
(2016) 12 AHC CK 0142
In the Allahabad High Court
Case No : Writ A No. 4837 of 1987

C/M Janta Inter Collage

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Uttar Pradesh Secondary Education Service Commission Act, 1982 — Section 21-B

Citation : (2017) 3 ADJ 384

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Ashutosh Srivastava, A. Srivastava, Rahul Jain and Ravi Ranjan, Advocates, for the Petitioner; SC, for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—Supplementary Affidavit filed today is taken on record.

2. Heard Sri Rahul Jain, learned counsel for the petitioner and the learned Standing Counsel.

3. This writ petition assails the validity of an order dated 28 February 1987 passed by the District Inspector of Schools, Gorakhpur in terms of which the absorption of the petitioner No. 2 as a reserve pool teacher in terms of the provisions of Section 21B of the U.P. Secondary Education (Services Selection Board) Act, 1982, has come to be set aside. The District Inspector of Schools while passing the order impugned has rested his decision on the following two grounds. According to him, the petitioner came to be absorbed against a vacancy which had come into existence on 30 July 1979 consequent to the submission of resignation by one Gulam Farid. He notes that full particulars in respect of this issue of resignation had not been disclosed to his office. The second objection taken is that since the post had fallen vacant on 30 July 1979 and no steps had been taken by the management to advertise the vacancy within a period of three

months from the date of occurrence, the post itself would be treated as lapsed in terms of the provisions of Regulation 20 falling in Chapter II of the Regulations framed under the Intermediate Education Act, 1921.

4. Sri Jain, learned counsel for the petitioner referring to the averments taken in the writ petition has submitted that Sri Gulam Farid had only submitted his resignation on 30 July 1979. On the same date itself Mr. Gulam Farid is stated to have submitted a letter holding out that his resignation be not acted upon till 15 January 1981. He submits that the resignation was ultimately accepted by the management on 27 January 1981. Consequent to Sri Gulam Farid not exercising any other option prior to 15 January 1981, it is his submission that the absorption of the petitioner came into effect with the direction issued by the District Inspector of Schools on 7 January 1985. This order makes specific reference to the provisions of Section 21B which had come to be inserted in the 1982 Act initially by way of U.P. Ordinance No. 13 of 1985 which stood replaced by the Amending Act itself. Sri Jain submits that no facts were concealed from the District Inspector of Schools. In any view of the matter, it is his submission that no reasons have been assigned to establish the charge of concealment of a material fact by the management.

5. Learned Additional Chief Standing Counsel, on the other hand, contends that from the records as they stand, it appears that the petitioner was appointed for the first time only on 7 January 1985 and therefore even if the vacancy be treated to have come into existence on 27 January 1981 when the resignation was accepted, it is clear that no orders in favour of the petitioner could have been passed by the District Inspector of Schools referable to Section 21B. The learned Additional Chief Standing Counsel in addition reiterates the objection taken in the impugned order which rests upon the provisions of Regulation 20 comprised in Chapter III of the Regulations framed under the 1921 Act.

6. Having heard learned counsel for parties, this Court finds that the pleadings which have been taken in the writ petition and which detail the circumstances surrounding the resignation of Gulam Farid have not been traversed by the State. While the order impugned does refer to concealment of fact, what facts were actually concealed from the District Inspector of Schools and which would have effected the basis of the order dated 7 January 1985 are not disclosed. Even the affidavit filed by the State-respondents in these proceedings do not detail the facts which according to the respondents were concealed by the committee of management. In the absence of any effective traverse, the Court must necessarily proceed on the pleadings taken in the writ petition. It is therefore clear and apparent that the resignation of Mr. Gulam Farid was accepted by the management only on 27 January 1981. The vacancy therefore could not possibly be said to have come into existence in 1979. It is not the case of the respondent that the letter of resignation submitted by Sri Farid in 1979 came into effect immediately. The letter as has been averred in the writ petition was subject to acceptance by the committee of management and even otherwise made

dependant upon the statement of Mr. Farid that it be not acted upon till at least 15 January 1981.

7. Insofar as the order of the District Inspector of Schools dated 7 January 1983 is concerned, a bare reading of the said order clearly establishes that it is not an order of appointment but an order of absorption made with reference to Section 21B of the 1982 Act. This order of absorption presupposes and is based upon the petitioner having worked as a reserve pool teacher between the period 9 January 1978 and 19 January 1978. The factum of the petitioner having worked as a reserve pool teacher during these terminal dates is also not disputed by the respondents. Consequently, this Court is of the considered view that the provisions of Section 21B stood duly attracted and therefore the order of the District Inspector of Schools dated 7 January 1985 was not liable to be recalled on the grounds taken in the order impugned. Insofar as the objection referable to Regulation 20 is concerned, suffice it to state that the same would have application to a process of recruitment which may have been or could have been set in motion by the management under ordinary circumstances. The order of the District Inspector of Schools Dated 7 January 1985, as noted above, is not an order of appointment but a direction to the respondent to effect absorption of the petitioner who was a reserve pool teacher. Since this direction was itself based upon the special provisions enshrined in 21B of the 1982 Act, the same could not stand eclipsed by the provisions of Regulation 20. The impugned order which takes objection on this score cannot be sustained also for the aforesaid reason.

8. During the course of submission, Sri Jain has apprised the Court that pursuant to the interim protection afforded by this Court, the petitioner had continued to work, drawn all salary and other emoluments and also retired from service. He submits that the petitioner upon attaining the age of superannuation is only being paid provisional pension as a consequence of the pendency of the instant writ petition.

9. For the reasons afore noted, this writ petition stands allowed. The impugned order is hereby quashed and set aside. The petitioner shall be entitled to all consequential reliefs. The respondents shall consider and pass appropriate orders with regard to the release of final pension and other benefits to the petitioner in accordance with law, with expedition and preferably within a period of two months from the date of production of a certified copy of this order.