

(2003) 09 AHC CK 0279

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 55163 of 2000

Alok Kumar Dixit

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Citation : (2003) 6 AWC 5087 : (2004) 1 UPLBEC 192

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : V.K. Singh, G.K. Singh, R.N. Singh and S.N. Singh, for the Appellant;

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—Heard Counsel for the petitioner and the learned Standing Counsel. Counter and rejoinder-affidavits have been exchanged, with the consent of the parties, the writ petition is being finally decided.

2. By this writ petition, the petitioner has prayed for quashing the order 28/29.11.2000 (Annexure-1) to the writ petition passed by District Inspector of Schools, Bulandshahar rejecting the claim of the petitioner of ad hoc appointment on the post of Lecturer(Maths). Brief facts giving rise to the writ petition are; Inter College, Surajawali, Salempur, Bulandshahr is aided and recognised Intermediate College. Principal of the Institution Shri Shekhar Saran Sharma retired on 30.6.1998, causing vacancy on the post of Principal. Senior most Teacher Nand Kishore Mittal was given ad hoc appointment as Principal. On account of ad hoc promotion of Nand Kishore Mittal, a short term vacancy arose in the lecturers grade. Advertisement was published in two daily newspaper "Dainik Jagran" and "Amar Ujala" inviting application for ad hoc appointment on the post of Lecturer. Petitioner applied for ad hoc appointment. Petitioner was recommended for ad hoc appointment on the post of Lecturer (Maths). An appointment letter dated 16.12.1998 was also given to the petitioner. The Committee of Management forwarded papers pertaining to appointment of the

petitioner for approval to the District Inspector of Schools by letter dated 12.1.1999. District Inspector of Schools did not take any decision. The Writ Petition No. 43517 of 1999 was filed by the petitioner which was disposed of by this Court vide order dated 11.10.1999, directing the District Inspector of Schools to decide the representation of the petitioner by a speaking order. In pursuance of order of this Court dated 11.10.1999, the District Inspector of Schools has passed an order dated 28/29.11.2000, rejecting the representation of the petitioner. This writ petition has been filed by the petitioner challenging the said order passed by District Inspector of Schools.

3. The District Inspector of Schools rejected the case of the petitioner on the following three specific grounds : (i) after the circular dated 9.6.1995, the appointment of U.P. Secondary Education Services Selection Board, the power of Management to make ad hoc appointment has come to an end; (ii) the appointment letter which was sent along with the papers is faulty, since the appointment of petitioner on ad hoc basis has been made till selection on the post of Principal by the Commission; (iii) provision of reservation has not been considered while making ad hoc appointment.

4. The Counsel for the petitioner challenging the order of the District Inspector of Schools raised following submissions :

(1) The Committee of Management was fully empowered to make appointment on short term vacancies in accordance with the provisions of U.P. Secondary Education Services Commission Removal of Difficulties (Second) Order, 1981. The power of the management has not been taken away to make ad hoc appointment on short-term vacancy. The said Difficulties Order is still continuing as laid down by the Full Bench judgment of this Court reported in (1994) 3 UPLBEC 1551, *Km. Radha Raizada v. Committee of Management and Ors.*

(2) The Counsel for the petitioner has stated that ad hoc appointment of the petitioner was till return of Nand Kishore Mittal on his post of Lecturer, He contended that the intention in the letter was that till Shri Mittal returns after regular selection on the post of Principal, petitioner will continue;

(3) The provisions of reservations are not applicable with regard to appointment of short term vacancies. Reliance has been placed by Counsel for the petitioner on the judgment of this Court reported in (1999) 2 UPLBEC 1621 *Smt. Pratima Chauhan and Anr. v. Regional Deputy Director of Education (Madyamik) and Ors.*

5. Shri Vishnu Pratap, learned Standing Counsel appearing for the respondent contended that the District Inspector of Schools in his order has observed that Management is not aware of the rules and regulation and appointment has been made illegally. He further contended that appointment was given to the petitioner before the approval, hence, the appointment is void in accordance with the provisions of U.P. Secondary Education Services Commission Removal of Difficulties (Second) Order, 1981. The learned Standing Counsel has further stated that appointment of the petitioner till selection of the post of Principal was

erroneous. Petitioner has no right to continue till selection of the post of Principal.

