

(2010) 09 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 41750 of 2007

Bansh Raj and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 6 AWC 6490 : (2011) 128 FLR 25

Hon'ble Judges : A P. Sahi, J

Bench : Single Bench

Advocate : Rishi Chadha, Jitendra Kumar Srivastava, Ajay Kumar Singh and Ashish Kumar Singh, for the Appellant; Ravi Pratap, C.S.C., for the Respondent

Judgement

A.P. Sahi, J.—Heard learned Counsel for the Petitioners, learned standing counsel for the Respondent Nos. 1 to 4 and the learned Counsel for the Committee of Management on whose behalf an Impleadment Application has been filed.

2. In spite of notice, the Respondent No. 5 has not put in appearance and it is contended at the Bar that the Principal of the institution is supporting the cause of the Petitioners.

3. The Petitioners in this writ petition are class--IV employees of an Intermediate College namely Gautam Inter College, Pipra Guatam, Basti. The Petitioners contend that under the permission granted by the District Inspector of Schools on 15.5.2004, the Principal of the institution advertised the post where after the Petitioners were duly selected and appointed. The appointment papers were forwarded to the District Inspector of Schools, who approved the appointment on 20.12.2004. The District Inspector of Schools, who conducted the aforesaid exercise, was Sri Hirday Ram Azad.

4. The salary of the Petitioners was stopped in view of the order passed by the successor District Inspector of Schools Sri B.B. Maurya vide order dated 31.5.2005 which has been assailed in the present petition on the ground that the same is without jurisdiction and is in violation of principles of natural justice. It is

further submitted that the approval order of the Petitioner has not been withdrawn and, as such, in view of the aforesaid circumstances, there was no occasion to restrain the payment of salary to the Petitioners. It is further submitted that the indication given in the impugned order about the interim order passed on 26.5.2005 in Writ Petition No. 12737 of 2005 has no concern with the present proceeding and, therefore, the impugned order is founded on an erroneous fact.

5. Learned Counsel for the Petitioners submits that the aforesaid action of the District Inspector of Schools, therefore, is unwarranted and once the approval has not been withdrawn by the competent authority, the payment of salary should not be restrained by the successor District Inspector of Schools.

6. Learned Counsel for the proposed Respondent -- Committee of Management contends that the appointment of the Petitioners is invalid on several grounds including the ground that Hriday Ram Azad was not the authority competent at that point of time to function as District Inspector of Schools and any action taken by him as noticed in the judgment passed in Writ Petition No. 61091 of 2005 dated 16.9.2005 should not be treated to be a valid and lawful act on the part of the District Inspector of Schools. He submits that the procedure prescribed under Regulations 101 to 107 of Chapter--III of the U.P. Intermediate Education Act, 1921, has not been followed and thirdly the permission granted to fill up the post from amongst the reserved category candidates is illegal inasmuch as, out of the total number of 9 posts sanctioned in the institution. 6 persons were already working, who belong to the reserved category. It is, therefore, submitted that the permission to fill up the post amongst the reserved category would amount to 100% reservation which was impermissible in law.

7. Learned standing counsel, on the other hand, submits that it was on account of the inquiry against Sri Hriday Ram Azad that the payment of salary was stopped and even otherwise the Petitioners are not entitled for payment of salary due to the pendency of Writ Petition No. 12737 of 2005 and the orders passed therein.

8. Having heard learned Counsel for the parties, the fact that the appointment of the Petitioners was made and approved by Mr. H.R. Azad, the then District Inspector of Schools, is undisputed. The question as to whether Sri Hriday Ram Azad had the authority to approve the selection and appointments or not could have been investigated by the Regional Level Committee which has been authorized to scrutinize such selections and appointments under the Government order dated 19.12.2000. The Petitioners have been appointed under the permission granted by the District Inspector of Schools on the ground that the posts should be filled from amongst the reserved category. It is not disputed that both the Petitioners belong to the reserved category.

9. The question of applying the rule of reservation has now been settled by this Court in the Full Bench decision of Heera Lal v. State of U.P. and Ors. 2010 (6)

ADJ 1, and, therefore, the rule of reservation has to be applied in accordance therewith. Apart from this, there cannot be more than 50% reservation as has been held by the Apex Court in the celebrated decision of *Indra Sawhney v. Union of India*, (1992) Supp 3 SCC 217.

10. In the instant case, this issue as to whether the selection of the Petitioners was on the strength of the strict reservation also has to be examined by the Regional Level Committee in the light of the aforesaid law as laid down by this Court and by the Apex Court. The rule of reservation if followed may not entitle the Petitioners for claiming any benefit as there are already 6 employees in the cadre out of 9 of the reserved category.

11. Apart from this, in view of the judgment in the case of Writ Petition No. 61091 of 2005. *Virendra Pratap Singh Vs. State of U.P. and Others*, , the issue as to whether Sri Hirday Ram Azad had the authority to either grant permission or approval to the appointment of the Petitioners has to be examined. Apart from this, the Regional Level Committee will also have to examine the procedure adopted by the procedure of the appointment of the Petitioners keeping in view the regulations as contained under Chapter--III for the purposes of ascertaining the genuineness or otherwise the selections of the Petitioners.

12. This exercise shall be undertaken by the Regional Level Committee apart from the other issues. The stopping of payment of salary by the District Inspector of Schools without notice or opportunity to the Petitioner may have been in violation of principles of natural Justice but the payment of salary to the Petitioners can be made only after it is found on inquiry that the selection and appointment of the Petitioners is valid.

13. Accordingly, this writ petition is disposed of with a direction to the Respondent No. 2 to examine the claim of the Petitioners in the light of the observations made hereinabove and pass appropriate orders as expeditiously as possible but not later than 8 weeks from the date of production of a certified copy of this order before the said authority after examining the records and calling for comments from the authorities of the institution.

14. It is clarified that so far as the order passed in Writ Petition No. 12737 of 2005 is concerned, the same is in no way an impediment in consideration of the claim of the Petitioners.

With the aforesaid observations, the writ petition is disposed of.