

(2009) 08 AHC CK 0195

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15605 of 1989

Bharat Ram Chaudhary

APPELLANT

Vs

District Inspector of Schools, Basti and Others

RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:

Citation : (2009) 08 AHC CK 0195

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. Two vacancies of class IV were available in Ganna Vikas Intermediate College, Munderwa, District Basti, which is recognized and aided institution. Sri Ram Bhaj Singh and Sri Vishram were appointed on the aforesaid post and were also granted financial approval by the District Inspector of Schools, Basti. However, Sri Ram Bhaj Singh submitted his resignation on 30.9.1986 which was accepted. The college notified the vacancy on the Notice Board as well as local Employment exchange against which the petitioner applied. He was selected and appointed by the Principal of the college vide order dated 27.10.1986. It is stated that the District Inspector of Schools, Basti, respondent no.1 had also approved the appointment of the petitioner in the vacancy so caused by the resignation of Sri Ram Bhaj Singh.

3. The grievance of the petitioner is that all of a sudden vide order dated 20th July, 1989 his services were terminated by the Principal and on enquiry he was informed that according to the DIOS the vacancy was not advertised in a Newspaper having wide circulation in the area and the appointment was not approved and as such approval to the appointment of the petitioner was withdrawn by the DIOS.

4. The impugned order is being challenged on the ground that there was no requirement under the U.P. Intermediate Education Act and the Regulations

framed thereunder to advertise the vacancies of class IV employees in Newspaper at the relevant time and that the DIOS does not have any jurisdiction to recall any approval granted without giving an opportunity of hearing to the petitioner and as such the impugned order of termination passed by respondent no.2 pursuant to the directions of the DIOS is liable to be quashed being illegal.

5. The Standing counsel relying upon the averments made in paragraphs 3,5 and 9 of the counter affidavit filed on behalf of the DIOS, Basti has submitted that though financial sanction was granted to the appointment of Sri Ram Bhaj Singh but in so far as the appointment of Sri Bharat Ram Chaudhary, the petitioner is concerned, neither any financial sanction was granted nor his appointment was approved by the DIOS. On the contrary, the Principal of the college managed to sign the salary bill of Sri Bharat Ram Chaudhary, the petitioner instead of Sri Ram Bhaj Singh and it was paid to him under mistake. However, when the correct facts came to the knowledge of the DIOS that the appointment of Sri Bharat Ram Chaudhary made by the Principal is illegal and financial sanction granted in favour of Sri Ram Bhaj was also withdrawn as such the petitioner can not claim himself to be a confirmed employee of the institution. It is stated that on the basis of the order of the DIOS dated 10.7.89 a consequential order was passed by the Principal terminating the services of the petitioner. Copy of the order has been appended as AnnexureCA1 to the counter affidavit.

6. It is lastly urged by the learned Standing counsel that the salary of the petitioner was wrongly paid up to the month of July, 1989 and thus the GPF and Insurance amount was being deducted from the salary of the petitioner, though the petitioner was not an employee of the institution. The Principal never replied to the query made by the DIOS, Basti vide letter dated 29.4.89, which is as under:

7. Another counter affidavit has been filed on behalf of respondent no.2, Principal of the college in which it has been stated that the vacancy was filled up after notifying the same on the Notice Board of the college and in the Employment exchange and that all the papers regarding the appointment of the petitioner were sent to the DIOS for approval. The DIOS had granted financial approval to the appointment of the petitioner vide his letter No. 1098687/8687 dated 13.11.1986. Copy of the letter of the DIOS dated 13.11.86 granting approval to the appointment of the petitioner has been appended as AnnexureCA2, which is as under:

8. In reply the petitioner has placed reliance upon paragraphs 4,6 and 10 of the rejoinder affidavit in which it has been averred that the DIOS, Basti, respondent no.1 had granted approval to the appointment of Sri Ram Bhaj, who subsequently submitted his resignation on 30.9.86.

9. The averments made in paragraph 9 of the counter affidavit are stated to be false and are denied. The petitioner has re asserted that he was legally appointed on 27.10.1986 for which DIOS had granted approval on 13.11.1986 and that

after completing successfully one year of service he became confirmed automatically. As regards letter dated 10.7.89 is concerned, it is stated that a perusal of the letter would clearly show that the DIOS had only withdrawn the approval granted on 7.3.1986 and the approval granted on 13.11.86 was not withdrawn.

10. From the averments of the parties and from the record it emerges that petitioner was appointed on 27.10.1986 in the vacancy caused due to resignation of Sri Ram Bhaj and that the financial approval was also granted by the DIOS to the appointment of the petitioner on 13.11.1986 therefore, it is incorrect that no financial approval was granted for appointment of the petitioner in place of Sri Ram Bhaj. In fact financial approval granted for the post of petitioner has not been withdrawn vide letter dated 10.7.89 and the Principal in collusion with the DIOS, Basti has illegally relieved the petitioner from the post.

11. From perusal of the record it emerges that the financial approval to the appointment of the petitioner was granted by the DIOS.

12. It appears from the averments made in the writ petition as well as in the counter affidavit filed on behalf of respondent no.2 that the appointment of the petitioner was made legally and the vacancy was notified on the Notice Board and the Employment exchange and there being no provision for advertisement of the vacancy of class IV in the Newspaper at the relevant time, therefore, it can not be said that the appointment of the petitioner was illegal. Once the appointment of the petitioner was made and financial approval was granted to it by the DIOS, he has also been continuing to work on the said post in view of the interim orders of this Court 24.1.90 for the last 20 years, hence he is liable to continue on the said post.

13. For all the reasons stated above, the writ petition is allowed. No order as to costs.