
(2011) 12 AHC CK 0302

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51517 of 2007

Arun Kumar Mishra and Others

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 101, 102, 103, 104, 105

Citation : (2012) 1 ADJ 8

Hon'ble Judges : Pankaj Naqvi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Hon"ble Pankaj Naqvi, J.—Heard learned counsel for the petitioners and the learned standing counsel for the respondents.

2. Petitioners are three peons working since 15.1.2005 in the institution known as Asharfia Inter College, Mahul, District Azamgarh (for short the college), a recognized and aided minority institution and to which provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as Act of 1921) and the Payment of Salaries Act, 1971 (for short Act of 1971) are fully applicable and they have approached this Court for a direction to respondent No. 1 to pay salary to them on the post of peons from the date they are working i.e. since 15.1.2005 to 7.4.2006, as arrears.

3. The petitioners claim to have been selected as peons in the aforesaid institution under the resolution of managing committee of the college dated 13.12.2004 and after facing the aforesaid selection process when the papers were sent by the Principal of the college on 16.12.2004 before the District Inspector of Schools, Azamgarh (hereinafter referred to as the DIOS) for approval no orders whatsoever was passed on the said approval, but even then the petitioners continued to work in the said college w.e.f. 15.1.2005 and as salary was not paid to them, they were compelled to file Civil Misc. Writ Petition

No. 19305 of 2005 and that this Court vide its judgment dated 13.5.2005 was pleased to direct the DIOS to consider the matter of approval of the petitioners on the post of peons in the said college and take decision within a period of four months in the light of the observations made in the said judgment.

4. Pursuant to the aforesaid order of this Court dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005 a decision was taken on 7.4.2006 (Annexure 5 to the writ petition) whereunder the approval was granted to the appointment of the petitioners and it was held that the petitioners would be entitled for the payment of salary from the date of order of approval dated 7.4.2006.

5. It appears that since the salary of the petitioners prior to the date of approval i.e. 7.4.2006 was not paid to them, hence the petitioners submitted a representation dated 18.7.2006 before the Principal of the college with a request that they be paid arrears of salary on the posts on which they are working w.e.f. 15.1.2005. In this regard, reminder representation was also sent on 27.3.2007 to the Principal of the college and another representation dated 10.8.2007 to the DIOS and as the petitioners were not paid any salary for the period commencing from 15.1.2005, hence they have filed the present writ petition for payment of arrears of salary on the posts of peon w.e.f. 15.1.2005 to 7.4.2006.

6. The sum and substance of the stand taken in the counter-affidavit is that the payment of salary to the petitioners would accrue only from the date their appointments have been approved i.e. 7.4.2006, keeping in view the judgment of this Court dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005, hence the petitioners under law are not entitled to claim any salary for the period, which is prior to the order of approval dated 7.4.2006.

7. The first submission of the learned counsel for the petitioners is that the institution being a minority institution the DIOS while passing the order of approval in respect of the petitioners' appointment on 7.4.2006, ought to have granted arrears of salary w.e.f. the date of appointment i.e. 15.1.2005 and not from the date of approval i.e. 7.4.2006.

8. Per contra, the submission of the learned standing counsel is that the DIOS was well within his jurisdiction to grant salary to the petitioners only from the date of approval and not from any date anterior to approval.

9. Appointments to class III and IV posts under the provisions of the Act of 1921 have to be made in accordance with the provisions of the said Act and the Regulations framed thereunder. Regulation 101 of Chapter III provides that without prior approval from the DIOS concerned, the appointing authority will not fill up class III and IV posts in any recognized institutions and that the only exception being the post of Jamadar.

10. The approval contemplated under Regulation 101 is an approval, which has to be taken after the completion of selection process and before issuance of letter of appointment. This view has been taken in the case of Jagdish Singh and

others, 2006 (3) ESC 2055 (DB). Paragraph Nos. 18, 19 and 22, being relevant on the issue, are quoted below:

18. Regulation 101, as quoted above, uses two words, namely, and Hindi matter. The first part of the Regulation provides that appointing authority except with prior approval of Inspector shall not fill up any vacancy of non-teaching post of any recognized aided institution whereas second part of the Regulation provides that permission for filling of post of sweeper [Jamadar] can be given by Inspector. Second part of the Regulation is in the nature of proviso. The main part of the Regulation contains word i.e. prior approval whereas second part of the Regulation contains word i.e. permission. Thus, the Statute uses both the word "prior approval" and "permission". The meaning of both the word cannot be the same. In view of this, the submission of the learned counsel for the appellant that Regulation 101 requires only permission to issue advertisement by appointing authority and if such permission is granted by Inspector, the appointing authority can fill up the post. Regulation 101 provides prior approval with regard to vacancy to non-teaching staff and permission is contemplated only for filling the post of sweeper. Regulation thus indicates that when the permission is given to the appointing authority to fill up post of sweeper. There is no further prior approval is required. This provision being in nature of proviso to the main Regulation 101 i.e. "prior approval" and "permission" itself negates construction of Regulation as contended by the counsel for the appellant.

