

(2008) 12 AHC CK 0345

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39474 of 1997

Daljeet Singh

APPELLANT

Vs

District Inspector of Schools, Mainpuri And Others

RESPONDENT

Date of Decision : 19-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0345

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned counsel for the petitioner.

2. According to the petitioner, a post of Lecturer fell vacant in National Inter College, Bhogaon, Mainpuri which is privately managed but government aided college and is governed by the provisions of U.P. Intermediate Education Act, 1921, Payment of Salaries Act, 1971 (U.P. Act No. 24 of 1971) and U.P. Secondary Education Service Selection Boards Act, 1982. It has further been stated that the post of Lecturer fell vacant due to retirement of Virendra Narain Saxena on 30.6.1995. Sri Naresh Kumar Saxena who at that time was working as teacher in L.T. Grade was promoted to the post of Lecturer which had fallen vacant due to retirement of Virendra Narain Saxena. According to the petitioner due to promotion of Naresh Kumar Saxena, a short time vacancy in L.T. Grade came into existence. Management advertised the said vacancy in a newspaper known by the name of Dainik Jantantra dated 13.8.1996. Petitioner claims that he was interviewed on 21.9.1996 and was selected and appointment letter was given on 29.11.1996 (Annexure V). Documents seeking financial approval were sent to District Inspector of Schools (D.I.O.S.) through letter dated 5.12.1996. D.I.O.S. rejected the proposal through letter dated 16.12.1996 on the ground that there was a ban on appointment. Said order was set aside in writ petition No. 6994 of 1997 and D.I.O.S. was directed to decide the matter again. D.I.O.S. through order dated 8.8.1997 again rejected the representation of the petitioner. The said order has been challenged through this writ petition.

3. In the impugned order it is mentioned that Shri Naresh Kumar Saxena had not been promoted and he was getting salary of L.T. grade as papers regarding his promotion to the post of Lecturer were pending with Regional Deputy Director of Education. Second reason given is that there was a ban imposed by the Government. Third reason given is that the appointment of the petitioner, was over and above the sanctioned strength. In that regard it has been mentioned that there are only 29 sanctioned posts of teachers in L.T. grade while infact 33 teachers are working i.e. 4 more than the sanctioned strength. The fourth reason is that Joint Director of Education sent the papers regarding promotion of Shri Virendra Narain Saxena to the post of Lecturer to the Selection Board and simultaneously wrote a letter dated 8.11.1996 to the management directing the management not to appoint any person at his place as number of students had fallen down. Fifth reason was that there was no scheduled caste teacher in L.T. grade in the college in question.

4. In supplementary affidavit filed by the petitioner in August 2007 it has been stated that sanctioned strength of teachers in L.T. Grade in the college in question is 29 and only 27 teachers are working. In this regard some letters issued by Principal in 2002 and 2007 have been mentioned. The fact mentioned in the impugned order that in 1997 there were 33 L.T. grade teachers has not been denied. In the Supplementary counter affidavit filed in September, 2007 by the respondents 1 and 2 it has been stated that Selection Board through order dated 13.8.1997 approved the promotion of Shri Naresh Kumar Saxena to the post of Lecturer from the actual date of joining the post. In para6 of the main counter affidavit it has been stated that before making appointment of the petitioner no approval of D.I.O.S. was sought which was necessary under Second Removal of Difficulties Order, 1981 issued under U.P. Secondary Education Services Selection Board Act. In this regard learned counsel for the petitioner has argued that prior approval was not necessary. Under para 2(3)(i) of the said order it is provided that management shall intimate the vacancy to the D.I.O.S. Under para 2(3)(ii) prior approval for selection is not necessary but it is a must before appointment.

5. This writ petition is to be dismissed on the ground that vacancy was not published in two newspapers having adequate circulation in Uttar Pradesh as required by first Removal of Difficulties Order. The Newspaper in question has got absolutely no circulation in U.P. In the case of K.N. Dwivedi v. District Inspector of Schools, (1994) 1 UPLBEC 461 and Radha Raizada v. Committee of Management, 1994 (2) ESC 345 it has been held that for making appointment on shortterm vacancy the procedure prescribed under first Removal of Difficulties Order regarding publication of vacancy is to be followed. According to the first Removal of Difficulties Order vacancy must be published in two newspapers having adequate circulation in the State (para5). All these points have been considered in detail in the Division Bench authority reported in 2007 (2) ESC 1116, Joint Director of Education v. UdaiRaj Vishwakarma.

6. Moreover as L.T. grade teachers in the college were already more than the sanctioned strength hence there was no question of appointment of anyone on any basis.

7. Learned counsel for petitioner has cited several authorities regarding ban and reservation. This judgment is not based on any of these points. Single Judge authority holding that prior approval for appointment is not necessary (Mukesh Kumar v. State, 1996 (2) UPLBEC 783) is no more good law in view of above Division Bench. In any case, independently of this question, appointment is illegal for want of publication/advertisement of vacancy in two Newspapers having adequate circulation in U.P.

8. Learned counsel for the petitioner has cited a Division Bench authority reported in D.I.O.S. v. Diwakar Lal, 2000 (3) ESC 1670 and has contended that D.I.O.S. on the earlier occasion refused to grant financial approval to the appointment of the petitioner only on the ground of ban hence the said order cannot be justified on other grounds subsequently taken in the order of D.I.O.S. which is challenged through this writ petition or the counter affidavit. In the said Division Bench authority reference was made to the Supreme Court authority of M.S. Gill V. Chief Election Commissioner, MR 1978 SC 851. Firstly, in the Division Bench authority it was categorically held that appointment against shortterm vacancy without advertisement in the newspaper was not bad because it was made prior to 13.1.1994 when the case of K.N. Dwivedi (supra) was decided.

9. Secondly, this doctrine cannot be extended beyond a certain limit otherwise, it will play a havoc. To illustrate, suppose instead of petitioner, the Manager of the college in question had appointed his High School pass wife in the same manner and D.I.O.S. had refused the approval on the same ground i.e. ban on appointment then through writ petition the wife of the Manager could not pray for quashing the order of D.I.O.S. and seek a declaration that her appointment was valid and a direction that she should be paid salary by the State merely on the ground that the ground of ban taken by the D.I.O.S. for refusing to grant financial approval to her appointment was not in accordance with law.

10. Accordingly, there is no merit in the writ petition hence it is dismissed.