
(2006) 02 AHC CK 0128
In the Allahabad High Court
Case No : Writ Petition No.7451 (S/S) of 1991

Fateh Bahadur Singh

APPELLANT

Vs

Regional Higher Education Officer, Lucknow and Another

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Citation : (2006) 02 AHC CK 0128

Hon'ble Judges : S.S.Chauhan, J

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—The petitioner feeling aggrieved with the disapproval orders dated 3.7.1991 and 30.5.1991 has preferred this writ petition.

2. The brief facts of the case are that the petitioner and other persons applied in response to the open advertisement. The Selection Committee as provided under the Kanpur University Statutes was constituted. The said provision is quoted below:

21.03 (6) (b): the Selection Committee for the appointment to the remaining posts referred to in Clause (1) or Clause (3) either by direct recruitment or by promotion shall consist of

(i) the Head of the Management or a member of the management nominated by him who shall be the Chairman;

(ii) the Principal of the College;

(iii) the District Inspector of Schools;

(iv) the District Employment Officer or an Officer authorized by him in this behalf.

3. The Selection Committee, as required under the statutes, was to comprise of the Principal, Head of the Management, District Inspector of Schools and the District Employment Officer. The Management sent information to all the

concerned for appearing in the selection, which was fixed on 18.3.1991. The DIOS, has written by means of letter dated 11.6.1991 that whenever he is out of Head Quarter his functions are to be discharged by the Finance and Accounts Officer. Since on the date of selection the DIOS was out of Head Quarter, therefore, in the capacity of DIOS, Finance and Accounts Officer participated in the selection. The Principal and the Manager were present in the Selection Committee. The District Employment Officer refused to participate in the selection on the ground that intimation of vacancy has not been given to him and, therefore, he would not participate in the selection. The said reason as indicated by the District Employment Officer was not available to him, as the selection was to be made on the basis of open advertisement and the Kanpur University Statutes also do not provide any thing in this respect. There was no obligation upon the Management to have intimated the vacancy to the District Employment Officer being the member. The only requirement was that the District Employment Officer should have participated. On account of refusal by the District Employment Officer the selection was not stayed and the opposite parties proceeded with the selection and the selection was finalised on 18.3.1991. The papers were thereafter sent for approval and by means of Annexures No.1 and 2 orders were passed by the Regional Higher Education Officer, whereby the appointment of the petitioner was disapproved.

4. The learned counsel for the petitioner submits that since the grant was going to expire, therefore, selection was to be held in all circumstances prior to the expiry of the financial year and under compelling circumstances the Management proceeded to hold the selection in accordance with law.

5. The petitioner filed this petition before this Court challenging the disapproval order and an interim order was granted on 19.11.1991. Since then he is being paid salary and is working on the post of Clerk.

6. Counter affidavit has been filed by the opposite parties denying the allegations made in the writ petition and specifically stating therein that since Statutes provide that DIOS should be present in person and, therefore, he could not have sent any representative in his place to participate in the selection and secondly, that the District Employment Officer had not participated in the selection process as provided under the Kanpur University Statutes, therefore, the selection was vitiated and was not legally sustainable and the Regional Higher Education Officer had rightly disapproved the appointment of the petitioner.

7. Rejoinder affidavit has also been filed by the petitioner denying the allegations made in the counter affidavit.

8. I have heard the learned counsel for the parties and gone through the record.

9. It transpires from the record that the selection had been disapproved only on the ground that the DIOS himself had not participated and the District Employment Officer nor his representative had participated in the selection. The said ground is not available to the Regional Higher Education Officer for

disapproving the selection for the reason that the DIOS had written by means of letter dated 11.6.1991 that whenever he is out of Head Quarter his functions are to be discharged by the Finance and Accounts Officer. So as a practice, since on the date of selection the DIOS was out of Head Quarter, therefore, he authorized the Finance and Accounts Officer to participate in the selection. The nonparticipation of the DIOS under some compelling circumstances or under some misconception will not vitiate the selection when there was representation, in the capacity of DIOS, of District Finance and Accounts Officer, in his absence in the Head Quarter as practice prevalent in the DIOS office. The District Employment Officer was firmly of the view that since the intimation of the vacancy was not made 15 days prior to the selection to him, therefore, he will not participate in the selection. This reasoning of the District Employment Officer does not appeal to reason and the District Employment Officer could have participated in the selection putting his dissent in the selection, but instead of doing so, he opted to remain away from the selection with the understanding that he was only member of the Selection Committee.

10. The validity of the selection proceedings, if at all were vitiated for want of quorum, although not provided by the rules, regulations or by the Statutes would be valid or not, has not been considered by the Hon''ble Supreme Court and it has been held that if no quorum has been provided then merely because one of the representatives of the members has not participated in the selection, could not vitiate the selection proceedings.

11. The learned counsel for the petitioner has relied upon a decision of Hon''ble the Supreme Court reported in AIR 1972 SC page 1812, Ishwar Chandra v. Satyanarain Sinha and others, in which it has been held that if majority of the members are present in the selection and any quorum has not been provided then the selection would be valid and cannot be vitiated on this Count. The relevant paragraph of the said judgment is being quoted below:

?If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid.?

12. In the wake of the observation made in the case of Ishwar Chandra (supra), the disapproval order cannot be sustained. The reasoning given by the Regional Higher Education Officer is not valid in the eye of law, as the selection cannot be vitiated on account of the fact that the District Employment Officer refused to participate in the selection. The petitioner is already in employment and is also working and once the appointment was being made on the basis of open advertisement, the reasoning of the District Employment Officer was not valid for intimating the vacancy. The intimation of vacancy is not contemplated under the Kanpur University Statutes and as such the requirement of giving intimation to the District Employment Officer was not valid and legal in the eye of law. The

petitioner is already in employment and is working and she shall continue to work.

13. In view of the above legal position, I am of the opinion that the impugned orders dated 3.7.1991 and 30.5.1991, contained in Annexures No.1 and 2 to the writ petition, are illegal and liable to be set aside.

14. In the result, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the orders dated 3.7.1991 and 30.5.1991, contained in Annexures No.1 and 2 to the writ petition and the petitioner shall be entitled to the consequential benefits.

15. There shall be no order as to costs.

(Petition allowed)