

(1992) 11 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44533 of 1992

Baij Nath Sharma

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 16-11-1992

Acts Referred:

Citation : (1993) 1 AWC 628

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : Namwar Singh, for the Appellant;

Judgement

R.A. Sharma, J.—Sole grievance raised by the Petitioner is that although he has been appointed by the Principal of Samajwadi Inter College, Gambiran Jaunpur (hereinafter referred to as the College) vide order dated 26-6-1992, as Class IV employee but he is not being paid his salary due to inaction on the part of the District Inspector of Schools, Jaunpur (hereinafter referred to as the D.I.O.S.). Learned Counsel for the Petitioner in this connection has submitted that there is no necessity of the approval of the D.I.O.S. in the matter of appointment of Class IV employees and the D.I.O.S., after the appointment of Class IV employees has got to make the payment of the salary. In support of his submission learned Counsel has relied upon the decision of a learned Single Judge in the case of Moolchand Maurya v. District Inspector of Schools 1990 AWC 1536.

2. The appointment of a Class IV employee of a college is made under the U.P. Intermediate Education Act and the Regulation framed there under. Neither the Act nor the Regulations framed there under provide for approval of the D.I.O.S. in the matter of appointment of a Class IV employee. Appropriate authority can make such an appointment without the approval of the D.I.O.S. But when it comes to the Payment of the salary it is governed by U.P. High School and Intermediate College (Payment of Salary of Teachers and other Employees) Act, 1971 (hereinafter referred to as the Act) under which the D.I.O.S. is the competent authority to decide the question as to whether the employee is

entitled to the payment of salary. Whether an employee is entitled to payment of salary depends on several factors such as existence of the sanctioned post, availability of maintenance grant In respect of that post and manner and method of the appointment. Merely, because an employee has been appointed by the appropriate authority the D.I.O.S. is not bound to pay his salary under the Act unless the conditions precedent are satisfied. In the case of Moolchand Maurya (supra) the existence of the sanctioned post, availability of the fund and manner and method of appointment of the Petitioner therein was not disputed and the pleading made in the writ petition to that effect were not controverted by a counter affidavit. It was apparent that as all the conditions precedent for payment of salary were fully satisfied, this Court declared the appointment of the employee as valid and issued necessary direction for payment of his salary. This decision is not an authority for the proposition that as and when a Class IV employee is appointed by the Principal of the College the D.I.O.S. is bound to pay him the salary without finding out as to whether conditions precedent for payment of salary as laid down In the Act are satisfied. The submission of the learned Counsel lacks merit and as such cannot be accepted.

3. However, the D.I.O.S. has to decide expeditiously the question as to whether the concerned employee is entitled to payment of salary. But for this purpose the employee has to make a representation through proper channel before the D.I.O.S.

4. This writ petition is, as such, disposed of with the following order:

5. It is open to the Petitioner to make a representation before the D.I.O.S. containing all his grievances regarding payment of salary along with a certified copy of this order and if such a representation is made within two months from today the same shall be decided by the D.I.O.S. along with pending representation, if any, within a further period of six months. The order which may be passed shall be communicated to the Petitioner within two weeks thereafter.