

(2007) 05 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 3379 of 1981

Ajit Kumar Misra and Another

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 4
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10), 16E(3), 16G
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 4, 59

Citation : (2007) 7 AWC 6991

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : H.R. Misra, A.K. Misra and Ajai Kumar Misra, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The Petitioners were appointed as Assistant Teachers in D.A.V. Junior High School and Dayanand Adarsh Vidyalaya on 1.7.1976 and 1.1.1977 respectively by the Committee of Management. At that time no statutory rules were in existence for appointment of teachers.

3. The D.A.V. Junior High School was upgraded to the status of Higher Secondary School on 28.12.1977. The District Inspector of Schools after considering the resolutions passed by the respective committees of managements permitted the transfer of Petitioner No. 1 on 15.11.1978 to Baba Raghavdas Inter College, Deoria and of Petitioner No. 2 to Janta Inter College, Bankata, Deoria on 2.12.1978 in exercise of powers under Regulation 59 of the Regulations. It appears that the District Inspector of Schools, Deoria on the basis of some ex parte enquiry report stopped the salary of the Petitioners on 27.1.1981 in exercise of powers u/s 4 of the Payment of Salary Act and referred the matter to the Director u/s 16G of the U. P. Intermediate Education Act. Aggrieved, the

Petitioners have filed the instant writ petition on 20.2.1981 and on 5.7.1981 the writ petition was admitted and an interim order was granted to the following effect :

Issue notice.

The District Inspector of Schools, Deoria, is ordered to arrange an expeditious disposal of the enquiry alleged to be pending against the Petitioner in such manner that it is concluded within one month of the service of the copy of this order on him. If the enquiry is not concluded and the result announced within the aforesaid period the Petitioners would be entitled to draw their salaries and the Respondents is directed to pay their salaries, thereafter. This interim order would be subject to the final result of the petition. The stay application shall be listed for orders again immediately after the expiry of the period of one month.

The Petitioners undertake to serve a copy of this order on the Respondent.

Sd. M.N.S., J.

Sd. B.C.J., J.

4. It appears that despite time granted by the Court the Respondents did not initiate any enquiry proceedings and instead filed counter-affidavit stating that even prior to passing of the aforesaid order some ex parte proceedings were already concluded against the Petitioners but no realisation that the order of the Court was violated by their conduct they issued show cause notices to the Petitioners on 5.1.1982 u/s 16E (10) of the U. P. Intermediate Education Act which were replied by the Petitioners in May, 1982.

5. The District Inspector of Schools has denied to have received the original records relating to the appointments of the Petitioners which appears to be contrary to Annexure-11 to the writ petition. The District Inspector of Schools in the aforesaid certificate has certified that he had received all original records relating to appointment of the Petitioners.

6. Another notice dated 27.4.1982 was also issued to the Petitioner No. 1 u/s 16E (10) of the Act which was replied by him in May, 1982. Another notice dated 15.10.1982 was also issued to the Petitioner to appear before the Director of Education on 30.10.1982 in pursuance whereof the Petitioner attended the proceedings but nothing was done in the matter. It appears that both the Petitioners again appeared before the Director of Education on 30.10.1982 and submitted their reply but again in vain. Notices dated 8.8.1986 were again issued to the Petitioners requiring their presence before the Director of Education on 20.8.1986 on which date also the Petitioners appeared but nothing happened.

7. When the enquiry proceedings did not conclude till 1994, the Petitioners filed supplementary-affidavit bringing on record this fact that the enquiry initiated against them was not concluded and no final decision in the matter has been taken. It appears that the Petitioner continued to press the matter before the

Director of Education for mitigation of their grievance, but no decision having been taken in the matter the Petitioners again appeared before him on 21.1.1997 when orders were reserved.

8. On the supplementary-affidavit filed by the Petitioners the State was granted 3 weeks" time for filing its reply which was not filed and the impugned order dated 9.5.1997 was passed by the Additional Director Secondary Education, U. P., Lucknow holding the appointment/transfer of the Petitioners as cancelled on the ground that it is on the basis of forged papers.

