

(2000) 08 AHC CK 0046
In the Allahabad High Court
Case No : Writ Petition No. 5589 (S/S) of 1998

Devendra Nath Misra

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties)
(Second) Order, 1981 — Order 2(1)

Citation : (2001) 1 AWC 266 : (2001) 2 UPLBEC 1835

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : O.P.M. Tripathi, for the Appellant; C.S.C., for the Respondent

Judgement

Bhanwar Singh, J.—Sri Devendra Nath Misra has filed this petition under Article 226 of the Constitution of India praying for a writ in the nature of certiorari quashing the order dated 6.10.1998 passed by the District Inspector of Schools (D.I.O.S.), opposite party No. 4 and for another writ in the nature of mandamus commanding the opposite party No. 4 to accord financial approval and make payment of the petitioner's salary in the lecturer's grade with effect from 1.7.1994.

2. According to the factual matrix of the case, the petitioner is working as Assistant Teacher in L.T. grade in Shri Satya Narain Tewari Vidya Mandir Inter College, Nigohan, Lucknow. He is a well-qualified teacher having done post-graduation in four subjects, namely, Mathematics, Economics, Ancient Indian History and M.Ed. There are six recognised subjects for imparting education to the Intermediate students. However, the financial approval subsists only for two posts of lecturers in the subjects of Geography and Psychology. Earlier there were two Lecturers working in the aforesaid Institution. Of them Sri G. P. Mishra (Geography lecturer) was appointed as Principal in Sri Raj Narain Jaiswal Inter College and the other Sri Bhuvnesh Chandra Shukla (Psychology lecturer) was

appointed as Principal of Shri Satya Narain Tewari Vidya Mandir Inter College. The promotion of Sri Shukla was approved by the D.I.O.S., however, with a condition that Sri Shukla's appointment would automatically come to an end when a duly selected candidate joined the post. The petitioner's claim is that he being the senior-most qualified L.T. grade teacher was entitled to be promoted as Lecturer in Psychology. In this regard, the petitioner wrote a letter to the Manager of the Management Committee staking his claim for being promoted but the Manager and the Principal both paid no heed to his request. His representation dated 17.8.1994 to the Management Committee was also not taken notice of. However, he sent a similar representation to the Deputy Director of Education with a copy to the D.I.O.S., whereupon the D.I.O.S. sought certain information from the Committee of Management. The Principal of the College in response to the letter of D.I.O.S. submitted misleading and incorrect factual position as he and the Committee of Management both were trying to promote a junior-most teacher Sri Saryu Prasad Shukla on the post of Lecturer. In the meantime, the Committee of Management recommended, ignoring the specific provisions of the Intermediate Education Act, that Sri Saryu Prasad Shukla be promoted as Lecturer in Hindi although there was no sanctioned post for the said subject. The D.I.O.S. directed the Principal to dispose of the representation of the petitioner first. The D.I.O.S. also directed the Manager of the College to forward the relevant papers of the petitioner regarding his promotion to the post of Lecturer in Psychology. The D.I.O.S. also called for a report from the Principal and the Manager as to why the petitioner had not been promoted in accordance with the Rules. Giving a deaf ear to the D.I.O.S., the Manager and the Principal of the College promoted Sri Saryu Prasad Shukla to the post of Lecturer in Hindi vide resolution dated 9.10.1994. The D.I.O.S. returned the said resolution with a direction to consider the representation of the petitioner first. As a matter of fact, no post of Lecturer in Hindi was ever sanctioned and as such the promotion of Sri Saryu Prasad Shukla was contrary to the Rules. The petitioner was then obliged to file Writ Petition No. 4217 of 1997 (S/S), praying for a writ of certiorari quashing the resolution of the Committee of Management regarding promotion of Sri Saryu Prasad Shukla and another writ of mandamus commanding the opposite parties to promote the petitioner as Lecturer in Psychology. An interim order was issued directing the Committee of Management to take appropriate decision on the representation of the petitioner within four weeks. In the meantime, Sri Bhuvnesh Chandra Shukla's promotion on the post of Principal was approved by the D.I.O.S. vide his letter dated 6.6.1997. Thereafter the D.I.O.S. directed the Principal to forward the petitioner's papers regarding his promotion on the post of Lecturer in Psychology. When the said order was not obeyed and the petitioner's representation in compliance of the interim order of the High Court was not considered, he had filed Contempt Petition No. 906 of 1997. On receipt of the notice, the Committee of Management considered the matter and passed a resolution regarding promotion of the petitioner on the post of lecturer in Psychology under the Second Removal of Difficulties Order, 1981. The Principal submitted the relevant papers to the D.I.O.S. The D.I.O.S.,

