
(2002) 08 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 4046 of 1984

Anil Kumar Agarwal

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Citation : (2002) 4 AWC 3189 : (2002) 3 UPLBEC 2568

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Umesh Narain Sharma, for the Appellant;

Final Decision : Allowed

Judgement

Anjani Kumar, J.—Heard Sri U.N. Sharma, learned counsel for the petitioner, and the learned standing counsel.

2. The petitioner has filed this writ petition against the order dated 3rd March, 1984 (Annexure-3 to the writ petition) whereby the District Inspector of Schools, Saharanpur, has stated in the order that on a representation made by Sri Dhoom Singh which purports to consider the approval granted to the petitioner's appointment as clerk as a direct recruit deserves to be recalled as the said vacancy has to be filled in by promotion. The District Inspector of Schools, Saharanpur, by his earlier order dated 20th February, 1984 (Annexure-2 to the writ petition) has granted approval wherein he has stated that from the averments made in the representation of Sri Dhoom Singh, it is clear that fifty percent vacancy in the category of clear vacancy has to be filled in by promotion and fifty percent by direct recruitment and since the post of Head Clerk has already been filled in by promotion, the post of clerk cannot be filled in by promotion. He, therefore, rejected the representation of Sri Dhoom Singh.

3. Learned counsel for the petitioner has submitted that the impugned order by which the approval granted to the petitioner's appointment has been reviewed, firstly, suffers from violation of principles of natural justice in as much as no

opportunity, whatsoever, has been given to the petitioner before passing of the impugned order dated 3rd March, 1984. Secondly, the District Inspector of Schools, Saharanpur, having approved the appointment on the representation filed by Sri Dhoom Singh by his earlier order dated 20th February, 1984, has no right or jurisdiction to review its earlier order by which the petitioner's appointment has been approved.

4. Learned standing counsel tried to justify the action of the District Inspector of Schools that since admittedly there are three posts and one has already been filled in by promotion as stated in the order itself, the quota of fifty percent comes to half. Therefore, the roster should be applied and the vacancy should be filled in by promotion. Neither any provision nor any Government order has been brought to my notice by the learned standing counsel to show that the roster should have been applied.

5. It has not been denied that no opportunity, whatsoever, has been given to the petitioner before passing of the impugned order by the District Inspector of Schools, Saharanpur. The writ petition, therefore, deserves to be allowed only on this point. It is further submitted that the District Inspector of Schools, Saharanpur, having already passed an order rejecting the representation filed by Sri Dhoom Singh has no power to review its own order as there is neither any assertion by Sri Dhoom Singh nor anybody else that the order of approval dated 20th February, 1984, was obtained either by misrepresentation or concealment of fact. Assuming it be so, according to the law settled, the petitioner is, in law, entitled for opportunity before passing of the impugned order that having not been done so by the District Inspector of Schools, Saharanpur. The submission of the learned counsel succeeds even on the second point also.

6. In this view of the matter, the petition succeeds and is allowed. The order dated 3rd March, 1984 (Annexure-3 to the writ petition) passed by the District Inspector of Schools, Saharanpur, is quashed. There is no order as to costs.