
(2009) 09 AHC CK 0171
In the Allahabad High Court

Amar Deep Talyan and Another

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3

Citation : (2010) 2 AWC 1296 : (2009) 123 FLR 620

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner, Sri Kamlesh Shukla, learned standing counsel for the respondent Nos. 1 to 4, 5, 6 and 8, Sri H.N. Pandey, counsel for the respondent No. 7. Perused the record.

2. Janta Inter College Loomb, district Baghpat is a recognised institution under the provisions of the U.P. Intermediate Education Act, 1921. At present an authorised controller is functioning in the institution as Committee of Management has been superseded. The institution in question is in the grant-in-aid list of the State Government. In view of the fact that the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 and Rules framed thereunder are applicable to it.

3. The backdrop of the case is that one Sri Babu Ram son of Sri Ray Singh claimed appointment under Scheduled Caste quota on Class IV post on the ground that management is illegally filling up the reserved category of posts by general candidates which is illegal. He also moved representation dated 7.12.1994 to the D.I.O.S., Meerut, comments were asked from the Principal of the college by the D.I.O.S., but as no comments were received but his claim was not considered by the management. Hence, he preferred Civil Misc. Writ Petition No. 5659/97, Babu Ram v. District Inspector of Schools, Meerut and Ors. The Court vide order dated 18.2.1997, directed the District Inspector of Schools,

Meerut to look into the matter on merits and by issuing appropriate orders. Pursuant thereto, the District Inspector of Schools, Meerut by his order dated 29.3.2000, directed the Principal of the institution to fill up the vacant Class IV posts in the institution from amongst the appropriate reserved category candidates. In case, the category of S.C./S.T. is full, he was to fill up the remaining post of reserved category candidates from amongst (sic).

4. Sri Babu Ram was thereafter appointed on 6.5.2000 as Class IV post employee under Scheduled Caste category candidate. The District Inspector of Schools also accorded approval to his appointment vide order dated 30.9.2000.

5. It is averred in paras 6 and 7 of the writ petition that there are total 15 sanctioned posts of Class IV post employees in the institution which employees are working and are paid their salary under the U.P. Act, 1971 including Gorakhpur, is that three vacancies subsequently occurred in the institution. Two of the vacancies occurred due to attaining the age of superannuation by Sri Raghuveer Singh and Sri Hari Singh and the 3rd vacancy occurred due to promotion of Sri Sheetala Singh a daftary in the institution. The vacancies were advertised in National Herald dated 4.8.2000 and in Samagraq Samachar dated 8.8.2000. After processing the applications and interview the 1st vacancy was filled up under Scheduled Caste quota and remaining two vacancies were filled up by Backward Caste candidates 27% quota.

6. The counsel for the petitioners submits that the petitioners who belong to Backward Caste, they had applied for the post and had also been selected by the selection committee. Though their entire papers of selection had been forwarded by the management to the District Inspector of Schools on 16.8.2000 for his approval but he has not passed any orders either approving or disapproving their selection. However, the Principal of the institution issued appointment letters in favour of the petitioners on 4.9.2000 in anticipation of approval by the D.I.O.S. and that the petitioners had joined their duties as Class IV employees in the institution on 5.9.2000.

7. Counsel for the petitioners has urged u/s 3 of the U.P. Act No. 24 of 1971, the District Inspector of Schools, is under a statutory obligation to ensure payment of the salary of the employees but though the petitioners have been marking their attendance on separate attendance register and are working regularly since their date of appointment yet their salary is not paid to them. It is submitted that the petitioners are entitled to their salary on the principles of deemed approved of their appointments as there is no positive order passed by the District Inspector of Schools rejecting or refusing to grant approval to their appointments.

8. The counsel for the petitioners has also placed Annexure-7, appended to the writ petition which is a letter dated 18.11.2000 by the District Inspector of Schools, Meerut to Principal of the College for appointment of one Sri Ravindra Kumar under the U.P. Dependent of Government Servants, Dying-in-Harness Rules, 1974 and would argue that the recommendation for appointment of Sri

Ravindra Kumar in the institution is unjustified and is illegal as there is no vacancy against which he could have been appointed ; and that instead of direction to appoint Sri Ravindra Kumar, the D.I.O.S. ought to have created a supernumerary post for appointing him under the Dying-in-Harness Rules, 1974. No vacancy existed as all the three vacancies had been filled up in the institution for the appointment of Sri Ravindra Kumar in accordance with law by a legal and valid appointments of the petitioners. It is then urged that one Sri Gopal Singh a Class IV employee had superannuated on 7.7.2000 and as 16 persons had been paid their emoluments till 1.8.1998. There is no legal impediment in directing the District Inspector of Schools to ensure appointment of salary to the two petitioners particularly in view of the fact that they have been discharging their duties as Class IV employee, since their joining the post on 5.9.2000, pursuant to the appointment letter dated 4.9.2000 issued to them and that they are suffering irreparable loss and injury due to non-payment of their salary.

