
(2013) 05 AHC CK 0372

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8866 of 2009

Deo Dutt Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 9

Citation : (2013) 6 AWC 6200 : (2013) 138 FLR 531

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : V.K. Singh and G.K. Singh, for the Appellant; Nipun Singh, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner has moved this writ petition under Article 226 of the Constitution being aggrieved by the order of the District Inspector of Schools, Muzaffarnagar dated 28.11.2008 and 29.1.2009 whereby his appointment as a Class IV employee in a reconstituted institution has been rejected. Briefly stated the facts of the case are that Inter College Bhokarhedi, Muzaffarnagar is a recognized institution, wherein education is imparted upto the level of Intermediate. It receives aid out of State Fund. The provisions of the U.P. Intermediate Education Act, 1921, the Regulations framed thereunder, the Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 (U.P. Act No. 5 of 1982), and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 are applicable to the institution.

2. It is stated that on 25.7.2008 one post of Class IV employee fell vacant as one of the regular employee of the institution was transferred in another institution. In paragraph 7 of the writ petition it has been stated that in the institution there

is eight posts of Class IV employees and their name and categories, date of appointment has been given in tabular form. The Principal of the institution sought permission from the District Inspector of Schools to fill up the said vacant post by a general candidate. The District Inspector of Schools vide order dated 3rd September, 2008 granted permission. A copy of the permission has been brought on the record as Annexure-4 to the writ petition.

3. Consequent upon an advertisement dated 9.9.2008 was issued in two newspapers namely Dainik Jagran and Royal Bulletin whereby applications were invited for appointment against the said post. Copy of the advertisement published in the newspaper has been brought on the record as Annexure-5 to the writ petition. The petitioner in pursuance to the said advertisement made application and he was found suitable. Accordingly, he was appointed as Class IV employee. After completion of recruitment proceedings the papers were sent to the office of the District Inspector of Schools for approval of the petitioner's appointment.

4. Before the approval could be considered it appears that several complaints were made to the District Magistrate who forwarded those papers to the District Inspector of Schools. By impugned order the District Inspector of Schools has cancelled his permission dated 3rd September, 2008 to fill the post. By consequential order dated 29.1.2009 the District Inspector of Schools communicated the District Magistrate that he has cancelled the permission granted for appointment of Class IV employee.

5. A counter affidavit has been filed by respondent No. 1 and 2, the stand taken in the counter affidavit is that earlier the permission have been secured by the Management/Principal by misrepresentation of the fact.

6. Learned Counsel of the petitioner submits that there are already three Scheduled Caste candidate namely Shiv Charan, Vinod Kumar Kohli and Subhash Chandra who belong to Scheduled Caste and Daya Chand, Sajindra Kumar and Smt. Shanti Devi belong to O.B.C. Category, thus out of eight posts five reserved category candidates are working. He has placed reliance on the Division Bench judgment of this Court in Smt. Pholpati Devi Vs. Smt. Asha Jaisawal and Others, and Full Bench decision of this Court in the case of Heera Lal v. State of U.P. and others reported in 2011 (6) All C.J. 664, 2010 (6) ADJ 1.

7. Learned Counsel for the petitioner further urged that the District Magistrate has no power to intervene in the matter of appointment of teaching or non teaching staff of the institution.

8. Learned Standing Counsel Sri J.K. Tiwari submits that only the Regional Committee has power to grant the approval and the matter was not placed before the Regional Committee as such the matter may be considered by the Regional Committee.

9. I have heard Sri V.K. Rai, learned Counsel holding brief of Sri V.K. Singh,

learned Counsel for the petitioner and Sri J.K. Tiwari, learned Standing Counsel and considered their respective submissions.

