

(2017) 05 AHC CK 0114
In the Allahabad High Court
Case No : 313 of 2017

District Basic Education Officer, Meerut	APPELLANT
Vs	
C/M Adarsh Janta Inter College, Meerut And Another	RESPONDENT

Date of Decision : 23-05-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 05 AHC CK 0114

Hon'ble Judges : Arun Tandon, Prabhat Chandra Tripathi

Bench : Division Bench

Advocate : Shivam Yadav, Awadh Narain Rai

Judgement

1. Heard learned counsel for the parties. Cause shown for the delay in filing of the appeal has been explained to the satisfaction of the Court. Delay is condoned. Delay Condonation Application is allowed.
2. This intra court appeal is directed against an order of the learned Single Judge dated 27.10.2016 passed in Writ Petition No. 51710 of 2016; Committee of Management, Adarsh Inter College vs. State of U.P. and others.
3. Facts in short leading to the present special appeal filed by the District Basic Education Officer, Meerut are as under:- Adarsh Janta Inter College is a private managed institution duly recognized under the Basic Education Act. The terms and conditions of recruitment and other service conditions of teachers of the institution are regulated by the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978 (hereinafter referred to as "Rules, 1978"). The power to make appointment on the post of teachers is conferred upon the Committee of Management of the said institution duly recognized.
4. According to the writ petitioner there were existing vacancy on the post of assistant teacher and they had made an application before the District Basic

Education Officer for grant of prior permission to advertise the vacancies in accordance with the provisions of Rule 7(3) of Rules, 1978. The District Basic Education Officer did not grant the permission nor he refused to grant such permission. Because of this the appointment on the post of teacher was being delayed contrary to the interest of the students of the institution. The petitioner Committee of Management, therefore, approached the Writ Court with the following prayer:- "(i) Issue a writ order or direction in nature of Mandamus and directing to respondent no. 2 as District Basic Education Officer to grant prior approval for start the selection process on vacant sanction post in institution in interest of justice accordance with law.

(ii) Issue a suitable order or direction, which this Hon"ble Court may deem fit and proper under the circumstances of the case.

(iii) Award the costs of the writ petition to the petitioner."

5. It will be seen that the only prayer made in the writ petition was that a mandamus be issued to the District Basic Education Officer to grant prior approval for start of the selection process.

6. The learned Single Judge under the order impugned, following the order passed in the case of C/M Ramapur Uchchattar Madhyamik Vidyalaya & Another vs. State of U.P. & two others; Writ Petition No. 61329 of 2015 has directed that the Committee of Management may proceed with the selection in accordance with the procedure prescribed and, if the appointments are made, the District Basic Education Officer will accord approval with a further condition that the Committee of Management shall make a note in the letter of appointment that the same is subject to the result of writ petition.

7. Counsel for the District Basic Education Officer challenging the said order contended before us that the language of Rule 7(3) admits of no exception. The provision is mandatory in nature and therefore before any advertisement for the vacancy can be published by the management it has to have prior permission from the District Basic Education Officer. It is submitted that if the law requires something to be done in a particular manner, it has to be done in that manner or not at all.

8. It is thus submitted that the High Court while granting interim order cannot re-write the statutory provision and even otherwise the directions, which have been issued by the Writ Court in the facts of the case, virtually negates the intention of the rule framing authority as contained in Rule 7(3) of Rules, 1978.

9. Counsel for the respondent-petitioner on the contrary submits that the District Basic Education Officer slept over the request made by the institution for granting prior permission under Rule 7(3) for months together and thereby frustrated the very purpose of teaching in the institution as no suitable teacher became available within reasonable time despite there being existing vacancies against the sanctioned posts. It is submitted that in these circumstances the

High Court has exercised its extraordinary power under Article 226 of the Constitution of India. Therefore, in the larger interest of the education this Court may not interfere with the order of the learned Single Judge.

10. We have heard learned counsel for the parties and have gone through the records of the present appeal. The appeal is being disposed of at this stage with the consent of the parties without calling for any further affidavit.

11. It is admitted to the parties that the procedure for appointment on the post of Assistant Teacher in recognized Basic Schools (Junior High Schools) is regulated by the Rules, 1978. Rule 7, relevant for our purposes, is being quoted herein below:- "VERNACULAR MATTER OMITTED"

12. From a simple reading of the aforesaid provision it is apparently clear that the statutory provisions contemplate that the management of the institution shall inform the existing vacancies, which are to be caused in the academic session, compulsorily by 30th April each year to the District Basic Education Officer and shall seek permission for advertising the vacancies from the said District Basic Education Officer. The District Basic Education Officer is required to examine the request so made within 15 days and to call upon the management to remove the discrepancies, if any, within a period of one week. After the discrepancies are removed, the District Basic Education Officer has been conferred a right to grant the permission or to withhold the permission for certain period of time or to refuse the permission. Any person aggrieved by such an order of the District Basic Education Officer has a right to appeal before the Regional Assistant Director of Education (Basic). The decision of the Regional Assistant Director of Education has been declared to be final.

13. In our opinion a complete time bound mechanics has been provided for under the aforesaid statutory rules. The rule is mandatory in nature and that any advertisement against the vacant post can be published by the management of the institution only after it receives a prior approval from the District Basic Education Officer. The rule further cast a duty upon the District Basic Education Officer to act upon the request of the management in a time bound manner. If the District Basic Education Officer does not act within the time frame prescribed under the rule, the aggrieved management can approach this Court by means of a writ petition for compelling the authority to perform its part of statutory duty. But in such a writ petition there cannot be an interim order by-passing the statutory requirements, specifically in the circumstance when the vires of the rules are not under challenge. The rule has to be complied with so long as it stands on record.

14. It is the settled principle of law that if law requires something to be done in a particular manner it has to be done in that manner or not at all. Privy Council in *Nazir Ahmad v. King Emperor*; AIR 1936 PC 253 laid down the dictum that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. The Hon'ble Apex Court has reiterated and followed

the aforesaid dictum in a catena of cases. A Constitution Bench of the Hon''ble Apex Court in Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and Ors., reported in (2002) 1 SCC 633 reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the same itself.

15. We are, therefore, of the opinion that the Writ Court was not justified in permitting the Committee of Management of the institution to advertise the vacancies without having the prior permission of the District Basic Education Officer. The Writ Court at best could have directed the District Basic Education Officer to take appropriate action within the time frame permitted under Rule 7(3) and Rule 7(4) of the Rules, 1978 on the application of the management. For the reasons recorded above, we allow the present appeal. The order passed by the learned Single Judge is hereby set aside.

16. We further direct that the District Basic Education Officer shall, within 15 days of receipt of the certified copy of this order, examine the proposal submitted by the Committee of Management for permission being granted for advertising the vacant post. If there is any discrepancy, he may require the management to remove the same within a week. Within one month of the removal of the discrepancies the District Basic Education Officer shall pass appropriate order as contemplated by Rule 7(5) of the Rules, 1978 quoted herein above.

17. We may, however, clarify that the appellant must also keep in mind his statutory obligations and there should not be any complaint to this Court that the statutory time frame fixed under the aforesaid Rule 7 is being violated inasmuch as inaction on the part of the District Basic Education Officer only result in repeated writ petition being filed before this Court and repeated proceedings being initiated causing unnecessary burden upon the Court. With the aforesaid direction the appeal is allowed.