
(2009) 08 AHC CK 0206

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14820 of 1982

Amar Nath Tripathi

APPELLANT

Vs

Government of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0206

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari,J.

1. Heard learned counsel for the parties and perused the record.
2. Pursuant to the advertisement published on the Notice Board of Sri Gandhi Smarak Intermediate College, Hata District Deoria the petitioner applied for the post of Assistant Teacher in C.T. Grade. After selection he was appointed on the post of Assistant Teacher in C.T.grade in the said institution. He was issued letter of appointment in accordance with the resolution of the Committee of Management. He joined the institution on 5.10.1981 as Assistant Teacher in C.T. Grade.
3. The contention of the learned counsel for the petitioner is that there were three vacancies at the relevant time in C.T. Grade which were caused due to promotions of Gangeshwar Pandey, Sri Surendra Tewari and Sri Mathura Mani from C.T. grade to lecturer grade and that the petitioner had been appointed in the vacancy of promotion of Sri Gangeshwar Pandey from C.T. grade to lecturer grade. It is stated that papers regarding promotion of the petitioner along with the resolution of the Committee of Management were sent for approval to the DIOS, Deoria, who did not pass any order either approving or disapproving the appointment of the petitioner.
4. It appears from the impugned order dated 1st September, 1982 of the DIOS,

Deoria that proposal of the Manager of the Institution for appointment of the petitioner vide his letter dated 13.8.82 to the DIOS, was rejected on the ground that the appointment of the petitioner was not against a vacant post.

5. The contention of learned counsel for the petitioner is that the petitioner had admittedly been appointed in a clear vacancy caused due to promotion of Sri Gangeshwar Pandey from C.T. grade to Lecturer grade which was approved by the DIOS but thereafter his salary was not paid on the ground that certain records were required to be verified.

6. Aggrieved by the aforesaid order, Sri Gangeshwar Pandey filed Civil Misc. Writ Petition No. 2252 of 1980, Gangeshwar Pandey and others versus State of U.P. and others in which an adinterim order was passed on 16.9.1980, which is as under:

" In spite of time granted for filing supplementary counter affidavit no supplementary counter affidavit has been filed. The respondent is accordingly, directed to pay the salary of the petitioner for the months of June, July to September, 1980 by the 20th October, 1980 and keep on paying the salary from October, 1980 and onwards as and when it falls due."

7. It is submitted that pursuant to the above order dated 16.9.80 Sri Gangeshwar Pandey continued to be paid salary in lecturer grade till the date of his retirement i.e. 30.6.99. Civil Misc. Writ Petition No. 2252 of 1980 was thereafter disposed in terms of the aforesaid interim order dated 16.9.1980 vide order dated 21.7.2009 as under:

"Heard learned counsel for the petitioners and learned counsel for the respondents.

Learned counsel for the petitioners submits that all the petitioners were appointed in Gandhi Smarak Intermediate College, Hata, District Deoria now Kushinagar. Petitioner no.1 was appointed on the post of lecturer in Sanskrit. Petitioner no.2 was appointed on the post of Demonstrator in Science in L.T. Grade, petitioner no.3 was appointed on the post of Music Teacher in C.T. Grade and petitioner nos. 4 and 5 were appointed on the post of Assistant Clerks vide appointment letters dated 01.09.79.

This petition has been filed for direction in the nature of certiorari for quashing order passed by the District Inspector of Schools, Deoria dated 28.09.79. A further writ of mandamus has sought for directing the respondents to pay the salary of the petitioners with effect from 1.09.79 which was stopped by the District Inspector of Schools on the ground that original approval orders of the petitioners are verified though he had approved their appointments.

The Court vide order dated 12.03.80, directed respondent nos. 2 and 3 to pay the petitioners, their entire arrears of salaries for the months commencing September, 1979 and ending February, 1980 before the end of the month. The order, thereafter was modified vide order dated 16.09.80 as under:

"inspite of time granted for filing supplementary counter affidavit no supplementary counter affidavit has been filed. The respondent is accordingly, directed to pay the salary of the petitioner for the months of June, July to September, 1980 by the 20th October, 1980 and keep on paying the salary from October, 1980 and onwards as and when it falls due."

