the Committee of Management to make direct recruitment even though senior most teacher in the institution was available. Section 18 only empowers the Management to make adhoc appointments. It is silent in respect of procedure. In absence of any rationale it cannot be construed as contrary to the scheme visualized by Removal of Difficulties Order and in vogue from 1975. Any other construction or conceding power to the Management to fill adhoc vacancy under Section 18 by direct recruitment even though senior most teacher was available shall result in arbitrariness and would be against the interest of teachers to protect whose interest the Legislature has intervened from time to time since 1975 and State Government has issued Removal of Difficulties Order. Therefore, whether from the language of the section or from the Scheme the irresistible conclusion is that adhoc vacancy under Section 18 should be filled by promotion and the method of direct recruitment should be adopted only if the teachers for promotion are not available. Even the argument of equity is not available as the petitioner not only being senior most teacher but being qualified in the subject in which the vacancy arose, the Committee of Management was not justified in by passing his claim and appointing a candidate from outside."

6. A similar view has been taken by another Division Bench in *Sabindra Kumar Singh v. Rajdev Pal*, 1998 (32) ALR 366.

7. Sri G.K. Singh, learned Counsel appearing for the petitioner in Writ Petition No. 23552/87 very fairly accepted the aforesaid legal proposition. Thus, the position boils down to this that the vacancy caused on the post in question on the appointment of Nand Lal Kumar as adhoc Principal of the institution, a resultant vacancy on the post of Lecturer is to be filled up by promotion and not by direct recruitment. In this view of the matter the appointment of the petitioner on the post in question by way of direct recruitment cannot be justified under law.

8. However, Sri G.K. Singh, learned Counsel for the petitioner strenuously submitted that the respondent has challenged the aforesaid order of the District Inspector of Schools holding that the post in question was to be filled up by direct recruitment, after lapse of 34 years and he should have filed a separate writ petition. I am not at all impressed by the aforesaid argument of Sri G.K. Singh, Advocate, inasmuch as the said order of the District Inspector of Schools is void and illegal in view of the authoritative pronouncement of this Court, holding that the post in question was required to be filled up by promotion and not otherwise, if the suitable candidate is available in the institution as provided under Removal of Difficulties (Second) Order 1981.

9. In view of the above discussion, I find no merit in Writ Petition No. 23552 of 1987, *Ajay Kumar Pandey v. District Inspector of Schools*, and the said writ

petition is hereby dismissed. The post in question could not have been filled up by direct recruitment and thus there is no illegality in the order of the District Inspector of Schools revoking the earlier approval granted to the petitioner's appointment. The respondent could not legally ignore the claim of Sri Anwarul Hasan for adhoc promotion on the post in question.

10. In view of above discussion the Writ Petition No. 8798 of 1993, Anwarul Hasan v. District Inspector of Schools, is allowed. The order of the District Inspector of Schools dated 29th April, 1989, Annexure 11 to the Writ Petition No. 8798/93 holding that the post in question was liable to be filled up by direct recruitment is hereby quashed. It is held that the petitioner is entitled to promotion to the aforesaid post vacated by Nand Kumar Lal, Lecturer in Economics in the institution in question. It goes without saying that now the respondents shall pass appropriate orders in the light of the observations made above within a period of one month from the date of production of a certified copy of this order.