
(2004) 08 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40643 of 2000

Dinesh Kumar Singh Sengar

APPELLANT

Vs

District Inspector of Schools and Committee of Management,
Uday Pratap Inter College

RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:

Allahabad High Court Rules, 1956 — Rule 2

Citation : (2004) 5 AWC 5119

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : G.K. Singh and V.K. Singh, for the Appellant; Shyam Singh and Vivek Rai and S.C., for the Respondent

Judgement

R.B. Misra, J.

Heard Sri V.K. Singh, learned Counsel for the petitioner, and learned Standing Counsel for the State respondent.

1. With the consent of learned Counsels for the parties this writ petition is decided finally at this stage in view of the Second proviso to Rule-2 of Chapter XXII of the Allahabad High Court Rules, 1956.
2. In this petition prayer has been made to quash the order dated 28.07.2000 (Annexure-8 to the writ petition) passed by the District Inspector of Schools, Ghaziabad rejecting the claim of the petitioner, and further prayer has also been made for issuance of writ of mandamus commanding the respondents to make the payment of salary to the petitioner along with arrears.
3. The facts necessary for adjudication of the present writ petition are that the post of Principal in Uday Pratap Inter College, Sapnavat, Ghaziabad (hereinafter in short called as the "College") had fallen vacant due to retirement of one Sri Malkhan Singh on 30th June, 1993, thereafter the senior most lecturer Sri Man Singh was promoted to the post of Principal of the College on adhoc basis and his

promotion was approved by the District Inspector of Schools, Ghaziabad on 22nd May, 1996. By virtue of promotion of Sri Man Singh, a lecturer in Mathematics, to the post of Principal a short-term vacancy occurred in the lecturer's grade. It appears that no suitable and eligible senior most lecturer in the college was available, therefore, the post of lecturer was advertised by the committee of management in two widely circulated newspapers, namely, "Dainik Jagaran" and "Punjab Kesari" on 19.06.1998 and 10.06.1998 respectively, and a duly selected committee after considering the candidature of the candidates from the open market selected the petitioner on 21.06.1998. Thereafter, the petitioner by virtue of such selection joined the duty and the relevant papers for approval were forwarded by the committee of management to the District Inspector of Schools on 08.07.1998. When no order was passed by the District Inspector of Schools, the petitioner preferred a Writ Petition No. 45705 of 1999 (Dinesh Kumar Singh Sengar v. District Inspector of Schools), which was disposed of by this Court on 28.10.1999 with a direction to the District Inspector of Schools to decide the representation of the petitioner within a stipulated period. Consequently, the District Inspector of Schools by its order dated 28.07.2000 rejected the claim of the petitioner on the following grounds:

- (a) The committee of management advertised the vacancy in such a manner that only five persons have applied.
- (b) Applications were not invited from the employment exchange.
- (c) The provisions of reservation Act of 1994 have not been followed.
- (d) The selection committee was not properly constituted.
- (e) The ban was imposed by the State Government on making appointment on 29.06.1991 and 30.7.1991.
- (f) There was no vacancy of lecturer in the institution.

4. Counter affidavit has been filed by the respondents supporting the stand taken by the District Inspector of Schools in the order dated 28.07.2000.

5. In reply to the objections stand taken by the District Inspector of Schools in the impugned order Learned Counsel for the petitioner has submitted as under:

(A) The post was advertised in two newspapers, namely, "Dainik Jagaran and "Punjab Kesri" having wide circulation and it is immaterial that only few persons have applied in response to the aforesaid advertisement, whereas, under the Intermediate Education Act, 1921 (hereinafter in short called as the "Act") the committee of management before filling up the vacancy has to advertise the same in two newspapers having wide circulation and, as such, in the present case the committee of management has followed the procedure prescribed under the Act in view of the decision of this Court in Praveen Pratap Singh Bhadauria Vs. District Inspector of Schools, Varanasi and another, .

(B) The provisions laid down in the Uttar Pradesh Secondary Education Services

Commission (Removal of Difficulties) (Second) Order, 1981 (in short called "Second Removal of Difficulties Order, 1981") do not provide that applications from employment exchange are necessary to be invited.

(C) The provisions of Reservation Act, 1994 is not at all attracted in the short term vacancies in view of the decision of this Court in 2004 Vol. 2 E.S.C. 1226 (Smt. Nirja Sharma v. Director of Education (Madhyamik) Uttar Pradesh, Lucknow and Ors.).