When the case was taken up today, learned counsel for the petitioner fairly stated that clients are not responding and petitioner no.1 has already attended the age of superannuation. He submits that it appears that the original approval order of petitioners has been verified and they were paid salary. As such the writ petition appears to have become infructuous by efflux of time.

In view of the statement of the counsel, the petition is dismissed as having become infructuous. However, he may ascertain the position and if the petition has not become infructuous, he may file an application within a month from today for recall of this order.

No order as to costs."

8. In the mean time, the petitioner continued to work as C.T. grade teacher in the institution in question in the vacancy caused by Sri Gangeshwar Pandey and was paid salary in terms of the interim order of this Court dated 6.9.1984 as under:

"Having heard the learned counsel for the petitioner and the Standing Counsel,I direct that the petitioner shall be paid his salary from the month of July, 1984 in C.T. Grade in the college where he is serving. The question of arrears of salary will be considered at the final hearing of the case."

9. It appears from the impugned order itself that the DIOS, Deoria has not passed any order of disapproval of the appointment of the petitioner within 7 days of the receipt of the papers forwarded by the Management. As per the Second Removal of Difficulties Order, 1981,if appointment of a teacher is not disapproved within a period of seven days from its receipt of the proposal from the Management, the appointment shall be deemed to have been approved by the DIOS.

10. The contention of the counsel for the petitioner is that the petitioner had been appointed in the vacancy caused due to promotion of Sri Gangeshwar Pandey, who has now retired from service and since the petitioner had worked in the said vacancy and was paid salary in pursuance of the interim order dated 6.9.1984 till date of retirement of Sri Gangeshwar Pandey from post of higher grade, the appointment of the petitioner under the provisions of the Second Removal of Difficulties Order, 1981 was legal since there was no order of disapproval of the appointment of the petitioner within 7 days of the receipt of the papers by the DIOS, hence the ground taken in the impugned order that the petitioner has not been appointed in a clear vacancy, hence his appointment could not be approved is illegal and is a nonexistent reason.

11. Standing Counsel submits that the promotion of Sri Gangeshwar Pandey was itself per se illegal as he could not have been promoted to lecturers grade from C.T. Grade by passing appointment in L.T. Grade, hence the petitioner could not have been appointed in C.T. Grade in the said vacancy caused due to illegal appointment of Sri Gangeshwar Pandey.

12. From the facts narrated above it is apparent that the DIOS had himself approved the promotion of Sri Gangeshwar Pandey in the lecturer's grade and that petitioner had been appointed in the vacancy so caused due to promotion of Sri Gangeshwar Pandey, who worked in the lecturer's grade till his retirement i.e. 30.6.99.

13. Admittedly, the DIOS had not disapproved the appointment of the petitioner within seven days of the receipt of proposal from the Management in this regard, hence in absence of any order of his approval within seven days the appointment of the petitioner would be deemed under the Second Removal of Difficulties Order, 1981.

14. Both, the petitioner as well as Sri Gangeshwar Pandey worked on their respective posts in terms of interim orders. The writ petition filed by Sri Gangeshwar Pandey was decided after his retirement from service on 30.6.99 in terms of the interim order passed in the writ petition, hence the vacancy in C.T. Grade caused due to his promotion in which the petitioner was appointed and is working in terms of the interim order in this petition existed as Sri Gangeshwar Pandey was never reverted to C.T. Grade in which he was working. Thus, the reason given for not approving the appointment of the petitioner that he was appointed in a nonexistent vacancy in C.T. Grade does not stand either to reason or is substantiated from records.

15. For all the reasons stated above, the impugned orders dated 1.9.82 and 20.12.82 are quashed. The writ petition is accordingly, allowed with direction that the arrears of salary of the petitioner shall be paid to him in accordance with law within a period of 2 months from the date of production of a certified copy of this order. Since the arrears of salary were not paid due to bonafide dispute, hence the prayer for grant of interest on the amount of arrears of salary is rejected. No order as to costs.