however, neither accorded approval nor refused it. As no action was taken within seven days from the date of the receipt of the recommendation, the petitioner's promotion was deemed to have been approved on 27.11.1997. The Committee of Management and the Principal both requested the D.I.O.S. for financial approval but the latter did not communicate any decision. As per provisions of Second Removal of Difficulties Order, 1981, the D.I.O.S. should have taken a decision within seven days, meaning thereby, he could not refuse it after expiry of the said period. In any case, the petitioner was fully entitled for payment of salary of lecturer's grade as he was and is still teaching Intermediate Classes regularly. The inaction on the part of D.I.O.S. is wholly illegal, arbitrary and mala fide. However, under the circumstances, the petitioner, preferred another Writ Petition bearing No. 3963 (S/S) of 1998. The D.I.O.S. vide his order dated 29.7.1998 treated the petitioner's promotion as regular promotion under 50% promotion quota and pointed out that such type of matters were under consideration of the Government and as such it was not possible for him to take any decision in the matter of petitioner's promotion. Accordingly the papers were sent back to the Committee of Management. The D.I.O.S. committed an error by not considering the promotion of the petitioner even though it was in a short-term vacancy. The High Court in the aforesaid writ petition directed the D.I.O.S. to take a decision on the representation of the petitioner regarding his promotion. In compliance of the said direction, the D.I.O.S. passed an order on 6.10.1998 mentioning therein that the petitioner's representation had already been rejected vide letter dated 29.7.1998. The D.I.O.S. further revealed that Sri Bhuvnesh Chandra Shukla who was still working as ad hoc Principal was himself teaching Psychology to Intermediate classes. The D.I.O.S. arrived at a conclusion that there was no need of ad hoc promotion against the post of Lecturer in Psychology in the College. On the basis of this conclusion, the petitioner's representation was rejected vide order dated 6.10.1998 (Annexure-22). The petitioner has challenged this conclusion and has prayed for a writ in the nature of certiorari to quash it. As a matter of fact, the order of the D.I.O.S. is illegal, arbitrary and mala fide as he himself had earlier directed the Manager of the College to forward the petitioner's representation and relevant papers for his promotion to the post of lecturer. If there was any hindrance in promoting the petitioner to the said post, the D.I.O.S. must not have issued any such direction. The said earlier stand of the D.I.O.S. itself contradicts the subsequent decision taken by him by means of the impugned order. Even if the Principal teaches Psychology in Intermediate classes, he alone cannot teach Psychology in all the classes. The petitioner being post-graduate in four subjects is the most qualified teacher and the vacancy should have been available to him alone. Therefore, the legitimate right of the petitioner for being promoted on the post of lecturer should not have been denied on the ground that there was no need of lecturer in Psychology subject. The petitioner moved an application for permission to withdraw his earlier writ petition with liberty to file a fresh petition. His prayer was allowed and as still he had a cause of action, he preferred this writ petition with the prayers for two writs as indicated earlier.

3. The D.I.O.S., Lucknow, Ms. Manju Sharma filed her counter-affidavit and asserted therein that there being no requirement of a lecturer in Psychology, the petitioner's claim for ad hoc promotion was rejected by means of order dated 6.10.1998. As a matter of fact, Sri Bhuvnesh Chandra Shukla, who was the senior-most Lecturer, has been teaching the subject of Psychology to Intermediate classes even after his ad hoc promotion as Principal of the College. Moreover, it was a short-term vacancy and there is no provision for appointment against such vacancy in the Commission's Regulations, 1995. However, the appointment of Sri Bhuvnesh Chandra Shukla is on ad hoc basis and unless he is regularised on the said post, the vacancy of lecturer in Psychology will not be deemed to have occurred. In view of this aspect of the matter, the petitioner's representation regarding his claim for ad hoc promotion has been rightly rejected vide order dated 6.10.1998.

