

(2016) 03 AHC CK 0089
In the Allahabad High Court
Case No : Writ-A No. 62696 of 2010

C/M Krashak Inter College, Baltikra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2016) 03 AHC CK 0089

Hon'ble Judges : B. Amit Sthalekar, J.

Bench : Single Bench

Advocate : R.C. Dwivedi and Prem Chand Saroj, for the Appellant; C.S.C., S.K. Pathak, Suneel Kumar Pandey and U.N. Sharma, for the Respondent

Final Decision : Disposed off

Judgement

B. Amit Sthalekar, J. 1. The petitioner is the Committee of Management through its Manager and is seeking quashing of the order of the Regional Level Committee dated 08.05.2008 and the order passed by the Accounts Officer, Office of District Inspector of Schools dated 04.08.2010.

2. The facts of the case as emerging from the writ petition are that there is an Institution known as Krashak Inter College, Baltikra, District Deoria, which is recognized under the U.P. Intermediate Education Act, 1921 and the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 also applies to the said Institution. There are 12 sanctioned posts in Class IV, out of which 8 posts are already occupied and four posts are vacant. On 09.01.2006 the District Inspector of Schools, Deoria granted permission to the petitioner to proceed with making appointments on 4 vacant posts in Class IV. It is stated that the Officiating Principal of the College advertised the vacancy in the daily newspaper "Swatantra Chetna" on 14.01.2006 and "Aaj" on 16.01.2006 and applications were invited. Three posts were to be filled up by General Category and one post by Scheduled Caste. It is stated that the Committee of Management was unaware about the aforesaid advertisement and was kept in the dark by the

Officiating Principal. It is in this process of selection that the respondents No. 6 to 9 were appointed in the Class IV. The appointments so made was granted approval by the Regional Level Committee after two years by the impugned order dated 08.05.2008.

3. In paragraph 10 of the writ petition it is stated that against the vacancies of General Category, 12 candidates had applied, out of which Mahesh Dwivedi, respondent No. 7, Atul Kumar Pathak, respondent No. 6 were selected in the General Category and Ram Ashrey Yadav, respondent No. 9 was selected in the OBC Category and Satendra Kumar, respondent No. 8 was selected in the SC Category. It is also stated that so far as the appointments to Class IV service is concerned, there are no Rules of Procedure and therefore, the Group-D Employees Services Rules, 1985 shall apply which provides that the Selection Committee shall comprise of the Appointing Authority and;

"(1) If the appointing does not belong to SC or ST Category then a member nominated by the appointing authority belonging to the SC or ST Category.

(2) If the appointing authority belongs to SC or ST Category then a member nominated by the appointing authority who does not belong to SC, ST or OBC Category.

(3) If the appointing authority does not belong to OBC Category then a member nominated by the appointing authority from the OBC Category. If the appointing authority belongs to the OBC Category, then a member nominated by the appointing authority who does not belong to OBC or SC or ST Category."

4. Provided: If in the Department appropriate officer is not available to constitute the Selection Committee then such officer shall on the recommendation of the appointing authority be nominated by the District Magistrate and even if thereafter such an officer is not available then an officer who would be recommended by the Divisional Commissioner.

5. The application of the 1985 Rules has also been provided in the Circular of the Director of Education dated 10.05.2001.

6. It is the allegation of the petitioner-Committee of Management that the Group-D Employees Service Rules, 1985 have not been complied with. The selection proceedings were held by the Officiating Principal of the College in collusion with the District Inspector of Schools. It is also alleged that there was no nominee of the District Inspector of Schools in the Selection Committee.

7. In paragraph 29 of the writ petition it is also alleged that the approval was granted by the Regional Level Committee with the rider that the appointment of the respondents No. 6 to 9 will be effective after the withdrawal of the ban imposed by the State Government, therefore, the contention of the petitioner is that if there was a ban during the period appointments in Class IV were made no selection could have been made in the first place and no approval, therefore, could have been granted by the Regional Level Committee in anticipation that the

ban would be lifted. It is also alleged that the Regional Level Committee was not properly constituted. Under the Government order dated 30.12.2000 Regional Level Committee is required to consist of the Joint Director of Education, Deputy Director of Education and the District Inspector of Schools whereas in the present case the Joint Director of Education was also holding the post of Deputy Director of Education and therefore, there was no 3rd Member in the Regional Level Committee and consequently the Regional Level Committee was constituted in violation of the Government Order dated 30.12.2000.