9. The contention of the learned Counsel for the Petitioners is that in the show cause notice the allegation made was not regarding any forgery in the appointment of the Petitioners and the Director of Education has carved out a complete new case in respect of which neither any charge was framed nor the Petitioners were put to notice of it, as such the order impugned is illegal and in violation of the principles of natural justice having been passed arbitrarily and beyond jurisdiction.

10. He further contends that as per Regulation 59, the District Inspector of Schools, Deoria had already accorded permission for transfer of the Petitioners on the basis of resolution of two committees of management and therefore the transfer of the Petitioners was absolutely just and valid. It is stated that the permission for transfer granted by the District Inspector of Schools was never revoked or recalled by him and without cancelling the permission as such the transfer of the Petitioners was illegally held to be bad by the impugned order.

11. It is further submitted that the allegation that the Petitioners" transfer was without any vacant post is absolutely incorrect in view of the averment made in para 42 of the writ petition which remains uncontroverted. The proceedings resulting in passing of the impugned order are wholly ex parte, violative of principles of natural justice and is wholly arbitrary and cannot be sustained.

12. It is next contended that the ground taken in the impugned order is some ex parte report of the District Inspector of Schools which was never made available to the Petitioners and without holding any proper enquiry, the appointment and transfer of the Petitioners have been held to be illegal and cannot be sustained.

13. It is lastly contended that the Petitioners have already worked for about 30 years and are fully qualified. The Petitioners have become overage and the Respondents cannot be permitted to take advantage of their own wrong for having not concluded the proceedings within a month as was permitted by the Court and a wholly inequitable situation would arise in case the impugned order is not quashed.

14. From a perusal of the impugned order it appears that the appointment of the Petitioners was held to be forged on the following grounds:

(a) The Petitioners were never appointed in Dayanand Adarsh Uchchattar Madhyamik Vidyalaya, Deoria. Their names are not recorded in the Income and

Expenditure Account of the institution for the years 1976-77 and 1977-78 and in the Income and Expenditure Account for the year 1978-79 the date of appointment of the Petitioners is recorded as 1.4.1977. Thus, if the appointments were made on 1.1.1976 and 1.1.1977 their names ought to have been mentioned in the Income and Expenditure Account of respective financial years. Apart from it, manipulations have been made by using ink remover in the papers of interim grant.

(b) Neither any post as created in the institution nor any approval was taken from the D.I.O.S. for creating the post and appointment. They were not having the training certificate. Thus, their appointment itself was illegal and hence the subsequent transfer.

15. Admittedly Petitioner No. 1 acquired B. Ed. Degree in 1988 while Petitioner No. 2 acquired B. Ed. Degree in 1980, as such they were not trained at the time of their appointment or transfer. Regulation 4 of Chapter II of the Regulations framed under the Intermediate Education Act, 1921, specifically states that only those teachers who are qualified will become the teachers of High School. The qualification is given in Appendix-A and lays down that the word trained in reference to the eligibility condition means a degree from any institution or University of L.T., B.T., B. Ed., B. Ed. S-C or M. Ed. or any other equivalent qualification (Degree or Diploma). This also includes departmental A.T.C. and C.T. with at least 5 years teaching experience. The teacher of J.T./B.T.C. will also be treated as C.T. if he has worked in the C.T. grade at least for 5 years.

16. The provisions of Section 16E (3) of the Act provides :

No person shall be appointed as Head of Institution or teacher in an institution unless he possess the minimum qualifications prescribed by the Regulations :

Provided that a person who does not possess such qualification may also be appointed if he has been granted exemption by the Board having regard to his education, experience and other attainments.

17. I have given my anxious thoughts to the contentions of the learned Counsel for the parties. The contentions of the learned Counsel for the Respondents that the Petitioners were never appointed in Dayanand Adarsh Madhyamik Vidyalaya nor were qualified nor validly transferred has no force.

18. In the admitted set of facts that when the Petitioners were appointed as Assistant Teachers on 1.7.1976 and 11.1.1977, respectively there were no statutory rules regulating appointment of teachers, hence it cannot be said that their appointment by the Committee of Management was illegal as there were no posts created and no approval was taken from the District Inspector of Schools. Similarly the qualifications for Assistant Teacher were prescribed when the Rules/Regulations for appointment came into existence.