10. Indisputably the District Inspector of Schools had granted permission to fill the post by the general candidate. u/s 9 of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (for short Act, 1971) the Director of Education has power to create the post. All the details regarding the creation of post, previous approval is available in the office of the District Inspector of Schools. Whenever vacancy occurs in a recognized Intermediate College which is govern by the provisions of the Act, 1971 it is the duty of the District Inspector of Schools to verify all the facts with regard to the sanctioned posts, the details of the teachers/employees who are working on the existing posts their date of retirement under the provisions of Act No. 24 of 1971. The District Inspector of Schools is statutory authority who is clothed with the power in respect of payment of salaries of teachers and employees. Therefore, the District Inspector of Schools cannot wash off his hands by saying that he was mislead by the Management, simultaneously he is also empowered under the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (in short Reservation Act) to comply the provisions of the Reservation Act also. Therefore, the District Inspector of Schools cannot shirk from his responsibility by rejecting the approval on the ground that he had granted the permission on the misrepresentation of the fact. He cannot be allowed to play blame game as the payment from public exchequer is involved.

11. If, Committee of Management/Principal seeks the permission to fill a post/posts it is obligatory on the part of District Inspector of Schools to verify the facts from his own records, office of the Director/Joint Director before according permission/approval. But the verification should be done on high priority basis and without delay, because unreasonable delay in the appointment of teacher/non teaching staff causes adverse effect on the teaching of the Institution.

12. Therefore, the order of the District Inspector of Schools that by misrepresentation permission was granted by him is unsustainable.

13. From perusal of the impugned order it is also manifest that he was swayed by a large number of complaints sent by the District Magistrate to him. By Annexure-2 to the writ petition the District Inspector of Schools has informed the District Magistrate on 29.1.2009 that he has cancelled the permission granted by him.

14. This Court in Writ A. No. 17325 of 1999 (Madan Kumar and others v. D.M. Auraiya and others) decided on 13.3.2013, has held that District Magistrate is alien to the provisions of the U.P. Intermediate Education Act, 1921, the Regulations framed thereunder, and the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. The District Magistrate has no power to interfere in the matter of an Educational

Institution governed by these statutes. In both the Act No. II of 1921 and Act No. 24 of 1971, there is no reference of any role to the District Magistrate in the statutory Scheme therefore the District Magistrate has no authority to interfere in the matters of Educational Institutions.

15. The Supreme Court in the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, has held that if statutes confer a power on a authority then he alone can exercise that power and no superior authority had any jurisdiction to issue direction to control the said power.

16. The Supreme Court has considered this issue in the case of The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others, the matter was in respect of exercise of power by the Cane Commissioner under the provisions of Sugar Cane (Control) Order, 1966 which empowers the Commissioner to divide the reserved area into two portions and allot one portion to the Sugar Mill/respondent No. 5 therein. The Cane Commissioner in compliance of the direction of the Chief Minister divided the reserved area into two portions. The order of the Cane Commissioner was challenged on the ground that the Cane Commissioner without application of mind had carried out the directions of the Chief Minister, thus he had abdicated his authority under the Act. The Supreme Court set aside the order of the Cane Commissioner on the ground that Clause 6(1) is a statutory power and the said Clause empowers the Commissioner alone to take the decision in the light of the Scheme of the Statutory provisions. The Supreme Court held that Clause 6(1) is a statutory power and he alone could have exercised that power. The Supreme Court further observed while exercising that power the Commissioner cannot abdicate his responsibility in favour of the State Government or the Chief Minister. The Court expressed its displeasure and observed that it was not proper for the Chief Minister to have interfere with the functions of the Cane Commissioner.

17. From the Annexure 2 of the writ petition whereby the District Inspector of Schools has communicated the District Magistrate that he has cancelled the permission demonstrably establishes that the District Inspector of Schools has abdicated and surrendered his power to the District Magistrate. On this ground also the order of the District Inspector of Schools needs to be set aside. Accordingly on both the grounds the order of the District Inspector of Schools dated 28.11.2008 and 29.1.2009 are set aside.

18. Having considered the facts and circumstances of the case I find that the submission of the learned Standing Counsel has got substance that the matter ought to have been considered by the Regional Committee constituted under the Government Order dated 19.12.2000.

19. A direction is issued upon the District Inspector of Schools to send the papers to the Joint Director of Education concerned to place the matter before the Regional Committee to consider the appointment of the petitioner. The Regional Committee shall pass the order as expeditiously as possible after giving

opportunity to the petitioner say within two months from the date of communication of this order.

20. The writ petition is allowed. No order as to costs.