
(2011) 03 AHC CK 0262
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37054 of 1994

Dinesh Kumar Sharma

APPELLANT

Vs

District Magistrate/Collector, Bulandshahr and others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0262

Hon'ble Judges : Arun Tandon, J

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—Petitioner is directed to implead the Director of Education (Secondary), U.P. at Allahabad as respondent No. 6 during the course of the day.

2. Heard learned Counsel for the petitioner and learned Standing Counsel for the Staterespondents.

3. Petitioner before this Court seeking quashing of the order of the District Magistrate/Collector, Bulandshahr dated 2nd May, 1994 enclosed as Annexure 7 to the writ petition as also a writ of mandamus commanding the respondents to ensure payment of salary to the petitioner as L.T, grade teacher of D.A.P. Intermediate College, Sikarpur, District Bulandshahr from the month of May, 1994 regularly,

4. Facts in short giving rise to the present writ petition are as follows :

(i) D.A.P. Intermediate College (hereinafter referred to as the "institution") is an aided and recognised intermediate college under the provisions of U.P. Intermediate Education Act. The provisions of U.P. Secondary Education Services Selection Board Act, 1982 are fully applicable to the teachers of the said institution.

(ii) According to the petitioner, one Lal Bahadur Shastri proceeding on leave, as a result whereof a leave vacancy was caused in the institution and the petitioner was appointed against the said leave vacancy vide letter dated 23rd June, 1993.

According to the petitioner, this appointment was approved by the District Inspector of Schools vide letter dated 2nd November, 1993. It is then stated that Lal Bahadur Shastri resigned on 1st June, 1994, the vacancy, therefore, became substantive vacancy and against the substantive vacancy the petitioner was again appointed as ad hoc teacher afresh under an order dated 11th June, 1994, wherein the petitioner was directed to continue till a regularly selected candidate from the Selection Board joins. This appointment of the petitioner had been approved by the District Inspector of Schools.

(iii) The District Magistrate issued an order dated 2nd May, 1994, wherein it has been recorded that the District Inspector of Schools, namely, Krishna Avatar Bisnoi, was absent from his office since long and yet appointments are being made by his office by ante dating orders. In these circumstances, the District Magistrate directed that the details of the payment made in last two years be communicated by way of list along with relevant records so that the matter may be examined and till then payment of salary to the appointees shall remain in abeyance. It is against this order that the present writ petition has been filed.

5. On behalf of the petitioner it is contended that once his appointment has been approved by the District Inspector of Schools, there is little or no justification for the District Magistrate to interfere in the matter, inasmuch as he has no role to play qua working and payment of salary to the teachers of recognised institution.

6. The contention so raised on behalf of the petitioner appears to be attractive on the face of it, it is no doubt true that the District Magistrate has no role to play in the matter of appointment and payment of salary of teachers of recognized intermediate college, but at the same time, the District Magistrate being the Collector of the District, in whose custody, the Government money is kept cannot be a mute spectator, to fraudulent payment and withdrawal of money from the Government Treasury for payment under fraudulent order. The District Magistrate has every right to at least prima facie satisfy himself that before Government money is utilized there is no fraud or misappropriation of money involved therein.

7. From the facts, which have been brought on record before this Court, it is apparently clear that absolutely no details have been furnished, qua the manner in which the petitioner was selected and appointed qua short term vacancy for the first time on 23rd June, 1993, the order of the District Inspector of Schools approving his appointment records that the approval is being granted for the period of leave i.e. 30th June, 1995 or for the period when the leave is revoked whichever is earlier. In the facts of the present case, the incumbent, Lal Bahadur Shastri resigned on 1st June, 1994 and therefore, the approval came to an end on the date he resigned, the leave vacancy stood converted into substantive vacancy.

8. So far as the ad hoc appointment against substantive vacancy is concerned, the writ petition is completely silent about the vacancy being requisitioned and therefore, section 18 of U.P. Secondary Education Services Selection Board Act,

1982 being complied with or the procedure prescribed under the Removal of Difficulties Order by making an advertisement in at least two newspapers, as per the law laid down by the Full Bench of this Court in the case of Kutnari Radha Raizada and others v. Committee of Management, Vidyawati Darbari Girls Inter College and others¹ being followed. Approval letter of the District Inspector of Schools does not take notice of any relevant facts as required under law. In the approval letter, the District Inspector of Schools has not even cared to notice that once the vacancy became substantive, the Committee of Management did not have any right to make any ad hoc appointment before the vacancy is requisitioned to the Board. It is for such type of order said to be passed by the then District Inspector of Schools that the District Magistrate had to intervene.

9. However, in the facts of the present case, since material facts have not been disclosed by the petitioner which can entitle him to any mandamus from this Court, the present writ petition is disposed of by providing as follows :

(i) Petitioner may make a representation, ventilating his grievances, supported by such documents as he may be advised, qua his appointment of the petitioner in the institution, before respondent No. 6 within two weeks from today, along with a certified copy of this order. On such representation being made, respondent No. 6 shall examine the legality or otherwise of the appointment of the petitioner, after calling for the relevant records from the office of the District Inspector of Schools, in accordance with the law laid down by the Full Bench of this Court in the case of Kumari Radha Raizada (*supra*). He shall pass a reasoned speaking order. If the respondent No. 6 comes to the conclusion that the appointment of the petitioner is a force and because of such fraudulent employment he has succeeded to get salary from the State exchequer, the Director shall further issue an order for recovery of the money so paid to the petitioner from the Manager of the institution, District Inspector of Schools and the petitioner equally.

10. The present writ petition is disposed of accordingly.