8. The grievance of the petitioner further is that the District Inspector of Schools by an order dated 24.12.2009 directed the petitioner that the salary of the selected Class IV employees be released at their stage meaning thereby at the level of the Committee of Management. The petitioner submitted his reply to the District Inspector of Schools to the effect that the alleged Class IV employees respondents No. 6 to 9 had never been appointed in the Institution. The District Inspector of Schools, therefore, by the order dated 19.02.2010 passed an order of Single operation of the Accounts of the Institution without affording any opportunity of hearing to the petitioner and after passing the order of single operation the salary has been released to the respondents No. 6 to 9.

9. A counter affidavit has been filed on behalf of the State respondents No. 1 to 4 and in paragraph 4 thereof it is stated that there were 12 sanctioned posts of Class IV of which 8 posts were held occupied and four posts were vacant. The Principal of the Institution, respondent No. 5 sought permission to make appointments to the said vacant posts through his letter dated 17.12.2005 and approval was granted on 01.09.2006 by the Office of the District Inspector of Schools and thereafter the Principal advertised the posts as stated in the writ petition and thereafter the respondents No. 6 to 9 were selected. After the selection a request for financial concurrence was forwarded to the Regional Level Committee which granted its concurrence on 06.05.2008 and thereafter on 16.05.2008 the District Inspector of Schools passed the consequential order according financial approval regarding the appointment of the respondents No. 6 to 9. It is stated that the petitioner-Committee of Management submitted a complaint on 05.12.2009 alleging that the selection has been made without taking concurrence of the Committee of Management and since the salary bill was not being forwarded by the Committee of Management the District Inspector of Schools passed the order of single operation on 19.02.2010.

10. In the counter affidavit filed on behalf of the State respondents it has been stated that the selection has been held according to the procedure prescribed and therefore, the selection is legal and valid and it has been reiterated that when the salary bills were not being processed by the petitioner-Committee of Management an order of single operation was passed by the District Inspector of Schools.

11. A counter affidavit has also been filed on behalf of the respondents No. 6 to 9 in which it is not denied that the selection was notified in two Newspapers and

thereafter the respondents No. 6 to 9 were appointed. Such appointment has also been granted financial approval by the Regional Level Committee by the impugned order dated 08.05.2008 and the consequential order of the District Inspector of Schools dated 16.05.2008. It is alleged that in the selection two persons, one Pradeep Rai and Anand Rai had also submitted their applications. It is alleged in paragraph 17 of the counter affidavit that the Manager of the Committee of Management, Sri Ramayan Rai is the uncle (PHUPHA) of Pradeep Rai whereas the mother of Anand Rai and wife of Ramayan Rai are real sisters and when they were not selected various allegations have been leveled against the process of selection. In paragraph 20 of the counter affidavit it has been stated that the Selection Committee has been constituted as per the provisions of Rule 16 of the Group D Employees Service Rules, 1985 read with the provision of Chapter III Regulation 101 to 107 of the U.P. Intermediate Education (Amendment) Act, 1921. Rule 16 of the Rules filed as Annexure-2 to the counter affidavit provides that the selection committee shall consist of the appointing authority and;

"(1) if the appointing authority does not belong to SC or ST then he shall nominate some person belonging to SC or ST Category as the case may be but;

(2) if the appointing authority belongs to SC or ST then he shall nominate one person who does not belong to SC or ST or OBC and;

(3) if the appointing authority does not belong to OBC then he shall nominate an officer belonging to OBC but if the appointing authority belongs to OBC then he shall nominate one such Officer who does not belong to OBC or SC or ST."

12. Provided:-- if in the Department appropriate officer is not available to constitute the Selection Committee then such officer shall on the recommendation of the appointing authority be one who shall be a nominee of the District Magistrate and if even thereafter if no such officer is available then the officer shall be one who is nominated by the Divisional Commissioner.

