
(2003) 08 AHC CK 0198
In the Allahabad High Court
Case No : C.M.W.P. No. 1900 of 1994

Amar Nath

APPELLANT

Vs

D.I.O.S. and Another

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 6 AWC 4661

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.N. Shukla, for the Appellant; K.M. Shahi, R.C. Dwivedi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri S. N. Shukla, learned Counsel for the Petitioner at length.

2. The Petitioner was appointed as an Assistant Clerk in Lala Karam Chand Thapar Inter College, Deoria by the Committee of Management vide resolution dated 26.11.1992, which has been appended as Annexure-1 to the writ petition. He submits that there was no advertisement issued by the Respondents for the appointment of the Petitioner on the post in question. Vide Annexure-2 the D.I.O.S. had made certain queries regarding sanctioned strength of the post of Clerk in the college in question. According to the D.I.O.S. the appointment of the Petitioner was not in accordance with law and he did not accord financial approval to his appointment.

3. The contention of the Petitioner is that vide Annexure-8 the D.I.O.S. had granted approval to the appointment of one Bhartendu Sharma but this letter is silent about the Petitioner. He also contends that there is no provision for making appointment on the post of Class III and Class IV posts in Intermediate College. The standing counsel submits that the Committee of Management has passed the

resolution without any authority of law for filling up the vacancy and that the vacancy has to be filled up by way of 50% promotion amongst the senior most class IV employee. It is contended by the learned standing counsel that the Petitioner has no claim for payment of salary and it cannot be released in his favour as the appointment of the Petitioner was neither in accordance with law nor financial sanction was granted to him by the D.I.O.S.

4. Learned Counsel for the Petitioner was given an opportunity to file an affidavit annexing therewith copy of the advertisement for the post in question. The Petitioner has not filed copy of advertisement. Referring to Annexure-1 to the writ petition, it is submitted that in meeting dated 26.11.1992 it was resolved that Petitioner may be appointed in place of Gorakh Nath Verma and approval for financial sanction may be taken from District Inspector of Schools. This resolution is signed only by Sri B. L. Rai alleged to be Chairman but it does not show who were the members of the Committee of Management who had attended meeting dated 26.11.1992 and other person except B. L. Rai is signatory of said resolution. Annexure-2 is the appointment letter of the Petitioner dated 27.11.1992 said to have been issued in pursuance of resolution by the Committee of Management dated 26.11.1992, appointing the Petitioner on the post of Assistant Clerk on ad hoc basis. According to the letter dated 1.12.1992 Annexure-3 to the writ petition it appears that the Petitioner joined as Assistant Clerk and by letter dated 21.12.1992 (Annexure-4 to the writ petition) the Manager had requested the District Inspector of Schools for grant of financial approval to the appointment of Petitioner, Amar Nath.

5. The counsel for the Petitioner submits that Annexure-5 is the representation filed by the Petitioner before the District Inspector of Schools, Deoria in which he has requested the District Inspector of Schools to accord financial approval to the appointment of the Petitioner.

6. A perusal of letter dated 9.2.1993 Annexure-7 to the writ petition sent by District Inspector of Schools, Deoria to the Manager of the institution shows that a query was made by the District Inspector of Schools from the management of the college as to how the appointment of the Petitioner had been made as there was no post of clerk vacant for being filled up by direct recruitment on the date of the resolution. Letter dated 9.2.1993 is as under:

other language

7. By Annexure-8 to the writ petition the financial sanction was given to the appointment of Bhartendu Ji Sharma.

8. From the counter-affidavit filed on behalf of the District Inspector of Schools it appears that the Petitioner could not have been granted financial sanction due to reason that the vacancy on which he was claiming appointment as direct recruitment was to be filled up by way of promotion from eligible class IV employees. Attention of the Court has also been drawn to paragraph 3 of the counter-affidavit by the standing counsel in which it has been stated that one Sri

Kuber Chauhan has already filed Writ Petition No. 28083 of 1995 and the writ petition filed by the Petitioner claiming appointment on direct recruitment for a post under promotion quota was not maintainable as the vacancy in question was to be filled-up by way of promotion the District Inspector of Schools has not accorded approval to the appointment of the Petitioner and he is not entitled to the salary from the District Inspector of Schools.

9. Admittedly appointment of the Petitioner having been made by the Committee of Management, and having worked since 1992 cannot be left in a lurch without payment. It appeals to reason and justice that one who has appointed him should pay his salary. The Committee of Management had appointed the Petitioner it is responsible for payment of salary to him. It is also been apparent from the resolution dated 26.11.1992 (Annexure No. 1 to the writ petition) and letter of appointment dated 27.11.1992 (Annexure No. 2 to the writ petition) that payment of salary of the Petitioner by District Inspector of Schools was subject to approval of financial sanction by the District Inspector of School, which has not accorded by him from the record.

10. It appears that the Petitioner's appointment was fraudulent and de hors the rules. Such appointment cannot give any right to the Petitioner to claim salary from the District Inspector of Schools. At best the Petitioner can claim salary from the Committee of Management which had appointed him.

11. In view of facts and circumstances of the case the writ petition has no force and it is liable to be dismissed.

12. For the reasons stated above, it is not a fit case for interference by his Court under Article 226 of the Constitution of India. The writ petition fails and is dismissed. It is however, provided that the Petitioner may claim his salary for the period he had worked from the Committee of Management of the institution.

13. No order as to costs.