
(2011) 12 AHC CK 0180
In the Allahabad High Court
Case No : Writ - A No. - 57237 of 2007

Anand Prakash Tewari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 101

Citation : (2011) 12 AHC CK 0180

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Sunil Hali, J.—By means of this writ petition, petitioner has prayed for a writ in the nature of certiorari quashing the order dated 7.7.2007 passed by respondent no. 2 whereby the respondent no. 2 had refused to grant its approval to the petitioner's selection as Assistant Clerk in Nehru Smarak Balika Inter College Chauri Chaura, Gorakhpur.

2. Facts of the case are that Nehru Smarak Balika Inter College Chauri Chaura, Gorakhpur (hereinafter referred to as the Institution) is governed by provisions of U.P. Intermediate Education Act, 1921 and the regulations framed there under. In terms of resolution passed by the Managing Committee, appointment by promotion of Class IV employees of the Institution against the sanctioned vacant post of Class III posts under 50 % quota was sent to the respondent no. 2 for its approval. Having failed to receive any response, respondent no. 3 had proceeded with the process of selection by appointment to fill up the vacancies of Class III post in the college by making advertisement in widely circulated news papers and had issued an advertisement dated 7.9.2006 in two daily news paper i.e. Dainik Jagran and Rashtriya Sahara. Process of selection was concluded and the name of the petitioner was enlisted for being appointed in one of the two vacancies of Class III in the Institution for a period of one year probation. All the necessary documents and the recommendation of the selection committee along

with covering letter dated 8.12.2006 was sent to the respondent no. 2 for making appointment to the said post. The said communication was received by the respondent no. 2 on 13.12.2006. However, when no approval was granted by the respondent no. 2 in accordance with the Regulation 101 of Chapter III of the UP Intermediate Education Act for a considerable period of time petitioner approached this Court by way of Civil Misc Writ Petition No. 12715 of 2007 which was disposed of vide order dated 9.3.2007 directing the respondent no. 2 to consider the claim of the petitioner in accordance with law. On receipt of the direction of this Court, respondent no. 2 passed the impugned order rejecting the recommendation of the Selection Committee. It is under this circumstances the present writ petition has been filed.

3. Heard Learned Counsel for the parties and perused the material on record.

4. The order of rejection was passed on the following reasons:

- i) That prior to initiation of selection process no approval was obtained from the respondent no. 2;
- ii) That the persons who were appointed against the supernumerary post has not been adjusted against the clear vacancies;
- iii) That while effecting the selection process no advertisement was issued in widely circulated news paper.

4. So far as the first question regarding no approval was obtained from the respondent no. 2 before initiation of selection process is concerned, what is being contemplated that any process for making appointment to a post which had fallen vacant in the College is required to be initiated only with prior approval of respondent no. 2. Since there is no such approval all subsequent process initiated by the Managing Committee would be Void-ab-initio. The procedure prescribed under the law has not been followed in the mode and manner of selection of the petitioner.

5. Learned Counsel for the petitioner has contended that prior approval as contemplated by Regulation 101 of the Intermediate Education Act requires approval before appointment. It does not require any prior approval at the time of initiation of process for making appointment. Reliance has been placed on the Division Bench judgment rendered in Jagdish Singh Vs. State of UP and others, (2006) 2 UPLBEC 1815 . This judgment has been followed by a Co-ordinate Bench of this Court in Preet Kumar Srivastava Vs. State of U.P. and Others, Division Bench of this Court in Jagdish Singh (Supra) has held in paragraph No. 21 as under:-

21. The observation of the learned Single Judge in Ram Dhani's case (supra) that previous approval under Regulation 101 is required to be taken before issuing advertisement for filling up vacancy does not lay down correct law. We, however, make it clear that although prior approval is required from the District Inspector of Schools after completion of process of selection but there is no

prohibition in the Principal/Management to seek permission of the District Inspector of Schools for filling up vacancy by direct recruitment. The permission may or may not be granted by the District Inspector of Schools but even if such permission to start the selection process or to issue advertisement is granted that is not akin to prior approval as contemplated under Regulation 101.

6. In face of this, it be seen that prior approval before initiation of selection process is not mandatory and is only the approval after completion of the process of selection and before issuance of appointment letter to the selected candidates.

7. Regarding second contention raised that the persons who were appointed against the supernumerary post have not been adjusted against the clear vacancies, it is stated by the petitioner that all the persons holding such post have been adjusted. In this regard he has placed reliance on Annexure No. 8 to the writ petition which was issued by respondent no. 2 itself on 4.4.2007 which makes it clear that the incumbent working against supernumerary posts have been adjusted. This however, has been denied by the respondents by stating that the persons appointed on supernumerary posts have not been adjusted. Availability of the vacancies has been identified by the Managing Committee and once they allowed the posts to be advertised it cannot be said that the vacancies were not available. Reliance placed by the petitioner's counsel on the communication dated 4.4.2007 of the DIOS that the persons working on supernumerary posts have been adjusted cannot be overlooked merely because bald assertion has been made in the counter affidavit.

8. The third contention that the vacancies were not advertised in widely circulated news paper before they were put to process of selection. In this regard petitioner in paragraph no. 22 of the writ petition specifically stated that the posts were advertised in two daily news paper i.e. Dainik Jagran and Rashtriya Sahara having wide circulation in the district on 7.9.2006. Since the respondents have not denied this aspect in the counter affidavit therefore it shall be deemed to have been admitted. In the present case, no irregularity or illegality was found in the procedure adopted for selection of the petitioner for appointment.

9. In view of above, the writ petition is allowed. The order impugned dated 7.7.2007 passed by respondent no. 2 is hereby quashed. Respondent no. 2 is directed to take fresh decision in the matter of approval of the appointment recommended by the Managing Committee of the College within a period of two months from the date of production of certified copy of this order.