13. It is stated that the Selection Committee comprised of the Principal of Krashak Inter College, who was the appointing authority. The second person nominated by the Principal was one Sri Ram Roop Gupta, who was the Principal of the Gyan Prakash Inter College, Bhaluani, District Deoria (OBC) and the 3rd nominee of the Principal was one Sri Ram Prakash Gautam, who was the Principal of Dugdeshwar Nath Intermediate College, Rudrapur, Deoria (SC Category). It is, therefore, stated that there is no infirmity or illegality in the constitution of the Selection Committee.

14. Alongwith the counter affidavit filed on behalf of the respondents No. 6 to 9 a Government Order dated 03.03.2006 has also been filed which is in respect of nomination to be made by the District Magistrate in the matter of appointment against Group D Post by direct recruitment and is known as the Uttar Pradesh Group D Posts Direct Recruitment Nomination of One Member in the Selection Committee by the District Magistrate Rules, 2006 (hereinafter referred to as the

Rules, 2006). Rule 4 of the Rules, 2006 provides that in the matter of appointment to the post in Class IV by direct recruitment there shall be one nominee of the District Magistrate in the Committee.

15. A supplementary counter affidavit has been filed on behalf of private respondents bringing on record the Government Order dated 12.12.2016 imposing a ban in the matter of appointment to Class IV posts and this order has been filed alongwith the supplementary affidavit of the petitioner referred to above. The respondents have also brought on record the Government Order dated 11.04.2008 and 08.05.2008 whereby a decision has been taken for lifting of the ban on recruitment to Class IV posts. Annexure-3 to the supplementary counter affidavit is a Government Order dated 21.02.2007 which mentions that where selection process such as written examination, interview or type test have been held prior to 12.12.2006 the District Panchayats shall complete the process of selection.

16. I have heard Sri R.C. Dwivedi, learned counsel for the petitioner, Sri Ramesh Rai and Sri S.K. Pathak, learned counsel for the respondents No. 6 to 9, Sri Rajesh Kumar, learned counsel for the respondent No. 5 and Sri Mata Prasad, learned Additional Chief Standing Counsel for the respondents No. 1 to 4.

17. Three supplementary affidavits have been filed by the petitioner dated 19.01.2016, 29.02.2016 and 02.03.2016 which are being considered seriatim.

18. In the supplementary affidavit dated 19.01.2016 the case of the petitioner is that by the Government order dated 12.03.2005 a ban has been imposed in the matter of direct recruitment to Class IV post. Similar ban was imposed by another Government Order dated 12.12.2006. It is further stated that the impugned order of the Regional Level Committee dated 08.05.2008 also mentions the selection would be subject to the ban and would become operative once the ban is lifted. It is also stated that the provisions of the Group D (First Amendment) Rules, 1986 would apply to educational institutions recognized by the Government in the matter of appointments to Class IV. This issue has already been settled by a Full Bench of this Court in the case of Harpal Singh v. State of U.P. and Others reported in , 2015 (3) ADJ 236.

19. Paragraph 20 of the said judgment reads as under:

"The post of Daftari was created initially by a Government Order dated 20 November 1977. By a Government Order dated 10 August 1978, the pay scale of the post of Daftari was fixed at Rs. 170-225 with effect from 1 May 1978, while the pay scale applicable to other Class-IV posts continued to be Rs. 165-215. This factual position was taken note of by the Division Bench in Jawahar Lal (supra) on the basis of a counter affidavit which was filed by the Director, Secondary Education in those proceedings. When the Rules of 1975 were framed, rule 6 contemplated that promotion to the post of Daftari would be made from persons holding the post of Chaprasi, Messenger and Farras. Rule 2 (1) of Chapter III specifically incorporates the minimum educational qualifications for

appointment of clerks and Class-IV employees, as those which have been fixed for equivalent employees of Government Higher Secondary Schools. The Group-D Employees Service Rules, 1985, which apply to employees of Government Intermediate Colleges, provide in rule 6 the source of recruitment to various categories of Group-D posts. Rule 6 (c) provides the source of recruitment for the post of Daftari. The post of Daftari is required to be filled up by way of promotion from amongst qualified Peons, Messengers and Farrasas. Rule 10 (4) also provides that no person shall be eligible for appointment as Daftari unless he is found to possess requisite knowledge of book binding work and good experience of that work. Significantly, the same provision was contained in rule 10 (4) of the U.P. Class-IV Employees Service Rules, 1975. Moreover, rule 6 of the 1975 Rules also contemplated that appointment to the post of Daftari would be made by way of promotion from amongst qualified Peons, Messengers and Farrases."