9. Learned standing counsel submits that according to the Financial Survey Report of the institution in question, only 15 posts of Class IV employees are sanctioned against which 14 are appointed and that only one post of reserved category was vacant. He has relied upon paragraph 6 of the counter-affidavit wherein it has been specifically denied that complete papers pertaining to appointment of the petitioners were forwarded by the Principal of the institution to District Inspector of Schools for his approval. It is averred that pertaining to selection of the petitioners said to have been sent by the Principal were incomplete and not in order, furthermore the selection list contained cuttings and overwritings, hence in the circumstances, the incomplete papers with regard to selection of the petitioners were sent back to the Principal of the institution for proceeding in accordance with law for filling up one post of Scheduled Caste candidate and that thereafter the Principal vide letters dated 1.2.2001, requested for prior permission of the District Inspector of Schools for filling up one Class IV post. The standing counsel on the basis of above has urged that these facts itself show that appointments of the petitioners were illegal and beyond the sanctioned strength and as well as made illegal reserved category for Scheduled Caste in collusion with the management.

10. As regards, 16 number of persons working in the institution are concerned, the learned standing counsel contends that before the Finance Survey Report was submitted, the Government provided that those employees who were working in educational institutions from before, would continue in service and their strength would be brought within the sanctioned strength of the institute by adjusting them against retiring employees. He submits that even though, there were 16 persons working from prior to the submission of Finance Survey Report, the services could not be terminated and gradually, as retirements took place the strength of the employees has been brought within the sanctioned strength of the institution. It is lastly submitted in so far as, the case of appointment of Sri Ravindra Kumar under dying-in-harness rules is concerned, the petitioner cannot be granted any parity as he claims appointment by selection process whereas Sri

Ravindra Kumar was appointed under the dependents of Government Servants Dying-in-Harness Rules, 1974.

11. Sri H.N. Pandey, learned Counsel for the respondent No. 7 has relied upon paragraphs 5, 7, 8, 9, 10, 11 and 12 of his counter-affidavit, wherein it is averred that Sri Ravindra Kumar is son of late Bhopal Singh, who was working against a sanctioned Class IV post and that respondent No. 7 being son of late Bhopal Singh who died in harness on 7.7.2000 and not superannuated as alleged by the petitioner as such he was rightly appointed pursuant to the order dated 18.11.2002 issued by the District Inspector of Schools in accordance with law against a sanctioned post. The petitioners have not given the date of occurrence of the three vacancies on alleged retirement and promotion in the writ petition. It has been specifically stated in para 7 of the counter-affidavit that there was no vacancy of Class IV post under quota reserved for the O.B.C. candidates, and that it is incorrect for the petitioner to allege for any selection for appointment of Class IV post employee was held on 16.8.2000 or on any other date. It is urged by Sri Pandey that prior approval is must for the District Inspector of Schools for appointment of Class IV post under Regulations 101 and 107 in Chapter III of the Regulations, therefore, the appointment of the petitioner was only on paper in collusion with the management and not in accordance with law. As such that the petitioner cannot derive any benefit from an appointment which is void ab-initio

12. Relying upon paras 8 to 12, he submits that since neither prior approval was taken by the management for filling up the posts nor complete papers were not sent to the District Inspector of Schools as such selection cannot be said to have been made in accordance with law and consequently, there is no question of grant of approval or disapproval by the District Inspector of Schools in these facts and circumstances and that in any case if positive order of approval has not been issued by the District Inspector of Schools, it clearly established that the appointment of the petitioners was illegal and disapproved. According to him the appointment letter and the joining report of the petitioners are forged and in collusion with Principal of the institution as such District Inspector of Schools is not under any legal or statutory duty to make payment of the salary of the petitioner under U.P. Act No. 24 of 1971.

13. Learned Counsel for the respondent No. 7 further relied upon Division Bench judgment in Jagdish Singh Vs. The State of U.P., The District Inspector of Schools, The Principal, Shri Indra Bahadur Singh National Inter College and Committee of Management, Shri Indra Bahadur Singh National Inter College, , wherein the Court considered Regulations 101 to 107 under Chapter III of the U.P. Intermediate Education Act, 1921 in respect of appointments in aided institutions, interpreting the expression "prior approval" occurring in the aforesaid Regulations.

14. After hearing learned Counsel for the parties and perused the record, as well as provisions of law cited by the parties, I am of the considered opinion that after

incorporation of Regulations 101 and 107 in Chapter III of U.P. Intermediate Education Act, 1921 appointment on Class IV post, after August, 1992 requires prior approval of District Inspector of Schools. Admittedly, as the District Inspector of Schools had neither granted any prior approval to the Management for filling up the vacancies in which the petitioners claim to have been appointed nor the appointment of the petitioners were approved by him, therefore, their appointments were invalid and void ab-initio. The petitioners in the circumstances cannot derive any enforceable right in law. Per contra, prior approval was granted to the appointment of respondent No. 7 and appears to be legal and valid. Consequently the petitioners have no legal right to work in the institution pursuant to the appointment letters issued to them by the management and they are not entitled to any wages from the State Exchequer under Act No 24 of 1971.

15. From all the reasons stated above, the petition is accordingly dismissed. No orders as to costs.