
(1999) 07 AHC CK 0127
In the Allahabad High Court
Case No : C.M.W.P. No. 4870 of 1996

Gajendra Singh

APPELLANT

Vs

Joint Director of Education, Agra and others

RESPONDENT

Date of Decision : 09-07-1999

Acts Referred:

Citation : (1999) 3 AWC 2632 : (1999) 3 UPLBEC 1914

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ashok Khare and Ajay Bahnot, for the Appellant; S.C., P.K. Jain and R.K. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner claims to have been appointed on 14th September, 1995, in the post of Chowkidar in the Mahatma Gandhi Sniarak Inter College, Sonkh, district Mathura. According to him, instead of paying salary to him, one Kali Charan, respondent Ho. 6 has been purported to have been appointed and paid salary. There is a dispute with regard to the appointment of two persons. Mr. Ajay Bahnot, learned counsel for the petitioner, holding brief of Mr. Ashok Khare contends that only by a letter dated 25th September, 1995, the District Inspector of Schools, Mathura, had directed the Committee of Management to appoint Kali Charan under the Dying-in-Hamess Rules on account of death of Ramesh Chandra, Laboratory Assistant on 4th December, 1994, being father of Kali Charan. Therefore, there having been no vacancy and the vacancy having been filled up on 14th September, 1995. Kali Charan could not have been appointed pursuant to the letter dated 25th September, 1995. According to him, by the letter dated 20th October, 1995, the Deputy Director, Agra, had directed the District Inspector of Schools to cancel the appointment of Kali Charan in Mahatma Gandhi Smarak Inter College, Mathura and adjust him in Janta Vidyalaya Inter College, Magora, Mathura and to appoint the petitioner in the Mahatma Gandhi Smarak Inter College and pay him salary. According to him, the

letter of appointment was issued to Kali Charan on 27th October, 1995, namely, after the receipt of the said direction from the Deputy Director. According to him, the District Inspector of Schools being subordinate to Deputy Director, could not have issued the order of appointment. Therefore, this writ petition should be allowed.

2. Mr. R. K. Saxena, learned standing counsel on the other hand contends that the question of appointment of Kali Charan under the Dying-in-Harness Rules was initiated long before the advertisement was Issued by the Principal for appointment of the petitioner. Inasmuch as the death of Ramesh Chandra had occurred on 4th December, 1994. Smt. Kiran Devi, the widow had submitted an affidavit before the District Inspector of Schools on 15th April, 1995, indicating that Kali Charan the only son of the deceased Ramesh Chandra be given appointment under the Dying-in-Harness Rules, which is Annexure-CA-2 filed on behalf of respondent No. 6. The Principal had Issued the advertisement for appointment on 22nd June, 1995, namely, after the initiation of the process for appointment of Kali Charan under the Dying-in-Harness Rules. Such appointment can be made in Class IV post only with the approval of the District Inspector of Schools. The Principal could not have issued the advertisement without waiting for the approval of the District Inspector of Schools in the matter of Dying-in-Harness Rules since under process. It is the Principal who had created the deadlock, which he ought not have done. It seems that just 11 days before the order of appointment of Kali Charan was Issued by the District Inspector of Schools, the appointment of petitioner was given by the Principal without obtaining the approval of the District Inspector of Schools. Mr. Saxena, however, contends that such appointment has to be made with prior approval of the District Inspector of Schools. According to him alternatively even if prior approval was not obtained by the District Inspector of Schools for the appointment of the petitioner, when the question of appointment under Dying-in-Harness Rules was under consideration, the Principal could not have appointed the petitioner during continuance of consideration of such appointment. Therefore, according to him, the writ petition should be dismissed.

3. I have heard both the learned counsel at length.

4. It is not disputed that the father of Kali Charan died on 4th December, 1994 and his widow Kiran Devi submitted an affidavit on 15th April, 1995 for appointment under the Dying-in-Harness Rules in favour of Kali Charan. pursuant thereto the process was initiated for appointment under the Dying-in-Harness Rules culminating in the appointment on 27th October, 1995. From Annexure-CA-1, It appears that an enquiry was held as to the heirs of the deceased Ramesh Chandra on 13th March, 1995. It appears that report was submitted on 23rd March, 1995, showing that Kali Charan was the son of the deceased, aged 19 years and six months. Thus, the process for appointment under the Dying-in-Harness Rules was initiated long ago. In such circumstances, the Principal could not have initiated the process for filling up the vacancy in order to forestall the

process of appointment under Dying-in-Harness Rules initiated long ago. It appears that the advertisement was Issued on 22nd June, 1995, long after initiation of the process of appointment under the Dying-in-Harness Rules. A perusal of various Annexures shows that the Principal did not allow Kali Charan to join. This shows that the Principal was not eager that Kali Charan should join for some reason or the other best known to him. So far as the Instruction issued by the Deputy Director is concerned, it seems that he had issued such direction to the District Inspector of Schools on 19th October, 1995. after the order dated 25th of September. 1995. was issued directing that approval should be given to the appointment of the petitioner in the Mahatma Gandhi Smarak Inter College, Sokh, Mathura and that Kali Charan may be appointed in Janta Inter College, Magora. It is the District Inspector of Schools with whom the Jurisdiction rests. He had already issued an order on 25th September, 1995. The Deputy Director had no business to instruct the District Inspector of Schools to cancel such an order only to accommodate a particular person who has been appointed to forestall the right of Kali Charan. The authority to grant approval is the District Inspector of Schools and he has exercised his discretion and wisdom in the matter of grant of approval. The Deputy Director is not supposed to dictate terms to the District Inspector of Schools in the matter of grant of approval to one or the other. When the jurisdiction is conferred on a particular authority, the authority higher to him had no business to intermeddle in the business in his official work unless the higher authority had jurisdiction to review or revise under the Statutes. There is nothing to show that the Deputy Director had issued such instruction in exercise of any of his statutory powers either in the matter of supervision or otherwise over the action of the District Inspector of Schools. The fact does not reveal any illegality in the matter of appointment under the Dying-in-Harness Rules and disapproving the appointment of the petitioner in the said school. If the Deputy Director was so interested in the appointment of the petitioner, he could have asked the District Inspector of Schools in Janta Inter College instead of Mahatma Gandhi Smarak Inter College when the order dated 27th September, 1995, was already Issued. Wrong action of the Principal cannot be supported even if the same is proposed to be supported by a higher officer than the District Inspector of Schools. In such circumstances. I find no merit in this writ petition.

5. The writ petition, therefore, fails and is, accordingly dismissed. No cost.