19. Admittedly even otherwise the Petitioner Nos. 1 and 2 acquired B. Ed. Degree in the years 1988 and 1980, respectively. They have been teaching for

the last about 30 years, hence in view of principle of equitable estoppel as laid down in the decision in B.L. Sreedhar and Others Vs. K.M. Munireddy (Dead) and Others, upholding the contention of the learned Counsel for the Respondents at this stage would not be justified at this stage. In B. L. Sreedhar (supra), the Hon"ble Supreme Court has held :

If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

20. In so far as the last contention of the learned standing counsel is concerned, suffice is to say that the District Inspector of Schools permitted the transfer of the Petitioners himself by order dated 15.11.1978 in respect of Petitioner No. 1 to Baba Raghav Das Inter College, Deoria and of Petitioner No. 2 to Janta Inter College, Bankata, Deoria by his order dated 2.12.1978.

21. Had the Petitioners not been appointed in the College they would not have been transferred by the District Inspector of Schools. This very fact negatives the contentions of the learned standing counsel regarding appointment, qualifications and transfer of the Petitioners being illegal.

22. Admittedly also the salary of the Petitioners was stopped by the District Inspector of Schools on 27.1.1981, without any notice or opportunity to the Petitioners on the basis of some ex parte complaint behind the back of the Petitioners which was allowed to them vide interim order dated 5.7.1981. No enquiry was initiated inspite of the aforesaid interim order dated 5.7.1981. Per contra, reliance was placed by the Respondents in their counter-affidavit on some ex parte enquiry said to have been concluded earlier.

23. It is evident that the conduct of the District Inspector of Schools is not above board, for when the Court insisted upon compliance of the order dated 5.7.1981 and observation of principles of natural justice, realising their mistake, notice was issued to the Petitioners u/s 16E (10) of the U. P. Intermediate Education Act, 1921.

24. From the records it is evident that the District Inspector of Schools took a stand contrary to the records that he had ever received the original papers relating to the appointment of the Petitioners. The Petitioners had replied to the notices issued to them u/s 16E (10) of the Act but the enquiry was not concluded by the Director of Education till 1997, instead the Additional Director, Secondary Education, U. P., passed the impugned order on the ground that the appointment of the Petitioners was forged as some sentence was erased with white ink from which manipulation is established. This, however, was a new ground for which no notice had been given to the Petitioners and an absolutely new case was made

out by the authorities for justifying their whims particularly in view of the fact that the notice to the Petitioners was neither for committing any forgery in the appointment letters nor any charge was framed in this regard. The permission of transfer granted by the District Inspector of Schools under Regulation 59 was never revoked or recalled by the District Inspector of Schools, hence the same cannot be said to be illegal in the impugned order.

25. When the Petitioners were appointed by the Managing Committee as Assistant Teachers in D. A. V. Junior High School and Dayanand Adarsh Vidyalaya on 1.7.1976 and 1.1.1977 respectively they were fully qualified for the post of Assistant Teacher in C.T. grade, hence when the School was raised to Higher Secondary School they will be deemed to be teachers of Higher Secondary School if they possess minimum qualifications in view of Chapter II, Regulation 4 as under :

Where any Junior High School is recognised as High School u/s 7, a permanent or temporary teacher of such school possessing minimum qualification under Regulation I shall be deemed to be a permanent or temporary teacher, as the case may be, of such High School provided that the services of a temporary teacher who is not selected for appointment in accordance with the provisions of the Act and the regulation shall be dispensed with after giving him one month's notice in that behalf and one month's pay in lieu of such notice.

26. The impugned order appears to have been passed relying upon the ex parte enquiry report of the District Inspector of Schools without affording any opportunity to the Petitioners to fill up the lacuna in conducting enquiry proceedings u/s 16E (10) after 15 years while only one month's time was granted by the Court in the year 1987. The provisions of the Secondary Education Amendment Act do not apply to the appointment of teachers in a Junior High School. There is no evidence on record that the appointment of the Petitioners was irregular.

27. The Board can in the circumstances appoint the Petitioners in accordance with law as Head of the Institution u/s 16E (3) by granting exemption (if required) in the peculiar facts and circumstances of the case.

28. For all these reasons I find force in the contention of the learned Counsel for the Petitioners.

29. As a result, the writ petition succeeds and is allowed. The impugned orders dated 27.1.1981 and 9.5.1997 are quashed.