4. I have heard the learned counsel for both the parties and perused the record.

5. The main grounds on the basis of which the petitioner claims for his ad hoc promotion and the order dated 6.10.1998 (Annexure-22) being quashed are that his promotion had already been implemented under the Second Removal of Difficulties Order, 1981, that the D.I.O.S. failed to exercise his discretion within seven days in terms of sub-clause (iii) of clause (3) or Order II of the U. P. Secondary Education Service Commission (Removal of Difficulties (Second) Order, 1981 and as such he is entitled for the post of lecturer with effect from the date he started working as Lecturer, that the said promotion is against the short-term vacancy and the Committee of Management is fully authorised to make promotion, that the decision of the D.I.O.S. that there was no requirement of such promotion, is arbitrary and discriminatory, particularly when the Committee of Management proposed for such appointment keeping in view the requirement of the College, that the provisions of the U. P. Secondary Education Services Commission (Removal of Difficulties (Second) Order, 1981, do not contain any bar regarding ad hoc promotion of the senior-most teacher in higher grade and that the D.I.O.S. passed the impugned order without applying his mind to the need and resolution as proposed by the Committee of Management. It is noteworthy that the petitioner is admittedly the senior-most teacher in the College and he under clause (1) of Order II of the U. P. Secondary Education (Removal of Difficulties (Second) Order, 1981, is entitled to claim his promotion on ad hoc basis. It postulates as under :

"2. Procedure for filling up short-term vacancies.--(1) If short-term vacancy in the post of a teacher, caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the institution, by promotion of the permanent seniormost teacher of the Institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted."

6. A careful reading of the above quoted provision would reveal that if a short-

term vacancy exists, it shall be filled up by the Committee of Management by promotion of the permanent seniormost teacher of the institution in the next lower grade. The Committee of Management of the College initially promoted one Saryu Prasad Shukla but the D.I.O.S. did not approve his promotion. The petitioner filed Writ Petition No. 4217 of 1997 (S/S) and an interim order was issued in the said petition directing the Committee of Management to take appropriate decision on petitioner's representation after taking into account the recommendation of the D.I.O.S. as contained in his letter dated March 12, 1997. In the said letter (Annexure-13), the D.I.O.S. not only turned down the proposal of the Committee of Management regarding conversion of the post of Lecturer from Psychology subject to Hindi but also directed the Manager of the College to consider the representation of the petitioner and submit his report along with relevant papers and certificates at any early date. The Committee was reluctant to take any action and being compelled under the circumstances, the petitioner was obliged to file a contempt petition against the Manager. The D.I.O.S. sent a reminder to the Manager and the Principal. In the meantime, taking the contempt proceedings with a little concern, the Committee of Management passed a resolution promoting the petitioner to the post of Lecturer in Psychology and sent the proposal vide letter of November 20, 1997, (Annexure-18) to the D.I.O.S. Obviously the claim of the petitioner was favourably considered and this was also in accordance with the direction of this Court as referred to earlier and also the instructions of the D.I.O.S. as contained in his letter of June 27, 1997, (Annexure-15). It is significant to mention that in this letter, the D.I.O.S. clearly instructed that the Committee of Management was under obligation to promote Sri Devendra Nath Misra (petitioner) alone to the post of Lecturer as he was not only the senior most teacher in the College but was also eligible to be promoted. With these observations, the D.I.O.S. directed the Manager to send proposal regarding promotion of the petitioner only and none else. It appears that at this juncture, there was change in the office of D.I.O.S. and despite a long drawn exercise, the D.I.O.S. did not, for reasons best known to his office, accord the administrative approval nor the financial grant. However, withholding of the approval and financial sanction was absolutely meaningless in view of the clear provisions of clause 3 (iii) of Order II of the U. P. Secondary Education (Removal of Difficulties) (Second) Order, 1981, which postulates as follows :

"The District Inspector of Schools shall communicate his decision within seven days of the date of particulars by him failing which the Inspector will be deemed to have given his approval."

