
(2004) 07 AHC CK 0047

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 23239 of 2004

Damodar Yadav

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 20-07-2004

Acts Referred:

Citation : (2004) 5 AWC 4902 : (2004) 3 UPLBEC 3057

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : V. Singh, for the Appellant; I.R. Singh, O.P. Singh, K.K. Chand and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Heard Sri V. Singh, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the State-respondents and Sri Indra Raj Singh, learned Counsel appearing for the contesting respondent No. 6 and perused the record. A counter affidavit has been filed on behalf of Respondent No. 6 which may be placed on record. With the consent of the learned Counsel for the parties, this writ petition is being disposed of at this stage.

2. By means of this writ petition the petitioner has challenged the order dated 15.5.2004 passed by District Inspector of Schools, Mau whereby the earlier order dated 21.2.2004 passed by the same authority i.e. District Inspector of Schools, Mau, has been cancelled.

3. The brief facts of this case are that the petitioner Damodar Yadav as well as Respondent No. 6 Ramadhar Yadav were appointed as Assistant Teachers in Shri Krishna Vidyapith Higher Secondary School, Chiraiyokot, Mou. A dispute arose with regard to the absorption of one Assistant Teacher on the post of L.T. grade teacher which had fallen vacant on the retirement of one Sri Pati Ram Yadav on 30.6.2003. Admittedly, the Joint Director of Education, Azamgarh Region, Azamgarh passed an order dated 20.2.2004 for adsorption of the petitioner on

the vacant sanctioned post of L.T. grade and directed the District Inspector of Schools for necessary compliance. In compliance thereof the District Inspector of Schools passed an order dated 21.2.2004 for absorption of the petitioner on the vacant post of L.T. grade teacher in the institution. By means of the impugned order dated 15.5.2004 the District Inspector of Schools has cancelled the earlier order passed by the then District Inspector of Schools on 21.2.2004. The said order dated 15.5.2004 has been passed allegedly on the basis of an interim order dated 3.5.2003 passed in Writ Petition No. 13932 of 2003, *Ramadhar Yadav v. Director of Secondary Education and Ors.* It may be relevant to mention at this stage that in the said Writ Petition No. 13932 of 2003, the dispute was between Ramadhar Yadav (Respondent No. 6 in the present writ petition) and one Sri Pati Ram Yadav, who had since retired on 30.6.2003. Even otherwise the said interim order dated 3.4.2003 was operative only till the next date of listing. The said writ petition was listed on 25.7.2003 on which date three weeks time was granted to the petitioner of that writ petition for filing rejoinder affidavit and the interim order dated 3.4.2003 had not been extended. Thus on the date when the impugned order was passed i.e. on 15.5.2004, the interim order dated 3.4.2003 passed in Writ Petition No. 13932 of 2003 was not in existence. Since the impugned order has primarily been passed on the basis of the said interim order dated 3.4.2003 which was neither applicable in the present case as it related to the dispute between Respondent No. 6 herein and one Sri Pati Ram Yadav who had retired, and also that the said interim order was not operative on the date when the impugned order was passed, as such the impugned order dated 15.5.2004 is liable to be set aside. It is further not understood as to under which provision of law the District Inspector of Schools had the power to cancel its earlier order dated 21.2.2004 which had been passed on the direction/order dated 20.2.2004 having been issued by his superior officer i.e. Joint Director of Education.

4. Sri I. R. Singh, learned Counsel appearing on behalf of contesting respondent No. 6, has submitted that the order passed by the Joint Director of Education was a nullity in the eyes of law as it was not passed on any proceedings pending before him. It has been submitted that the inter se seniority of the teachers of an institution have to be decided on the basis of their date of substantive appointment. Be that as it may, since an order with regard to the appointment of the petitioner had been passed by a superior authority which was Joint Director of Education, Azamgarh Region, Azamgarh on 20.2.2004 (which was in compliance of an order of this Court dated 6.10.1999 passed in Writ Petition No. 8168 of 1994), and the compliance of the said order dated 20.2.2004 had already been made by the then District Inspector of Schools; thereafter another District Inspector of Schools who had joined the post after being transferred cannot be permitted to re-open a file which had already become final as the said order dated 20.2.2004 had not been challenged by Respondent No. 6 or any other person before any appropriate forum. Administrative discipline requires that an authority must comply with the orders passed and directions issued by its

superior officers. If at all such authority has any reservations regarding its correctness on facts or otherwise, at best he could have referred it back to its superior authority with his comments but cannot be permitted to set aside the order by which such directions had been implemented by his predecessor.

5. This writ petition is, accordingly, allowed and the impugned order dated 15.5.2004 passed by the District Inspector of Schools, Mau is quashed.

6. The learned Counsel for the Respondents it No. 6 has submitted that the dispute with regard to the seniority has not been decided by any competent authority as yet and claims that Respondent No. 6 Ramadhar Yadav is senior to the petitioner Damodar Yadav as it is alleged that the substantive appointment of Respondent No. 6 was earlier than that of the petitioner. However, the learned Counsel for the petitioner disputes this contention.

7. Sri K.K. Chand, learned Standing Counsel appearing for the State-respondents, has submitted that as per the Government Order dated 19.12.2000, any dispute with regard to the seniority/approval of teachers in an institution is to be referred to the Regional Level Committee headed by Joint Director of Education, which can look into the rival contentions of the parties and decide the matter. The learned Counsel for the parties do not dispute this position.

8. In such circumstances it is provided that in case if the Respondent No. 6 is aggrieved by any order with regard to his seniority/absorption, he may refer such dispute to the Regional Level Committee, which shall decide the same in accordance with law, expeditiously, after giving an opportunity of hearing to all concerned parties, including the Committee of Management of the institution. It is, however, made clear that any observation made in this judgment with regard to the inter se seniority between the Petitioner and the Respondent No. 6 shall not prejudice the concerned authority while deciding the matter on merits.