

**(2014) 03 AHC CK 0141**

**In the Allahabad High Court**

**Case No : Special Appeal Defective No. 79 of 2014**

Anil Kumar Shukla

APPELLANT

Vs

District Inspector of Schools

RESPONDENT

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**Date of Decision :** 05-03-2014

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2014) 3 ALJ 472

**Hon'ble Judges :** Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

**Bench :** Division Bench

**Advocate :** Arvind Srivastava and G.K. Mishra, Advocate for the Appellant;  
Anshu Chaudhary, C.S.C, Advocate for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. The writ petition filed by the appellant for a direction upon the respondents to make payment of salary with effect from August 1997 to December 2000 was dismissed by a learned Judge of this Court by a judgment delivered on 13 December, 2013. Such direction was sought in view of the order dated 31 December, 1998 passed by the Deputy Director of Education, Allahabad. The appellant claims to have been appointed on a Class IV post by the Manager/ Principal of the I.K.M. Inter College, Anapur, Block Nawabganj, Tehsil Soraon, District Allahabad. Approval for making payment of salary was granted by the Officiating District Inspector of Schools on 28 July, 1997 but soon thereafter this order was recalled by the District Inspector of Schools on 13 October, 1997/21 November, 1997. The appellant filed a representation before the Deputy Director of Education who, by the order dated 31 December, 1998, directed payment of salary but despite such a direction, salary was not paid as a result of which the writ petition was filed.

2. The stand taken by the respondents in the writ petition was that (i) the appellant had never been appointed in the Institution; (ii) the appointing authority was the Principal of the Institution and the procedure prescribed in

Regulation 101 contained in Chapter III of the U.P. Intermediate Education Act, 1921 was not followed inasmuch as prior approval of the District Inspector of Schools was not taken before making the alleged appointment; (iii) when the District Inspector of Schools went on leave, the approval to payment of salary was obtained from the Officiating District Inspector of Schools; (iv) when the District Inspector of Schools was apprised of this order after his return, he immediately recalled the order granting approval; and (v) the order passed by the District Inspector of Schools was final and the Deputy Director of Education was not the appellate authority.

3. A finding has been recorded by the learned Judge after analyzing the factual position that the sanctioned strength of Class IV employees in the Institution at the relevant time when the appellant claims to have been appointed was only 15 and as 15 persons were already working, there was no vacancy against which any person could have been appointed. The learned Judge also noted that neither the appointment letter nor any other material was placed on record to show that the appellant had been appointed after the grant of approval by the District Inspector of Schools as contemplated under Regulation 101. The learned Judge also observed that it was not clear whether the appellant had been appointed by the Principal or the Manager of the Committee of Management of the Institution. The writ petition was, accordingly, dismissed with liberty to the petitioners to move an application before the Joint Director of Education, who was required to examine whether any vacancy existed against which the appellant could have been appointed and whether the procedure for making the appointment was actually followed.

4. Learned counsel for the appellant submitted that since the Joint Director of Education had already examined the matter and had passed a detailed order dated 31 December, 1998 exercising supervisory powers under paragraph 16(8) of the Education Code, no useful purpose would be served by requiring the appellant to approach the Joint Director of Education. In this connection learned counsel pointed out that since the order dated 31 December, 1998 had attained finality as it was not challenged by the Institution in any proceedings, the relief prayed for in the writ petition for payment of salary with effect from August 1997 to December 2000 should have been granted. Learned counsel also submitted that infact the appointment of the appellant was within the sanctioned strength of 15 employees.

5. We have perused the order passed by the District Inspector of Schools as also the order passed by the Deputy Director of Education. The District Inspector of Schools, after analysing the factual position, drew the following conclusions:

(i) The sanctioned strength of Class IV employees in the Institution at the relevant time was 15 and 15 persons were already working.

(ii) Ravindra Nath Chaube, Subhash Chandra and Anil Kumar Shukla (appellant) claimed appointment on the basis of an advertisement pasted on the notice

board on 25 June, 1997 which gave time only up to 25 June 1997 to submit applications.

(iii) The contention of the Principal of the Institution that these three persons were appointed in collusion with Sri Ram Lakhan Sharma and Sri Chaube working in the office of the District Inspector of Schools appears to be correct. The alleged appointment of three persons is, therefore, clearly beyond the sanctioned strength and even otherwise, the procedure contemplated under Regulation 101 for making Class IV appointment was not followed.

6. The Deputy Director of Education, even after finding that there were only 15 sanctioned posts of Class IV employees at the relevant time, did not find any fault with the order passed by the District Inspector of Schools as salary was in fact being paid to 18 employees since 1991. He, therefore, concluded that the order dated 21 November, 1997 passed by the District Inspector of Schools was without any basis. An observation was, however, made that in future, appointments should not be made beyond the sanctioned strength of 15 employees.

7. It is, therefore, clear that even the Deputy Director of Education admits that there were only 15 sanctioned posts of Class IV employees at the relevant time and the three additional persons were made entitled for payment of salary only because till 1991 salary was being paid to 18 employees. In our view, once the Deputy Director of Education found as a fact that the sanctioned strength of Class IV employees in the Institution was 15 and 15 persons were already working, there was no reason to find fault with the order dated 21 November, 1997 passed by the District Inspector of Schools. This apart, the Deputy Director of Education has not considered the finding recorded by the District Inspector of Schools that the alleged appointments of these three persons also suffered from serious illegalities as the advertisement was pasted on the notice board on 25 June, 1997 and time was given up to 25 June, 1997 only to file applications. This itself is sufficient to vitiate the appointments as there was no due publicity of the advertisement nor was sufficient time given to the applicants to submit their applications. The procedure provided for in Regulation 101 that prior approval of the District Inspector of Schools should be taken before making any appointment, was also not followed.

8. What was, however, submitted by learned I counsel for the appellant is that the order passed by the Deputy Director of Education should be given effect to since it has attained finality and an order for payment of salary from August 1997 to December 2000 should be passed. Though it has been contended by learned counsel for the appellant that the Deputy Director of Education had no jurisdiction to entertain any representation against the order passed by the District Inspector of Schools, it will not be necessary for us to examine this issue in these proceedings. When the sanctioned strength of Class IV employees at the relevant time was 15 and 15 persons were already working in the Institution, there was no vacant post for which any advertisement could have been issued

nor for that matter could any process for making appointments have been initiated. It is not possible for the Court, in view of the specific finding recorded by the District Inspector of Schools and the Deputy Director of Education, to accept the submission of learned counsel for the appellant that the appointment of the appellant was within the sanctioned strength of 15 employees. While issuing any direction for payment of salary, a writ court has to be satisfied from the documents available on record that the appointment has been made in accordance with the procedure contemplated in law and against an existing vacancy. In the present case, there was no vacancy against which the appellant could have been appointed nor was the procedure contemplated in law followed. The appointment was void-ab-initio as has been held by the Supreme Court in *Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another*, .

9. It was, therefore, not a fit case for granting any relief to the appellant under Article 226 of the Constitution and the learned Judge committed no illegality in dismissing the writ petition. The Special Appeal is, accordingly, dismissed. There shall be no order as to costs.