

(2017) 01 AHC CK 0001

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3705 of 2005

Ashok Kumar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 746

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : S.M.A. Abdy, A.B. Singhal, Ashwani Kumar Mishra, R.B. Singhal, Advocates, for the Petitioner; S.S.C, C.D.P. Singh, Devendra Pratap Singh, N.P. Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. The order dated 16.8.2016 having been recalled vide order of date passed on Recall Application, writ petition is restored to its original number. As requested by learned counsels for parties, we proceed to decide the matter finally at this stage.
2. Heard Sri Shailendra, Advocate, for petitioner and perused the record.
3. Petitioner, who claims to have been working as daily wage Upper Division Clerk at Kendriya Vidyalaya No.II, Chakeri, District Kanpur Nagar since 2.1.1988, filed Writ Petition No.3812 of 1990 seeking regularization. It was subsequently transferred to Central Administrative Tribunal, Allahabad Bench, Allahabad and registered as T.A. No.16 of 2003, which was dismissed by impugned order dated 3.1.2005. The Tribunal found that neither the petitioner was engaged by the competent authority, empowered to make appointment on ministerial post i.e. Upper Division Clerk and Lower Division Clerk nor the petitioner fulfilled conditions necessary for regularization and therefore, relief sought by the petitioner could not be considered since his very appointment is void having not been made by the competent authority. This fact could not be disputed by

learned counsel for the petitioner that competent authority to make appointment on ministerial post is Assistant Commissioner, Kendriya Vidyalaya Sangathan whereas petitioner was appointed by Principal. The Rules applicable for recruitment and appointment in Kendriya Vidyalaya i.e. Rule 39 of Education Code for Kendriya Vidyalaya Sangathan which has been placed on record along with review application reads as under:-

"39. Recruitment :

Direct recruitment to the posts of Principal and various categories of teaching and non-teaching staff except to the posts of Lower Division Clerk, Laboratory Assistant, Laboratory Attendant and Group D shall be made centrally by the Headquarters office/Regional Office of the Sangathan as and when necessary on the basis of an All-India advertisement through the agency of the Central Employment Exchange of the Directorate General of Employment and Training and in accordance with the procedure mentioned in the KVS Appointments, Promotion and Seniority, etc. Rules, 1971 (Appendix III) as amended from time to time.

Recruitment to the posts of Lower Division Clerks and Laboratory Attendants shall be made by the Assistant Commissioner on the recommendation of the Vidyalaya Appointments Committee to meet their individual requirements during the course of the academic year. The vacancies in these Grades shall be notified by the individual Vidyalaya to the local Employment Exchanges and appointments made after an interview out of the nominees of the Employment Exchanges. Eligible Group D employee of the Vidyalayas serving in the same status may also be considered for appointment along with the nominees of the Employment Exchanges.

The recruitment to the post of Group D shall be made by the Vidyalaya Appointments Committee in accordance with the prescribed procedure through the local Employment Exchange.

Similarly, for making ad-hoc appointments to various other categories of posts where Headquarters or Regional Office of the Sangathan is not able to post centrally selected candidates either on account of the select panels having been exhausted or for any other reason or against leave vacancies, the vacancies shall be notified to the local Employment Exchange(s) endorsing a copy of the requisition to the local Employment Exchange and to the Professional and Executive Exchanges nearer the Vidyalaya. (Appendix IV).

In case the Employment Exchange is not able to nominate suitable candidates within a reasonable period, the Employment Exchange concerned should be asked to issue non-availability certificate within a specified time and thereafter, the vacancy may be filled through open advertisement in local newspapers.

In accordance with the instructions contained in the Ministry of Home Affairs O.M. No.71/58/57-CS (C) dated the 12th August qualified Group D employees of

the Kendriya Vidyalaya Sangathan can be considered for appointment to Group C posts along with the nominees of the Employment Exchange even though their names may not have been sponsored by the Employment Exchange. For this purpose, all qualified Group D employees in Kendriya Vidyalayas located at a station should be deemed eligible to compete for Group C posts along with the nominees of Employment Exchange.

Group C employees working in the Kendriya Vidyalayas should not be considered for appointment to higher posts unless their names are sponsored by the Employment Exchange. For this purpose these employees can obtain "No Objection Certificate" and register their names with the Employment Exchange for higher posts.

Appointment on daily wages should also be made through the agency of Employment Exchanges. Persons appointed through Employment Exchange on daily wages cannot be considered for appointment to regular posts unless their names are sponsored by the Employment Exchange for regular appointment.

A person initially recruited against a leave vacancy can further be adjusted against another vacancy of similar type if this can be arranged without break in service. He cannot, however, be re-employed once he is discharged from service, after a break in service of whatsoever duration, without the vacancy being re-notified to the Employment Exchange concerned and nominations called for.