20. It is also stated in paragraph 7 of the supplementary affidavit that the Officiating Principal of the College in question by his letter dated 11.01.2016 has informed that no copy of the advertisement exists nor any record of the selection process in which respondents No. 6 to 9 were selected is available in the office and therefore the entire selection is an outcome of fraud.

21. In the supplementary affidavit sworn on 29th February, 2016 on behalf of the petitioner, it is stated that at the time when the writ petition was filed Sri Ramayan Rai was the Manager of the petitioner-Committee of Management and subsequently after 14.11.2014 when elections of the Committee of Management were held he has again been elected as Manager of the Committee of Management of the College in question and the Joint Director of Education VII Region, Gorakhpur by his letter dated 18.04.2016 has also granted recognition to the election of Ramayan Rai as Manager of the Committee of Management and the signature of Sri Ramayan Rai as Manager has also been attested by the District Inspector of Schools, it is also stated in paragraph 8 of the affidavit that the order of the Joint Director on 08.04.2015 granting recognition to the Committee of Management with Ramayan Rai as Manager was challenged by the rival party before the High Court in Writ Petition No. 25392 of 2015 and the High Court vide its judgment dated 04.05.2015 set aside the order dated 08.04.2015 and remanded the matter back to the Joint Director of Education for reconsideration. It is also stated in paragraph 9 of the affidavit on 14.08.2015 the District Inspector of Schools, Deoria had passed the order of single operation of the Institution. In paragraph 10 of the affidavit it is stated that the order of single operation only takes away the power of the Manager in financial matters but the Committee of Management with Ramayan Rai as Manager continues to function for all other purposes.

22. In the supplementary affidavit dated 02.03.2016 it has been stated that the Assistant Registrar, Firms, Societies and Chits, Gorakhpur Region, Gorakhpur by his order dated 18.06.2015 has declared that the list of 218 members is legal

and valid and thereafter the Finance & Accounts Officer in the Office of the District Inspector of Schools, Deoria was nominated to hold elections of the Committee of Management of the Society. It is also stated that the Committee of Management of the Society and the College is the same. Elections were held on 06.12.2015. The District Inspector of Schools by his order dated 01.12.2015 appointed Sri Ram Hajur Prasad, Associate District Inspector of Schools, Deoria as observer in the elections. Sri Ramayan Rai was elected as Manager and the District Inspector of Schools has also by his order dated 11.12.2015 recognized the signature of Ramayan Rai as Manager of the College. Against the order of Assistant Registrar, Firms, Societies and Chits dated 18.06.2015, one Ashok Mani filed Writ Petition No. 39424 of 2015 and the said writ petition has been dismissed by the High Court by order dated 27.07.2015. The Special Appeal No. 751 of 2015 has also been disposed of by the High Court by order dated 06.11.2015 with a direction that the application for interim injunction filed by the Appellant-Ashok Mani shall be heard by the trial court within two months. It is also stated that after the election of Ramayan Rai as Manager of the Committee of Management of the College the salary bill for the month of January, 2016 of the teaching and non teaching staff has also been passed under the signature of Sri Ramayan Rai.

23. As already noted above, the impugned order dated 08.05.2008 granting approval to the selection of the petitioner itself mentions that the same is subject to lifting of the ban imposed by the State Government on the recruitment to Class IV post.

24. A second supplementary counter affidavit has been filed on behalf of private respondents bringing on record the Government order dated 18.03.2005 and it is stated that at the time of selection of the respondents No. 6 to 9 there was no ban on recruitment to Class IV posts. This Government Order, copy of which has been filed as Annexure-1 to the supplementary affidavit, only mentions that the selection process which has been initiated in the Departments other than the Medical, Health and Family Planning where the selection process has been initiated prior to 12.03.2005 the same may be concluded. This Government Order does not indicate that there was any ban or for that matter there was no ban at the time of selection of the respondents No. 6 to 9. The respondents have also brought on record orders dated 30.06.2015 and 14.08.2015, Annexure-2 to the affidavit. The order dated 30.06.2015 was passed by the Joint Director Education, Gorakhpur after the matter was remanded by the High Court to the Joint Director of Education. The High Court in Writ Petition No. 25392 of 2015, Committee of Management v. State of U.P. had quashed the impugned order dated 08.04.2015 granting recognition to the signature of Ramayan Rai and the matter was remanded to the Joint Director of Education. By the order dated 30.06.2015 the Order dated 08.04.2015 has been cancelled by the Joint Director of Education. By the other order dated 14.08.2015 it has been provided that the salary bill will be disbursed to the teaching and non-teaching staff by single operation which shall be subject to any final order which may be passed by the

