
(2007) 05 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 29770 of 1999

Dharmendra Kumar

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 7 AWC 7750

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare and N.P. Dubey, for the Appellant; Ravindra Sharma, A.K. Singh and Ashok Kumar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. A permanent post of Class IV employee came into existence in the institution Adarsh Inter College, Visunderpur district Mirzapur due to retirement of one Sri Hari Shankar on 28.2.1999.

3. It is alleged by the learned Counsel for the Petitioner that the management of the institution decided to fill up the post which was caused by retirement of Sri Hari Shankar by holding selection. Permission to fill up the post of Class IV employee by selection is said to have been granted to the institution by the District Inspector of Schools, Mirzapur by means of communication dated 9.4.1999 to the Principal. The post was thereafter advertised by the Principal in newspaper Sunmarg dated 13.4.1999 appended as Annexure-2 to the writ petition inviting applications from candidates for the post.

4. The Petitioner applied for the post in pursuance of the aforesaid advertisement and was appointed after selection. The papers were thereafter submitted to the District Inspector of Schools, Mirzapur for according financial approval which was granted by him by means of order dated 23.4.1999. The Petitioner subsequently

joined as Class IV employee of the institution on 24.4.1999 and it is claimed that the Petitioner is continuously working since then and has been paid his salary for the months of May and June.

5. The salary of the Petitioner was included in the salary bill for the months of May and June, 1999 which was submitted to the District Inspector of Schools for disbursement of his salary. However, the Accounts Officer made an endorsement on the said bill on 12.7.1999 that by order of the District Inspector of Schools the salary of the Petitioner has been stopped, therefore, the salary bill be produced by the College after deducting his salary. The endorsement by the Accounts Officer is as under:

6. The contention of the learned Counsel for the Petitioner is that the Petitioner had been appointed after following the procedure for recruitment ; that the District Inspector of Schools had also granted approval to his appointment, as such there does not exist any justification for not paying the salary of the Petitioner for the months of May and June and onwards.

7. In the counter-affidavit filed by the District Inspector of Schools a stand has been taken that the appointment of the Petitioner was not in accordance with law as the advertisement had not been made in two newspapers having wide circulation. It has been specifically mentioned in para 6 therein that the post of Class IV which was advertised and against which the Petitioner has been appointed was reserved for S.C./S.T. Candidate. Reference in this regard may be made to the advertisement, Annexure-C.A. 2, which shows that it was a reserved post but the appointment of the Petitioner has been made surreptitiously by the school management and on receipt of the complaint in this regard F.I.R. was also lodged, a copy of which has been appended as Annexure-C.A. 1 to the counter-affidavit filed by the District Inspector of Schools.

8. It is vehemently urged by the standing counsel that it is in the aforesaid backdrop that the salary of the Petitioner has been stopped as the appointment of the Petitioner was neither legal nor valid nor in accordance with law.

9. After considering the arguments of the learned Counsel for the parties it appears that the Petitioner is General Category candidate who has somehow manipulated to get appointment in the vacancy reserved for S.C./S.T. Category in collusion of the college management. The Petitioner was not eligible for applying against the said post reserved for Scheduled Caste candidate even though he may have possessed qualification for the same. It may be that the District Inspector of Schools had given approval for filling up the reserved vacancy but that does not mean that permission had been granted by him for filling of the vacancy by a general candidate who was not eligible to apply against the said reserved post. If any approval has been granted by the District Inspector of Schools and the Petitioner has been paid salary due to an inadvertent mistake which has been later on rectified on correct facts having been brought to the notice of the District Inspector of Schools the illegal

appointment of the Petitioner cannot be allowed to be perpetuated.

10. In the facts and circumstances of the case it is not a case for interference under Article 226 of the Constitution.

11. There is no illegality or infirmity in the order impugned to this writ petition.

12. For the reasons stated above, the petition is dismissed. Interim order is vacated. No order as to costs.