

(2015) 04 AHC CK 0070

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24686 of 2009

Chandra Shekhar Singh

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-04-2015

Acts Referred:

Citation : (2015) 3 ADJ 606 : (2015) 5 ALJ 521 : (2015) 3 AWC 2605 : (2015) 3 ESC 1247 : (2015) 2 UPLBEC 1335

Hon'ble Judges : Yashwant Varma, J

Bench : Single Bench

Advocate : V. Singh and R.P.S. Kushwaha, for the Appellant

Final Decision : Allowed

Judgement

Yashwant Varma, J.

1. The present writ petition assails the validity of the order dated 21st May, 2008 made by the respondent No. 2 in terms of which the claim of the petitioner for regularization in terms of the provisions of Section 33F of the U.P. Secondary Education (Services Selection Board) Act, 1982 (hereinafter referred to as the Act, 1982), has been declined. This Court has heard Sri V. Singh on behalf of the petitioner and Sri Ravi Shankar Prasad, Additional Chief Standing Counsel. Since the pleadings have been exchanged by the parties, this Court proceeded with their consent to dispose of the petition finally. The relevant facts which are liable to be noticed for resolution of the controversy raised are as follows. The petitioner asserts that one Chandra Bhushan Dixit, a permanent L.T. Grade Teacher in the institution was given ad hoc promotion by the Committee of Management on 4th August, 1991. The aforesaid promotion of Sri Chandra Bhushan Dixit was accorded approval by the District Inspector of Schools in terms of his order dated 10th March, 1993. The petitioner submits that on account of above a short term vacancy arose on 4th August, 1991 and that consequent to the approval of the ad hoc promotion on 10th March, 1993 and the appointment of Sri Dixit on 2nd April, 1993, the short term vacancy stood

subsequently coveted into a substantive vacancy.

2. Consequent to the vacancy being created on account of promotion of Sri Dixit, it is contended that the Committee of Management issued an advertisement calling for applications from interested persons to the post of Assistant Teacher in the institution. The petitioner appears to have applied and upon completion of the selection process was appointed by the Management on 2nd April, 1993. The papers of the appointment of the petitioner appear to have been forwarded to the District Inspector of Schools who however did not pass any orders thereon. Aggrieved by the said inaction, the petitioner preferred Writ Petition No. 30542 of 1993 before this Court on which an interim order was made on 3rd September, 1993 requiring the respondents to pay the current salary to the petitioner every month as and when it fell due. On the basis of the said interim order of this Court, the District Inspector of Schools, on 6th October, 2007 passed orders for the payment of salary to the petitioner subject of course to the result of the writ petition.

3. This writ petition ultimately came to be disposed of by the Court by its judgment and order dated 30th October, 2007 requiring the District Inspector of Schools to forward the claim of the petitioner for regularization in terms of the provisions of the Act, 1982 to the appropriate Committee. This Court provided that the Committee would consider the validity of appointment of the petitioner and thereafter take an appropriate decision in accordance with law. It is pursuant to the above order that the impugned order came to be made on 21st May, 2008.

4. A perusal of the order impugned establishes that the sole ground on which the claim of the petitioner has been rejected is that the order of the District Inspector of Schools dated 6th October, 2007 only provided for the interim payment of salary to the petitioner and that since the provisions of the Act, 1982 conferred the benefit of regularization only to such teachers who had been appointed to vacancies which came into existence prior to 7th August, 1993 and the case of the petitioner did not fall within the ambit of the said provision, it was not liable to be accepted.

5. Learned counsel for the petitioner has contended that the aforesaid order has been made without reference to the undisputed facts which existed on record. According to him, the short term vacancy came into existence on 4th August, 1991 and upon the ad hoc promotion being approved on 10th March, 1993 by the District Inspector of Schools, Sri Chandra Bhushan Dixit came to be confirmed on the post. It is submitted that the petitioner was appointed upon the Committee of Management following the procedure prescribed under the provisions of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (II) Order, 1981 (in short the Order, 1981), and that since he has been appointed against a vacancy which arose prior to 6th August, 1993 his case was ultimately covered by the provisions of Section 33F.

6. Learned counsel for the petitioner has further submitted that admittedly the

papers of his appointment had been forwarded to the District Inspector of Schools by the Committee of Management and it was the District Inspector of Schools who failed to communicate any decision within 7 days of the date of receipt of particulars by him. Accordingly and in view of the above, the learned counsel for the petitioner would contend, that the approval would be deemed to have been accorded.