6. I, have considered the submissions and perused the record. The first reason given by the District Inspector of Schools for rejecting the appointment is that Management has no jurisdiction to make ad hoc appointment after establishment of the U.P. Secondary Education Services Selection Board on substantive vacancy. The Selection Board do not make any appointment on short term vacancy and for appointment on short-term vacancy, the provisions of U.P. Secondary Education Service Commission Removal of Difficulties (Second) Order, 1981, is still subsisting. The Counsel for the petitioner has placed reliance on the Full Bench judgment of this Court in *Km. Radha Raizada v. Committee of Management and others*, where it was held that Removal of Difficulties Order are still continuing and for appointment on short term vacancies the procedure provided in the (Second Removal of Difficulties) Order has to be followed. The first reason given by the District Inspector of Schools, thus, is not made out. The second reason given by the District Inspector of Schools is that the period of appointment mentioned in the appointment letter is incorrect. It was stated that ad hoc appointment of the petitioner could not have been allowed to continue till regular selection of the post of Principal is made. Ad hoc appointment of the petitioner was made on account of short term vacancy caused due to ad hoc promotion of Shri Nand Kishore Mittal, the short term vacancies will continue till Shri Nand Kishore Mittal returns of the post. The tenure of the ad hoc appointment of the petitioner would have continued till the short term vacancies continues. The ad hoc appointment of the petitioner is not directly related to the selection on the post of principal, however, on the said objection the District Inspector of Schools was entitled to put a condition with regard to continuance of ad hoc appointment. The District Inspector of Schools would have approved the ad hoc appointment till the short term vacancy continues. The third ground given by the District Inspector of Schools is that reservation rules have not been followed while making the ad hoc appointment of the petitioner. This question is fully covered by the judgment of this Court reported in (1999) 2 UPLBEC 1621 *Smt. Pratima Chauhan and Anr. v. Regional Deputy Director of Education (Madhyamik) and Ors.* The following was laid down in Paragraph 8 of the judgment:

"8. So far as the second ground is concerned, the question of reservation does not arise in the case of ad hoc appointment against short-term vacancy. It was so held in the decision in the case of *Chatur Singh (supra)*, wherein it was held that the question of reservation is wholly irrelevant in respect of ad hoc appointment since such appointment is a stopgap arrangement which is of short-term duration. Therefore, the second ground also cannot be sustained."

7. In view of the judgment of *Smt. Pratima Chauhan's case (supra)*, the reservation rules were not applicable, on short term vacancy, the said ground was not valid ground for rejecting the ad hoc appointment of the petitioner. The submission of the learned Standing Counsel that District Inspector of Schools

made observation in the order that Management is not aware of the Rules is required to be considered in light of the three grounds given in the order. District Inspector of Schools has not given any other reason for not approving the appointment of the petitioner, hence, general observations made by District Inspector of Schools are not of any relevance. The next submission of the learned Standing Counsel that appointment letter was given prior to the approval was also not fatal. A Division Bench judgment of this Court reported in (1998) 3 UPLBEC 1722 Ashika Prasad Shukla v. District Inspector of Schools, Allahabad and Anr., held that even appointment is issued prior to approval, the said appointment will be effective from the date of approval or deemed approval. Following was laid down in Paragraph 16 by Division Bench judgment of this Court reported in Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, :

"Paragraph 2(3)(iv) of the Second Removal of Difficulties Order is not phrased in a prohibitory language as was the language used in Section 16-F (1) of the U.P. Intermediate Education Act, 1921. The words "prior approval" have been used in Sub-clause (ii) of Paragraph 2(3) of the Second Removal of Difficulties Order and a conjoint reading of Sub-clauses (ii), (iii) and (iv) of Clause (3) of Paragraph 2, no doubt, leads to an inescapable conclusion that the appointment would be issued under the signature of the Manager only on the approval having been communicated by the District Inspector of Schools within seven days of the receipt of the papers or where the approval is deemed to have been accorded as visualised by Sub-clause (iii) of Clause (3) of Paragraph 2 of the Second Removal of Difficulties Order. However, appointment if made prior to approval or deemed approval, would become effective from the date of approval or deemed approval as held by the Division Bench of this Court in Lalit Mohan Mishra. There is nothing on the record to connote that pre-requisite conditions attracting deemed approval were not satisfied in the instant case. The learned Single Judge has also not addressed himself to these facts of the matter and the judgment under appeal on this score too cannot be sustained."

8. In view of the Division Bench judgment of this Court as noted above, the submission of learned Standing Counsel that appointment was void cannot be accepted. It is true that appointment will take effect only from the date when it is approved, but that order was not fatal to the appointment.

9. In view of what has been said above, the order of District Inspector of Schools dated 28/29.11.2000 cannot be sustained and is hereby quashed. The District Inspector of Schools is directed to pass fresh order in light of the observations made in this order within a period of two months from the date of production of a certified copy of this order. It is made clear that District Inspector of Schools will also take into consideration while passing the order as to whether short term vacancy on which petitioner claimed appointment is still continuing or has come to an end, and it will be open to the District Inspector of Schools to pass necessary order with regard to that.

10. With the aforesaid direction the writ petition is disposed of.