Joint Director of Education in terms of the order of the High Court dated 21.05.2015 passed in Special Appeal No. 331 of 2015 arising out of the order of learned Single Judge as already noted above. These orders only take away the financial powers of Sri Ramayan Rai, Manager of the Committee of Management but it does not mean that Ramayan Rai does not continue to be the Manager of the Committee of the Management of the College in question for all other purposes other than financial matters.

25. The Government Order dated 21.02.2007 which mentions that where the process of selection such as written examination, interview or type test have been held prior to 12.12.2006 the same shall be completed applies to the District Panchayats and is confined to the recruitment in the District Panchayats and not in the present case which relates to recruitment in Class IV in the petitioner's College.

26. The Government Order dated 11.04.2008 filed as Annexure-2 to the supplementary counter affidavit dated 07.12.2014 filed by the respondents No. 6 to 9 speaks of lifting of the ban in the matter of recruitment to Class IV posts imposed by the earlier Government Order dated 12.12.2006. The selection in question itself was held through a process of selection on 12.02.2006. On that date there was no ban to the recruitment in Class IV post. Merely, because approval was granted by the Regional Level Committee on 08.05.2008 would not invalidate the selection which was held at the time when there was no ban to such appointments.

27. So far as the constitution of the Selection Committee is concerned, it has come on record that the appointing authority had nominated one Sri Ram Roop Gupta, Principal of the Gyan Prakash Inter College, Bhaluani, District Deoria (OBC) and the 3rd nominee of the Principal was one Sri Ram Prakash Gautam, who was the Principal of Dugdeshwar Nath Intermediate College, Rudrapur, Deoria (SC Category). The Principal of the Committee of Management, who was the appointing authority was the Chairman of the Selection Committee.

28. The averments to that effect have been made in paragraph 20 of the counter affidavit of the private respondents No. 6 to 9. There is no reply to paragraph 20 of the counter affidavit in the rejoinder affidavit dated 28.10.2014 filed by the petitioner in reply to the counter affidavit of private respondents No. 6 to 9. However, in paragraph 11 of the rejoinder affidavit there is no denial so far as the appointment of Sri Ram Roop Gupta, Principal of Gyan Prakash Inter College, Bhaluani, District Deoria is concerned. However, so far as such appointment of Sri Ram Prakash Gupta is concerned, it is stated that there was no Principal of the said name in the Dugdeshwar Nath Intermediate College, Rudrapur, Deoria and it is a forged name and the selection has been held on forged papers by the in-charge/officiating Principal of the eve of his retirement. However, no documents have been filed with the rejoinder affidavit which might lend reduce to the allegation that Sri Ram Prakash Gautam was not the Principal of Dugdeshwar Nath Intermediate College, Rudrapur, Deoria and that some other

person was the Principal.

29. The contention of the petitioner further is that since there is no Rule of Procedure for recruitment on Class IV post in the Regulations framed under the U.P. Intermediate Education Act, 1921, therefore, the Group-D Employees Service Rules, 1985 would be applicable but there is no nominee of the District Magistrate. Rule 16 of the Group D Employees Service Rules, 1985 already quoted hereinabove requires nominee of the District Magistrate only in special circumstances. It has not been shown that any such circumstance exists in the present case.