19. When the prior approval of the Inspector is contemplated in Regulation 101, that prior approval embraces itself an examination of all aspects of the matter including existence of the vacancy, nature of the vacancy whether vacancy is to be filled up by management or it be filled by appointing the dependant of deceased employee who has claimed for appointment under the scheme of the Regulations 101 to 107.

22. In view of the aforesaid, we are of the considered opinion that prior approval contemplated under Regulation 101 is prior approval by the District Inspector of Schools after completion of process of selection and before issuance of appointment letter to the selected candidates.

11. From the aforesaid, it is evidently clear that the approval, which is contemplated under Regulation 101, is a prior approval by the DIOS after completion of selection process and before issuance of letter of appointment to the selected candidates. Admittedly, in the present case, no such approval was taken by the management of the college before proceeding to fill up the said three vacancies on the post of peon and it was only pursuant to the directions of this Court dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005, the respondent concerned was issued a mandamus to decide the issue of approval of appointments of the petitioners within a period of four months that the date of production of certified copy of the order.

12. Approval contemplated under Regulation 101 has financial implications upon

the State, hence for all purposes it is the order of approval alone, which gives flesh and blood to an appointment. In other words, any appointment of which no approval has been taken, is no appointment in the eyes of law, as in such case the State cannot be made liable to pay their salaries. As stated above, the requirement of approval, as contained in Regulation 101, entails financial implications, therefore, the contention of the learned counsel for the petitioners that the said approval will not be required in case appointments are made in a minority institution cannot be accepted for the reason that such a provision would be regulatory in nature, as financial burden is to be borne by the State. Otherwise, if the contention of the learned counsel for the petitioners is accepted and the management of aided minority institution is permitted to make appointments without obtaining the aforesaid approval, then the same can be detrimental to the State exchequer. This is neither the legislative intent nor the position in law. Thus, this Court holds that the approval will have to be taken in respect of the aforesaid appointments both by the management of the minority and non-minority colleges from the authorities concerned.

13. However, it is always open for the petitioners to claim salary for a period prior to the order of approval from the management concerned in accordance with law, but on no account from the State Government. Thus, this Court finds that the DIOS adhered to the correct principle for payment of salary from the date of approval in its order dated 7.4.2006.

14. However, in the facts and circumstances of the case, this Court cannot lose sight of the fact that even though the mandamus of this Court was issued on 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005 directing the respondent concerned to decide the issue of approval within a period of four months from the date of production of certified copy of the order, yet the respondents sat tight over the matter for almost a year and ultimately it was only on 7.4.2006 that the order of approval saw the light of the day. This Court, being a Court of equity, would be failing in its duty if equities are not balanced for both the sides. Thus, in all fairness, the respondents ought to have decided the issue of approval within the stipulated period of four months, as indicated in the judgment dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005 and by not doing so, they cannot be permitted to take advantage of their own wrong by deciding the issue of approval after inordinate delay on 7.4.2006 in favour of the petitioners. Moreover, from a perusal of contents of para 6 of the counter-affidavit, it is apparent that the delay was solely attributable to the respondents, as in compliance of order dated 13.5.2005, the DIOS issued the first notice only on 13.9.2004 for 28.9.2005 and thereafter a notice on 27.10.2005 for 10.11.2005. This process could have been expedited and completed within the stipulated period. Accordingly, it would be in the fitness of things, if a direction is issued to the respondents to grant salary to the petitioners from the date on which four months period after filing of a certified copy of the judgment dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005 before respondent No. 1 expired, up to 7.4.2006. This arrangement is being worked out keeping in view the peculiar

facts of the case, so that the petitioners are not penalized for the inaction of the State respondents and at the same time to convey the message to the State respondents that they are expected to comply with the orders of this Court expeditiously within the period specified in the orders, especially when financial implications are involved. This arrangement may not be construed as an expression as if this Court is permitting as a matter of right the payment of salary to the petitioners for the pre-approval period.

15. However, in the peculiar facts and circumstances of the case, this Court directs the respondents to grant salary to the petitioners from the date on which four months period after filing of certified copy of the judgment dated 13.5.2005 in Civil Misc. Writ Petition No. 19305 of 2005 before respondent No. 1 expired, up to 7.4.2006 within a period of three months from the date of production of certified copy of the order.

16. With the aforesaid directions the writ petition stands disposed of.