
(2013) 05 AHC CK 0359

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 25583 of 2013

Amar Nath Chaubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Citation : (2013) 6 ADJ 162 : (2014) 1 AWC 118

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Niraj Tiwari and Aniruddh Upadhyay, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner. The petitioner is claiming payment of salary as ad hoc Principal in the Principal's Grade from 1.7.2010 to 30.6.2011.

2. The vacancy of Principal in the institution had come into existence and had been duly notified to the U.P. Secondary Education Service Selection Board. The Board selected one Dr. Chandresh Tiwari and placed him in the institution, but before Sri Chandresh Tiwari could join in the institution, he died. The petitioner was functioning as ad hoc principal of the institution. There is no dispute about this fact and the attestation of his signatures on 5.8.2010.

3. Aggrieved by the non payment of salary in Principal's Grade, the petitioner came up before this Court by filing Writ Petition No. 64201 of 2012, which was disposed of on 11th December 2012 with a direction to the District Inspector of Schools, Varanasi to pass appropriate orders in accordance with law. The D.I.O.S. in turn has now passed the impugned order dated 2.2.2013 and has rejected the claim of the petitioner on the ground that the Management failed to requisition the post after the death of Sri Chandresh Tiwari and in the absence of any such requisition, the provisions of Section 18 of the 1982 Act are not attracted for the purpose of payment of salary to the petitioner.

4. The finding recorded is that since there was no intimation of vacancy of the post of Principal to the Board, the ad hoc Principal cannot get salary in the said grade as no selection process commenced for the purpose of posting a permanent principal in the institution. The reason appears to be that unless there is an intimation for the process of selection to commence with due intimation to the Board, the provisions of Section 18 for payment of salary are not attracted.

5. The reasoning given for attracting Section 18 may be correct, but in the facts of this case the reasoning appears to have been incorrectly applied, inasmuch as in the instant case the post had been duly notified and the selection process by the Board for filling up the post was under taken against which Dr. Chandresh Tiwari had been selected and placed for appointment in the institution. It is unfortunate that Dr. Chandresh Tiwari died before he could join, as a result whereof, the petitioner continued to work as ad hoc Principal of the institution till his retirement on 30.6.2011.

6. Thus, this is not a case of no intimation at all. Subsequent information after the death of Sri Chandresh Tiwari will not be relevant for the present purpose as the petitioner had been appointed when the earlier vacancy had arisen and the process of selection had also been undertaken by the Board.

7. Thus, in view of the aforesaid circumstances, the impugned order dated 2.2.2013, proceeds on an erroneous assumption of fact to apply the law wrongly and cannot be sustained. If the petitioner was working as an ad hoc Principal and his signatures were attested then he would be entitled for payment of salary in the Principal's grade in view of the law as declared by this Court in the case of Narbedeshwar Misra v. District Inspector of Schools, 1982 UPLBEC 171. The writ petition is allowed, the order dated 2.2.2013 is set aside. The respondent District Inspector of Schools is directed to calculate the salary of the petitioner in the Principal's Grade and release the same within eight weeks from the date of production of certified copy of this order before him.