7. It is more than clear from the above that in case the D.I.O.S. does not approve within seven days the proposal of the Committee of Management, the appointment will be deemed to have been approved and in that eventuality, it shall be obligatory for the Manager to appoint the claimant. The petitioner, right from inception, traversed through odd circumstances. The Principal being associated with Saryu Prasad Shukla did not consider it appropriate to provide ad hoc appointment to the petitioner and opposed his claim tooth and nail and

convinced the Committee of Management to promote Sri Saryu Prasad Shukla on the post of Lecturer although he was not eligible. The D.I.O.S. turned down that proposal and issued instructions to the Manager and the Principal to consider the petitioner's claim and send proposal accordingly. When with the strength of such instructions and the authority of this Court's interim order dated 29.7.1997 in Writ Petition No. 4217 of 1997 (S/S) and the contempt proceedings, the petitioner managed to get favour from the Committee of Management and proposal for his appointment as lecturer was approved, the D.I.O.S. turned hostile and kept silence for nearly ten months. Be that as it may, the proposal of the Committee of Management regarding appointment of the petitioner became final on the expiry of seven days. Thereafter his appointment on ad hoc basis became operative and accordingly, he was entitled to get his salary. This view is fortified from the principle of law laid down in *Kumari Radha Raizada and others v. Committee of Management* 1995 Lab IC 112. In para 39 of the said decision, this Court has held that neither the Act nor the provisions of Removal of Difficulties Order provide for such prior approval or approval by the D.I.O.S. in case of ad hoc appointment. It was further held in that case that there is another reason for not taking approval of the D.I.O.S. of such appointment because teacher working in the institution is already approved and thus no further or subsequent approval is needed for it and only intimation to the D.I.O.S. is required to be given regarding such appointment. This Court in a recent Judgment *Suresh Chandra Mishra v. D.I.O.S.* 2000 All LJ 1295, has reaffirmed the said principle of law. Thus, the petitioner's ad hoc appointment was valid in all respects and in view of this aspect of the matter, the impugned order dated 6.10.1998 could be said to have been rendered nugatory.

8. Further, the ground on the basis of which the approval has been withheld is fallacious. According to the D.I.O.S. it was not necessary to appoint the petitioner on ad hoc basis as lecturer because Bhuvnesh Chandra Shukla, who was officiating as Principal, was also teaching Psychology to intermediate classes. As per the norms fixed for a minimum standard of teaching periods in an institution, a teacher is required to take 30 classes in a week. Sri Bhuvnesh Chandra Shukla has been taking only 10 to 12 classes. It may be justified for him to take lesser periods than prescribed for an ordinary teacher and the obvious reason for that justification is that he has to discharge the duty of a Principal with lot of administrative job. If he takes the prescribed number of classes in a week, he would be falling in discharge of his duties as Principal. But the fact remains that the study of Intermediate classes' students would be jeopardised if 18 periods of Psychology subject are not taken by a lecturer in the said subject. A simple question arises as to how that shortfall could be met so as to fulfil the interest of students and the answer lies in the provision for ad hoc appointment as envisaged in the U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. The discretion in the said provision has not been given either to the D.I.O.S. or the Committee of Management or even the Principal. The exercise of power in Order II of the

aforesaid U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, subsists for the benefit of the students and with that view of the matter, it was postulated that the Committee of Management should make such an ad hoc appointment. In this way, if the D.I.O.S. indulges in wrong exercise of power by not according approval in a genuine case like the one in hand, the very purpose of the U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, will stand withered away. It is entirely, a different matter that the U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, now stands rescinded. The present case of the petitioner pertains to the period preceding the rescission of the Order. The ad hoc appointment of the petitioner, as observed earlier, became valid on 27.11.1997, i.e., on expiry of seven days from the date of communication of the decision of such appointment by the Management to the D.I.O.S. as provided under clause (3) (iii) of Order II of the U. P. Secondary Education (Removal of Difficulties) (Second) Order, 1981. Accordingly, it may be held that the impugned order (Annexure-22) being based on a fallacious reason and contrary to the then prevailing provisions of law as quoted above is unreasonable and arbitrary and hence deserves to be quashed.

9. In view of what has been discussed above, this petition succeeds and is hereby allowed with costs. A writ of certiorari is issued quashing the order dated 6.10.1998 passed by the D.I.O.S. as contained in Annexure-22. A writ in the nature of mandamus is also issued commanding the opposite parties, particularly, the D.I.O.S., Lucknow, to pay the petitioner's salary in the lecturer's grade with effect from 27.11.1997, the date from which he shall be deemed to have been validly appointed as Lecturer. However, this ad hoc appointment of the petitioner shall continue until a regular lecturer in Psychology is appointed.