(D) In respect of fourth, fifth and sixth objections taken in the impugned order, it has been submitted on behalf of petitioner that there was no ban imposed by the State Government on making appointment on the short term vacancies, as this question has also been settled by this Court in 2003 Vol.2 ESC 661 (Sudha Chaturvedi v. State of U.P.). It has also been submitted that under the Second Removal of Difficulties Order, the selections are to be made on the basis of quality point marks, which are to be calculated by the Principal of the institution and there is no requirement of having a selection committee.

(E) With regard to objection taken by the District Inspector of Schools in the impugned order that no post was available, it has been submitted that the appointment of the petitioner was made on a vacancy, which had occurred on account of promotion of Sri Man Singh from the post of lecturer to Principal, therefore, this objection is totally misconceived.

6. According to the respondents, the provisions and procedure prescribed under the "Second (Removal of Difficulties) Order, 1981" provides as below:-

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, in the promotion of the permanent senior-most 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.

(2) Where any vacancy referred to in Clause (I) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3)(i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the-Manager of the institution along with the particulars given in Appendix "B" to this order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-1993/XV-7-1 (79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of

Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

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

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

Explanation. For the purpose of this paragraph-

(i) the expression "senior-most teacher" means the teacher having longest continuous service in the institution in the Lecturer's grade or the Trained graduate (L.T.) grade, or Trained under-graduate (C.T.) grade or J.T.C. or B.T.C. grade, as the case may be;

(ii) in relation to institution imparting instructions to women, the expression "District Inspector of Schools" shall mean the "Regional Inspectress of Girls Schools";

(iii) short term vacancy which is not substantive and is of a limited duration.

7. I have heard learned Counsels for the parties. In order to make appointment it was necessary to ascertain the nature of the vacancy. The appointment could only be made on the existence and on availability of vacancy or post. Even to fulfill the short term vacancies in view of "Second (Removal of Difficulties) Order, 1981 the management was under statutory obligation to intimate the vacancy to the District Inspector of Schools and simultaneously notifying the same on the notice board of the institution requiring the candidates to apply to the Manager of the institution along with particulars and the selection has to be made by the duly selected committee on the basis of quality point marks and the names and particulars of the selected candidates along with other participating candidates along with quality point marks allotted to them shall have to be forwarded to the District Inspector of Schools by the Manager for approval, where the District Inspector of Schools was under the statutory obligation to convey its decision within seven days from the date of receipt of proposal from the manager, failing which the deemed approval on the part of the District Inspector of Schools was to take effect, however, in view of the statutory requirements only on the receipt of approval of District Inspector of Schools the Manager could issue the appointment letter under his signature, here though the post in question was to be fulfilled by a short term appointment, however, it has not been indicated

whether the vacancy was really in existence and what was the nature of the vacancy as the District Inspector of Schools vide his order dated 28.07.2000 while rejecting the claim of the petitioner has indicated that there was no vacancy of the lecturer in the institution, therefore, it has also to be ascertained whether the appointment of the petitioner was made only after express approval of the District Inspector of Schools or deemed approval of the District Inspector of Schools and whether the selection committee was properly constituted or not, as sufficient material has not been brought for and on behalf of petitioner on these aspects, however, it appears that the proper advertisement was made in two widely circulated newspapers and the committee of management had informed to the then District Inspector of Schools and the selection was made from the open market and the petitioner was selected and was given appointment. Here, it has also to be ascertained whether the appointment was given earlier and later on the approval of District Inspector of Schools was sought. As required by the law the appointment of the petitioner was to be made only after permission of the District Inspector of Schools. In view of the "Second Removal of Difficulties Order, 1981" the names of the candidates from the employment exchange are not necessary to be invited and criteria of reservation in view of the "Act, 1994" is not to be observed in fulfilling the short term vacancy and at the relevant time there appears to be no ban in fulfilling the vacancy for short term. The District Inspector of Schools has also to ascertain that by virtue of promotion of Sri Man Singh, a lecturer in Mathematics, to the post of principal whether really short term vacancy was arisen, which was required to be fulfilled by appointment of the petitioner. All these above aspects are lacking in the impugned order, therefore, the impugned order dated 28.07.2000 is not legally sustainable and it is set aside, and the District Inspector of Schools is directed to pass a fresh order within six months from the date of production of certified copy of this order.

In view of the above observations, the writ petition is partly allowed.

No order as to cost.