

(2003) 07 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. No. 3734 of 1985

Deo Narain Misra

APPELLANT

Vs

Director of Education, U.P. and Others

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 AWC 4538 : (2004) 1 UPLBEC 206

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Daya Shankar, K.D. Tripathi, B.B. Jauhari, S.K. Mehrotra and, U.N. Khare, for the Appellant; V.S. Dwivedi and R.S. Dwivedi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—Heard learned Counsel for the parties.

2. The Petitioner, who alleges himself to be an employee, by means of the writ petition under Article 226 of the Constitution of India, has challenged the order dated 13th March, 1985, (Annexure-11 to the writ petition), passed by the Deputy Director of Education (Sanskrit), U. P., Allahabad, the Opposite Party No. 2, and is further seeking a mandamus for payment of salary from the State of U.P. under the provisions of the State Universities Act with effect from 12th April, 1982 to 31st March, 1985 and continue to pay future salary till he continues in service. The writ petition was filed in the year 1985 and no interim order was granted.

3. The case set up by the Petitioner in the writ petition is that the Petitioner was appointed as Clerk by the Managing Committee in Sri Tulsi Smarak Sanskrit Mahavidyalaya, Rajapur, Banda on 1st November, 1981 through its Manager and he was working when the institution was brought on the list of grants-in-aid and was recognised. Therefore, the Petitioner is entitled for salary with effect from 12th April, 1982. The order dated 12th April, 1982 is an order which is issued by

the State Government that there shall be one post of Clerk in the institution which are recognised by the Government under Clause (a) and, therefore, any appointment to such a post in accordance with the U.P. State Universities Act as far as it is applicable to the institution governed by the U.P. State Universities Act, 1973 and so far as it is applicable to the Sanskrit Pathshala recognised and governed by the statute framed under the Act, shall be paid salary from the State exchequer only when the procedure prescribed under law is followed for appointment and the appointment is approved by the authorities concerned. The aforesaid Government Order which has been relied upon by the Petitioner clearly states that no payment shall be made to any person who is appointed and is working contrary to the aforesaid Government Order dated 12th April, 1982. Annexure-2 to the writ petition annexes documents wherein the Selection Committee purports to appoint the Petitioner. The Selection Committee has been constituted by the managing committee of the college and this appointment has no statutory force or sanction on the basis whereof Petitioner can claim any statutory right which can be enforced under Article 226 of the Constitution of India.

4. Learned Counsel for the Petitioner has miserably failed to demonstrate that while appointing the Petitioner, the procedure prescribed under the Statute has been followed and that the appointment made by the Committee of Management is ever approved by the authorities, namely, Inspector of Sanskrit Pathshala or the Deputy Director of Education (Sanskrit), the authorities who can perform the statutory function under the Act.

5. In this view of the matter and particularly with regard to this assertion that the Petitioner though claims for the payment of salary from the State of U.P. but has not impleaded the State of U.P. as one of the Respondents in the writ petition, the Petitioner is not entitled for any relief and the writ petition deserves to be dismissed.

6. In the result, the writ petition fails and is hereby dismissed. The interim order, if any, stands vacated. There will be no order as to costs.