30. The petitioner has also placed reliance upon the Government Order dated 03.03.2006 which is by way of amendment as referred to the U.P. Group-D Post of Direct Recruitment Nomination of One Member in the Selection Committee by the District Magistrate Rules, 2006 framed under the Rule 309 of the Constitution of India and which requires that in the selection to Class IV post there should be at least one nominee by the District Magistrate in the Selection Committee. The Rules, 2006, copy of which has been filed as Annexure-2 to the counter affidavit of the private respondents No. 6 to 9, shows that the same have been notified on 03.09.2006 whereas the selection in the present case was advertised on 14.01.2006 and 16.01.2006 and the selection was held on 12.02.2006 and on that date the Rules, 2006 were not in existence and had not been notified, therefore, the same could not be said to be applicable to the selection in question and therefore, the selection of 2006 will not be rendered invalid merely because there was no nominee of the District Magistrate.

31. However, one matter which requires anxious consideration by the Court is the application of reservation in the impugned selection. It is the admitted case of the parties that there were total 12 sanctioned posts in Class IV in the College in question, out of which 8 posts were already filled up and the recruitment was held for only 4 vacant posts. In the ensuing selection, 2 General candidates were selected, namely, Sri Atul Kumar Pathak, respondent No. 6 and Sri Mahesh Dwivedi, respondent No. 7. Sri Ram Asrey Yadav, respondent No. 9 was selected in the OBC category. It is not understood as to how the respondent No. 8, Satendra Kumar, SC candidate was selected. The quota for SC being only 21% under the Reservation Act, 1993 no posts would have been available if the total vacancies were only 4. This question is no longer res integra having been settled by a Full Bench of this Court in the case of Heera Lal v. State of U.P. and others reported in , 2010 (6) ADJ 1. The relevant portion of the judgment reads as under:

"In view of the reasons in support of the conclusions drawn herein above our answers to the questions posed are as follows:

1. Question No. 1 is answered in the negative holding that either in cases of promotion or direct recruitment, the rule of reservation providing for 21% reservation to scheduled castes under U.P. Act No. 4 of 1994 as applicable to

aided educational institutions cannot be pressed into service where the number of posts in the cadre is less than five."

32. In this view of the matter, the appointment of the respondent No. 8, Satendra Kumar was wholly illegal and contrary to the law laid down by the Full Bench of this Court in the case of Heera Lal (supra) and therefore, the same is quashed.

33. The other point raised by the learned counsel for the petitioner is that the selection was notified by the Officiating Principal who did not have the power to do so. Reliance has been placed on the Single Bench judgment of this Court in Writ Petition No. 20704 of 2011, Gautam Singh & Others v. State of U.P. and Others. That was a case in which one G.K. Rai was appointed as Officiating Principal during the period when Sri Maya Shankar Pandey the Principal was under suspension. The Court held that after the expiry of 60 days from the date of suspension of Sri Maya Shankar Pandey, to be precise after 05.01.2009 such suspension ceased to exist by operation of law as Sri Maya Shankar Pandey stood restored as regular Principal and thereafter any action taken by Sri G.K. Rai in his capacity as Principal subsequent to 05.01.2009 would be a nullity. In my opinion the said judgment is on its own facts and has no application to the facts of the present case.

34. For reasons aforesaid, the writ petition is partly allowed. There shall be no order as to cost.

35. An application has been filed by one Prem Chandra Saroj seeking withdrawal of the writ petition. The affidavit to the withdrawal application has been sworn by one Ashok Mani Tripathy claiming to be the Manager of Krashak Inter College, Baltikra, District Deoria. This application is dated 24.11.2013 but no order has been passed thereon. However, Sri R.C. Dwivedi, learned counsel for the petitioner submits that since Sri Ramayan Rai the erstwhile Manager, who had filed the writ petition has been re-elected as Manager of the Committee of Management the question of withdrawal of the writ petition on an affidavit filed by Ashok Mani Tripathy does not arise and Sri Ramayan Rai the erstwhile petitioner seeks to press the writ petition.

36. No one is present on behalf of the applicant to press the withdrawal application.

37. Withdrawal application is accordingly rejected.

38. There is also an impleadment application on record filed by Ramayan Rai dated 28.10.2014 praying that he may be impleaded as petitioner No. 2 in the writ petition. This application had been filed at a time when Sri Ramayan Rai was not the elected member and Ashok Mani Tripathy had been elected as Manager of the College. However, since in the subsequent election Sri Ramayan Rai the erstwhile Manager of the petitioner-Committee of Management has been re-elected and he is still continuing as Manager there is no need to implead

Ramayan Rai as petitioner No. 2.

39. The impleadment application is accordingly disposed of.