Existing teachers in lower scales will not be considered for ad-hoc appointments to higher posts. An exception may be made where teachers have registered their names with the Employment Exchange for higher jobs and their names are sponsored by the Employment Exchange. In the event of an existing teacher being appointed thus to a higher post on ad hoc basis, there should be no offer or order of appointment but only an office order appointing him to the higher post "on ad hoc basis until further orders." In the event of termination of the ad hoc appointment, there will be another office order reverting him to the regular post earlier held by him. As this ad hoc appointment involves retention of lien on the lower post, in no case should a teacher who has not completed two years' service (normal probationary period) in his present grade be considered for such ad hoc appointment to a higher post.

The selection of candidates by the Vidyalaya Appointments Committee will be made on the basis of the qualifications and experience prescribed for the post by the Sangathan from time to time.

In the case of selected candidates who fulfil the prescribed qualifications and experience and who are to be appointed on the minimum of the pay scale, no formal prior approval of the Sangathan is necessary and an order of appointment can be issued straight away by the Chairman of the Vidyalaya Management Committee on behalf of the Assistant Commissioner if the post to be filled is a Group B or C post. In the case of a Group D post, the order of appointment will be issued by the Principal out of the selectlist prepared by the Management

Committee. The particulars of each such appointment will, however, be sent to the Sangathan in proforma I placed at Appendix V, immediately after the appointment is made. A copy of the appointment order need be sent to the Assistant Commissioner.

Prior approval of the Assistant Commissioner shall have to be obtained as per proforma in Appendix VI in the following cases before actually making the appointments :

(i) Cases in which any relaxation of the prescribed qualification experience or age, etc., is involved; and

(ii) Cases in which initial pay higher than the minimum of the prescribed scale is recommended by the Vidyalaya Appointment Committee.

40. All recruitment to various posts shall be made in accordance with procedure indicated in the preceding Article.

An exception to recruitment in accordance with the prescribed procedure can be considered only in the following two cases ;

(a) Proposal for appointment of a son/daughter/other near relative of an employee who dies in harness, leaving his family in indigent circumstances ; and

(b) Proposal for appointment of such person as had ceased to be in service on the ground that they failed to resume duty after the expiry of the maximum period of extra-ordinary leave admissible to them as temporary employees, for reasons beyond their control.

Proposals for relaxation of the normal procedure of recruitment through the Employment Exchange shall be made to the Sangathan giving full justification. The Commissioner for Kendriya Vidyalayas may, deserving cases, pass orders individually, relaxing the normal procedure recruitment through the Employment Exchange."

4. Further, circular dated 4th February, 1987 issued by Kendriya Vidyalaya Sangthan with regard to regularization of the services of adhoc non-teaching employees, reads as under:-

"Question regarding regularization of services of nonteaching employees of KVS (Headquarters, Regional Offices and Kendriya Vidyalayas) have been engaging the attention of the Sangthan for quite some time past. It has been decided that the services of those adhoc nonteaching employees who were recruited in accordance with the recruitment rules and who were within the age limit at the time of appointment and were recruited against regular vacancies should be regularized after verifying their services records (ACRs) provided they are working against their posts for more than 240 days.

While regularising the services of such employees a list of such cases be prepared mentioning therein the duration of adhoc appointment and reasons for

continuing the appointment beyond 6 months.

It may pleased be strictly noted that in future no adhoc appointment be made for more than 6 months. Violation of these rules will entail fixing of responsibility and disciplinary action."

5. The Recruitment Rules read with Circular dated 4th February, 1987 clearly show that if initial appointment on adhoc basis for nonteaching staff has been made in accordance with Recruitment Rules and a regular incumbent does not join, only then his case can be considered for regularization. In the present case, the very appointment on the post has been made by an authority not competent to make appointment i.e. Principal though the appointment on ministerial post could have been made by Assistant Commissioner. Thus, appointment of petitioner was void ab initio since his very appointment had not been made by competent authority. Hence, the question of right of continuing in service does not arise. These aspects have been considered by the Tribunal and relying on the law applicable on the subject, it has clearly held that an illegal appointment can not vest any right in a person to either continue in service till regular selection or seek his regularization. The question of regularization has been settled by Constitution Bench in Secretary, State of Karnataka and others v. Uma Devi and others, (2006) 4 SCC 1 and it has been held that regularization can be made strictly in accordance with the Rules made thereunder. Hence an incumbent continuing in service for a longer period is not entitled to claim regularization.

6. In the present case, engagement of petitioner by Principal of the school who had no authority or power to make appointment on the post of Lower Division Clerk and Upper Division Clerk was void and hence on the basis of an order which was void, petitioner cannot claim any right of regularization.

7. We, therefore, find no substance in this writ petition and in our view petitioner is not entitled for any relief.

8. Dismissed.

9. Interim order, if any, stands vacated.