

(1995) 07 AHC CK 0107
In the Allahabad High Court
Case No : C.M.MT.P. No. 6991 of 1981

Anand Kumar Pandey

APPELLANT

Vs

Vinod Kumar Srivastava, Executive Officer (Adhishashi Adhikari), Nagar Panchayat and Another
Ram Jiwan Singh and Others Vs District Inspector of Schools and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 UPLBEC 1459

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : J.N. Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of this writ petition Under Article 226 of the Constitution of India, the Petitioners, who are three in number, challenge the validity of the orders dated 12.5.1981 and 3.6.1981 passed by the Respondent Nos. 2 and 1 contained in Annexures 6 and 10 to the writ petition. Ram Jiwan Singh, Petitioner No. 1 has died during the pendency of the present writ petition. Counsel for the Petitioner No. 1 has filed substitution application, the said substitution application is apparently misconceived and there is no question of substitution of his heirs in the present case inasmuch as right of appointment to and hold the post in dispute was the purely personal right of the deceased Petitioner and, therefore, on his death right to sue does not survive to his heirs and legal representatives, the substitution application is, therefore, rejected. The rejection of the application of substitution filed on behalf of Petitioner No. 1, however, will not affect the maintainability of the writ petition filed by the Petitioner Nos. 2 and 3.

2. The facts of the case in brief are, in Har Sahai Jagdamba Sahai Inter College, Kanpur five vacancies (three of Assistant Teachers and two of clerks) were advertised. In the advertisement, it was specifically mentioned that out of

aforesaid five posts three posts of teachers and one post of clerk were reserved for scheduled caste candidates. The Petitioners, who belong to the category of general candidates, applied for their appointment on the said posts. On 18.10.1980 selection was held since no candidate belonging to scheduled caste except one who was not found to be qualified, turned up, consequently, the managing committee of the school referred the matter to the District Inspector of Schools with a prayer that the committee be permitted to fill up the vacancy by the recruitment of the candidates belonging to the general category. On the application made by the managing committee on 18.10.1980 the District Inspector of Schools by his Order dated 24.10.1980 permitted the managing committee to recruit the candidates belonging to the general category on the aforesaid posts. In pursuance to the order passed by the District Inspector of Schools, the Petitioners were selected for appointment on 16.11.1980 as Assistant Teachers in the institution and it was on 17.11.1980 that they were appointed on the said posts.

3. It appears that some one raised objection to the appointment of the Petitioners on the ground that the posts in question was reserved for Scheduled Caste candidate and the Petitioner who belong to the general category had no right to be appointed on the said posts. By his order dated 12.5.1981, the management terminated the services of the Petitioner on the ground that the posts in question were reserved for Scheduled Caste candidates.

4. As soon as the Petitioner came to know about the order passed by the manager dated 12.5.1981 they approached the District Inspector of Schools. The District Inspector of Schools by his order dated 20.5.1981 permitted the Petitioners to continue to hold the said posts.

5. It appears that the association known as Scheduled Caste Uplift Union also raised some objection against the appointment of the Petitioners before the District Inspector of Schools. The District Inspector of Schools without affording any opportunity of being heard to the Petitioners vide his order dated 3.6.1981, quashed the order dated 20.5.1981. The Petitioners as stated, aggrieved by the said order filed present petition.

6. I have heard learned Counsel for the Petitioners and learned standing counsel. On behalf of the Petitioners, it has been submitted that before passing the impugned order dated 3.6.1981, the District Inspector of Schools did not afford any opportunity of being heard to the Petitioners and the impugned order was passed in violation of the principle of natural justice. Learned Counsel for the Petitioner has also urged that the District Inspector of Schools had no Jurisdiction to review his order. The impugned order passed by the Respondent No. 1 was thus, wholly without Jurisdiction. Learned Counsel appearing for the Petitioners further submitted that the appointment of the Petitioners, who belong to the general category, was quite valid in as much as the Government Order dated 12.7.1978 contained in Annexure 2 to the writ petition itself permitted the appointment of the candidates belonging to the General category on the post in

question in the event the candidates belonging to the Scheduled Castes were not available. In the present case as stated above the candidates belonging to the Scheduled Caste were not available. The managing committee, as required Under law, already notified the said vacancies to be reserved for Scheduled Caste candidates but after obtaining the necessary permission from the District Inspector of Schools, made selection of the Petitioners therefore the Petitioners were legally entitled to hold the posts in question.

7. On the other hand, learned Counsel for the Respondents contended that the posts in question were reserved for the Scheduled Caste candidates and in any view of the matter, the candidates belonging to the general category could not be appointed on the said posts. The District Inspector of Schools was thus, right in setting aside the order dated 20.5.1981 and in passing the impugned order.

8. I have perused the record of the case and the Government Order referred to above. In my opinion, the submissions made on behalf of the Petitioners have got substance. Admittedly, vide order dated 24.10.1980, the District Inspector of Schools permitted the recruitment of the candidate belonging to the general category when the candidates belonging to the Scheduled Caste category were not available. The Government Order dated 12.7.1978 provides as Under:

9. In view of the aforesaid provisions it was open to the managing committee to appoint the candidates belonging to the general category on the posts in question after taking permission from the District Inspector of Schools. The view taken by the District Inspector of Schools and the contention of the learned Counsel for the Respondents to the contrary is not correct. It is also well- settled in law that the District Inspector of Schools has got no power of review. Reference in this regard may be made to the case of the Committee of Management, Inter College, Nonapur v. The District Inspector of Schools 1979 ALJ 33. The District Inspector of Schools, therefore, exceeded his Jurisdiction and passed the impugned order dated 3.6.1981 after passing orders dated 24.10.1980 and 20.5.1981.

10. It has not been disputed by the learned Counsel for the Respondents that the order dated 3.6.1981 were passed by the District Inspector of Schools without affording an opportunity of being heard to the Petitioners. The Impugned Order was, thus, also passed in violation of the principle of natural justice. The impugned order dated 3.6.1981 is thus, wholly illegal and deserves to be quashed.

11. The writ petition is allowed and the order dated 3.6.1981 is quashed. The Respondents are restrained from interfering in the Petitioner's working as assistant teachers in the institution. No Order as to costs.