7. Countering the above submissions, Sri Prasad, learned Additional Chief Standing Counsel for the State of U.P. has submitted that the petitioner's appointment had never been approved by the District Inspector of Schools and that the order dated 6th October, 2007 had been passed only in compliance of the interim directions issued by this Court. Sri Prasad has further submitted that the appointment of the petitioner itself had not been made in accordance with the procedure prescribed under Paragraph 2 of the Order, 1981 and therefore, also the petitioner was not entitled to any relief.

8. Since the contention of rival parties have centered upon the provisions of the Act, 1982 and the Order, 1981, it would be relevant to notice and bear in mind the following provisions which fall for consideration. The relevant provisions of the Order, 1981 read as follows:

"2. Procedure for filling up short-term vacancies.--(1) If short-term vacancy in the post of a teacher, caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the management of the institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion alongwith the particulars of the teacher so promoted.

(2) Where any vacancy referred to in Clause (a) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3) (i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the Manager of the, institution alongwith the particulars given in Appendix 13" to this order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) order, 1981, issued with Notification No. Ma-1993/XV-7-1 (79)-1981, dated July 31, 1981, hereinafter to be referred to as the first Removal Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the head of institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his, decision within seven days of the date of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or as the case may be, on his failure, to communicate his decision within Seven days of the receipt of papers by him from the Manager, the management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager."

9. For the purposes of being regularized a teacher must establish the following: (A) an appointment by promotion or by direct recruitment in the lecturers grade or trained graduates grade on or after 14th May, 1991 but not later than 6th August, 1993 against a short term vacancy; (B) the appointment must have made in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (II) Order, 1981; (C) such vacancy was subsequently converted into a substantive vacancy and; (D) the person possesses the qualifications prescribed and has been found suitable to be appointed in a substantive capacity by a Selection Committee referred to in Section 33C(2) and who has been continuously served in the institution from the date of appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment), Act, 2001.

10. This Court finds that it is not disputed that the short term vacancy in the instant case came into existence upon the ad hoc promotion of Sri Dixit on 4th August, 1991. This short term vacancy clearly attained statutory recognition upon the ad hoc promotion of Sri Dixit being approved on 10th March, 1993. It was post that the petitioner came to be appointed on 2nd April, 1993. Therefore, it is apparent that the petitioner came to be appointed against a short term vacancy after 14th May, 1991 and before 6th August, 1993.

11. This Court however, finds that the only ground taken by the respondents in the impugned order is that the petitioner did not come to be appointed against a substantive vacancy which arose prior to 7th August, 1993. This conclusion for obvious reasons and for what has been recorded hereinabove clearly cannot be sustained. The respondents have not disputed the dates of ad hoc promotion and the approval of the same by the respondents themselves which have been noticed by this Court hereinabove.

12. The other issue which finds mention in the impugned order is that the order of the District Inspector of Schools dated 6th October, 2007 had only issued directions for payment of salary to the petitioner in compliance with the interim directions of this Court. This aspect, in the opinion of this Court, was clearly alien to the consideration required to be conferred upon the issue and in light of the provisions of Section 33F. The Court has already indicated the aspects of Section 33F which must be considered and taken into account while adjudicating upon a claim for regularization placed for consideration of the respondents. In the

opinion of the Court, therefore, the respondent No. 2 has failed to apply its mind to relevant considerations required under statute and has clearly misdirected the inquiry contemplated and required to be undertaken under the provisions of Section 33F.

13. Sri Prasad, learned Additional Chief Standing Counsel has submitted that the appointment process of the petitioner did not comply with the procedure prescribed under paragraph 2 of the Order, 1981. This Court, however, finds that this is not a ground upon which the impugned order has been made and it is therefore, not liable to take the said contention into countenance. It is settled law that the validity of an order has to be judged in light of the grounds taken therein and not on grounds which may be urged or supplemented either by affidavit or oral submissions.

14. Section 33F does mandate and require the authority to consider whether the appointment against the short term vacancy has been made in accordance with the Paragraph 2 of the Order, 1981. However, presently the claim of the petitioner has not been rejected on this score. The Court must therefore necessarily leave this aspect of the matter here and the submissions advanced on this score is therefore laid to rest and is declined to be answered on its merits. Accordingly and in view of the above, this writ petition is allowed. The impugned order dated 21st May, 2008 is hereby quashed. The respondent No. 2 is commanded to place the papers of the petitioner and his claim for regularization before the appropriate Committee for reconsideration in light of the provisions of Section 33F of the Act, 1982 and the observations made hereinabove.