
(2000) 10 AHC CK 0078
In the Allahabad High Court
Case No : Special Appeal No. 471 of 1998

Dinesh Chandra Sharma

APPELLANT

Vs

District Inspector of Schools, Meerut and others

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 4 AWC 3262 : (2000) 87 FLR 1034 : (2000) 3 UPLBEC 2522

Hon'ble Judges : Shitla Pd. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Dismissed

Judgement

Shitla Pd. Srivastava, J.—This special appeal has been filed by the appellant (petitioner) against the Judgment and order dated 18.5.1998 passed by learned single Judge dismissing the writ petition of the appellant.

2. The brief facts giving rise to the writ petition has been mentioned in the affidavit filed by one Mahesh Chandra Sharma, who is brother of the appellant. Along with affidavit, documents beginning from the date of the appointment of the appellant till the cancellation of his appointment as assistant teacher in Ashok Higher Secondary School, Sarawan, district Meerut, have been filed. It is stated in the affidavit that petitioner's father Mam Chandra Sharma was serving as permanent lecturer in Chemistry in Janta Inter College Saroorpur, district Meerut. He died on 26.11.1987 while he was in service. The petitioner applied for appointment on compassionate ground. He was appointed as assistant clerk by the Committee of Management of the institution on 24.9.1992 and he joined his service as assistant clerk in the institution. At that time, the petitioner had passed only intermediate examination and subsequently he passed his B.A. examination in the year 1993 and B.Ed. examination in the year 1994.

3. After appointment of the petitioner as assistant clerk, a dispute arose

regarding the post on which the petitioner was appointed, as one Rohtas Singh and Salyavl Singh were also appointed on the said post. They challenged the order of appointment of the petitioner by filing writ petitions before this Court. The District Inspector of Schools by orders dated 15.9.1994 and 4.3.1995 declared the petitioner to be surplus. The order of confirmation of the appointment of the petitioner to the post of assistant clerk was cancelled by the Manager of the institution vide order dated 16.1.1995. It appears that when the petitioner became qualified for the post of assistant teacher, he submitted an application on 2.2.1995 that he should be appointed as an assistant teacher on the post which had fallen vacant in L.T. grade. This application was filed on the basis of certain amendments made in Regulations 101 to 107 introduced in Chapter III of the Regulations framed under the U. P. Intermediate Education Act by means of notification dated 30.7.1992. The application of the petitioner was forwarded by the Manager of Janta Inter College where the father of the petitioner had served before his retirement as a teacher as well as by the Manager of Kisan Inter College, Meerut. When no action was taken by the District Inspector of Schools on the representation of the petitioner, he preferred Civil Misc. Writ Petition No. 18292 of 1995 in which this Court directed the District Inspector of Schools to decide the representation of the petitioner. On 18.7.1995 petitioner made a fresh representation. The District Inspector of Schools on 30.1.1997 passed an order that the petitioner shall be appointed as an assistant teacher in Nav Bharat Vidya Peeth Inter College, Partapur, district Meerut. It appears that on 14.6.1997, the Manager, Committee of Management of Ashok Higher Secondary School, Saranwa, district Meerut, made a request to the District Inspector of Schools that the petitioner be accorded replacement in his institution on the vacancy which was going to occur due to the retirement of Sri Richha Pal Singh on 30.6.1997. The District Inspector of Schools on 30.6.1997 passed an order directing the replacement of the petitioner at Ashok Higher Secondary School, Saranwa, district Meerut, as assistant teacher. The petitioner joined on 1.7.1997. But subsequently on the salary bill of August, 1997, an endorsement was made on 22.8.1997 by the District Inspector of Schools that the bill should not be passed. The petitioner filed CM! Misc. Writ Petition No. 29649 of 1997. This Court on 12.9.1997 passed an order that as the petitioner started discharging his duty in compliance of the order dated 30.6..1997 passed by the District Inspector of Schools, Meerut, the respondents are directed to pay salary to the petitioner month by month in accordance with law. But this order will not prevent the respondents from making an enquiry or taking any action in terms of the decision, in such an enquiry in respect of the petitioner's appointment. It appears that the District Inspector of Schools on 24.4.1998 passed an order and cancelled the order dated 30.6.1997 by which the petitioner was appointed as assistant teacher. The petitioner has challenged this order by means of Civil Misc. Writ Petition No. 16614 of 1998, which was dismissed on 18.5.1998 by the learned single Judge against which this special appeal has been filed.

4. Learned single Judge held that the petitioner was appointed as assistant clerk on compassionate ground on 24.9.1992 and on that date, he was simply an intermediate and now he cannot be given again benefit on compassionate ground for appointment on the post of assistant teacher simply because he had passed B.A. and B.Ed. examinations during the period of his service. Learned single Judge has observed that in *State of Rajasthan v. Umrao Singh*, 1994 (6) SCC 657, it has been held that once the appointment has been made on compassionate ground, the claimant is not entitled to get another appointment on different post simply because he is qualified for other post subsequently.

5. We have heard learned counsel for the Parties at length. Learned counsel for the petitioner has vehemently urged that learned single Judge has not appreciated the point that on account of the order passed by the District Inspector of Schools in favour of Rohtas Singh and Satyavir Singh, the appellant continued as assistant clerk only against a supernumerary post of assistant clerk and while he was working on the aforesaid post, notification dated 2.2.1995 came into existence and creation of supernumerary post of assistant clerk was prohibited and a provision was made for making appointment on compassionate ground also on the post of assistant teacher in L.T. grade to the dependent of the person dying-in-harness after 1.1.1981 and as the father of the petitioner died in the year 1987, the petitioner was qualified to be appointed as assistant teacher on the post which fell vacant and when the petitioner was actually appointed vide order dated 30.6.1997 as assistant teacher, a right accrued to him and that right could not be snatched from the petitioner by the order dated 24.4.1998 without giving any opportunity of hearing to the petitioner. His further contention is that apart from violation of rules of natural justice, discrimination has also been made as other persons similarly placed were given benefit. therefore, the order is violative under Article 14 of the Constitution of India. His further submission is that the case of the petitioner was covered by amended Regulations 101 to 107 as introduced under Chapter III of Regulations framed under the Intermediate Education Act by means of notification dated 30.7.1992. His further submission is that the appointment on compassionate ground has to be made against a substantive vacancy in a permanent capacity and as the petitioner was working as temporary appointee against the supernumerary post of assistant clerk, in view of Regulations 101 to 107 he was to be adjusted against the substantive vacancy as soon as the vacancy comes into existence which was rightly done on 30.6.1997.

6. After hearing learned counsel for the petitioner at length and going through the entire documents filed along with the affidavit, we are of the view that when the father of the petitioner died, petitioner was legally entitled to get an appointment on compassionate ground and he was rightly appointed as an assistant clerk as he was qualified for that post only having qualification of Intermediate only. The law on compassionate ground is very clear. It is for the purpose of giving financial assistance to the dependents and the family members of the deceased who was a bread earner and died during the course of his

employment. It is apparent from the order passed by the District Inspector of Schools, Meerut, dated 24.4.1998 that the officer concerned considered the relevant rules and law reported in 1994 (6) SCC 657, wherein it has been clearly held that no person is entitled to claim the benefit under dying-in-harness rules more than once. Therefore, it cannot be said that the petitioner was entitled to get benefit of dying-in-harness rules for second time when he became qualified for the post of assistant teacher. We are of the view that the case of the petitioner is fully covered by the decision quoted above and the judgment of the learned single Judge does not require any interference in special appeal.

7. The special appeal is accordingly dismissed.