

**(1997) 07 AHC CK 0140**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 2226 of 1982**

Govind Lal Misra

APPELLANT

Vs

District Inspector of Schools and others

RESPONDENT

**Date of Decision : 09-07-1997**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(2)

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 6, 6(6), 8

**Citation : (1998) 1 AWC 178**

**Hon'ble Judges : S.C. Verma, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

## Judgement

S.C. Verma J.

1. Aggrieved by the promotion of respondent No. 2 Sri Raghav Ram Dwivedi, on the post of Lecturer in Sanskrit at Bakshi Ka Talab Inter College, Lucknow and the order of the District Inspector of Schools, dated 5.6.1980. allowing the representation of Sri Raghav Ram Dwivedi in accordance with the provisions of Regulation 8 of Chapter II framed under the U. P. Intermediate Education Act as also the rejection of review petition of the petitioner by order dated 5.4.1982 passed by the District Inspector of Schools, the petitioner filed the present writ petition under Article 226 of the Constitution.

2. The petitioner was appointed in leave vacancy in July, 1972 on a post in L.T. grade to teach the subject of Sanskrit. The petitioner had also applied for selection on the post of Lecturer in Sanskrit on regular vacancy but as his name was placed at Serial No. 2 in the panel, he could not be appointed as the incumbent placed at Serial No. 1 joined the post. Later on another post in L.T. grade fell vacant and the petitioner was appointed on regular basis with effect from 17.9.1973. Three vacancies in the Lecturer grade were created in subjects of Civics, Sanskrit and Geography. The name of the petitioner was recommended

by the Committee of Management vide resolution dated 6.3.1978 for appointment on the said post.

3. The respondent No. 2. Raghav Ram Dwivedi submitted his representation against the said appointment dated 11.3.1978 to the District Inspector of Schools. The District Inspector of Schools by letter dated 20.3.1978 asked for the comments of the institution on the representation of the respondent No. 2 dated 11.3.1978. In the recommendation sent by the Manager, the educational qualification of respondent No. 2 has been shown as B. A., B. Ed. and in the seniority list his name was shown at Serial No. 10 whereas the educational qualification of petitioner has been shown as M. A. (Sanskrit) and in the seniority list his name was shown at Serial No. 20. The District Inspector of Schools by letter dated 20.7.1978 required the date of approval of the appointment of the petitioner and the respondent No. 2 on the post of L.T: grade. The District Inspector of Schools by letter dated 4.9.1978 required the Institution to send the orders of approval given by the District Inspector of Schools, in respect of five teachers. By letter dated 11.9.1978, the Manager was informed that the record submitted by the Institution for recommending the name for appointment of Govind Lal Misra, it is not clear that he had five years continuous substantive service to his credit and that the institution considered the cases of all the incumbents who fulfilled the requisite qualification. In the resolution dated 6.3.1978 sent by the Manager, the names of only those candidates have been considered who have submitted their applications. In the letter of the Manager dated 14.9.1978, it was indicated that Sri Raghav Ram Dwivedi is M. A., B. Ed. The District Inspector of Schools, through this letter dated December 21, 1979 again directed the Manager that the proceedings for promotion have not been conducted in accordance with Regulation 6. sub-clauses (2) and (3) and his reply was required within 15 days . The Manager of the institution by letter dated 20.2.1980 asked for one month's time but even after expiry of one month, he did not submit any comment on the representation of the respondent No. 2.

4. The District Inspector of Schools in the above circumstances, considered the representation of respondent No. 2 and the resolution of the Committee of Management dated 6.3.1978 and allowed the representation of respondent No. 2 by order dated 5.6.1980 directing the Management to promote Sri Raghav Ram Dwivedi on the post of Lecturer on one year's probation.

5. The Committee of Management or the petitioner did not file any appeal against the said order. On the other hand, an order dated 26.11.1981 was obtained in Writ Petition No. 1487 of 1981 to consider the representation of the petitioner. After the order dated 5.6.1980 was passed by the District Inspector of Schools, the petitioner filed representation alleging that by misrepresentation and fraud, respondent No. 2 had obtained the order of promotion although he was not qualified and eligible for the post of Lecturer as he has not passed M. A. in Sanskrit. The District Inspector of Schools by order dated 17.3.1981 stayed the payment of salary in Lecturer's grade to opposite party No. 2. The operation

of the order dated 17.3.1981 was stayed by order dated 2.4.1981 in the aforesaid writ petition but later on the petitioner's application for vacation of the stay order was considered and an order dated 26.11.1981 was passed to decide the representation expeditiously. The District Inspector of Schools in accordance with the said direction issued notice dated 17.2.1982 fixing 25.2.1982 for hearing. The District Inspector of Schools by order dated 5.4.1982 rejected the petitioner's representation and affirmed the earlier order dated 5.6.1980 which has been assailed in the present writ petition.

6. The learned counsel for the petitioner mainly attacked the said impugned orders on the ground that in view of the provisions of the Regulation 6, sub-clause (6) of Chapter II, the District Inspector of Schools did not communicate his decision on receipt of the proposal of the petitioner's promotion through resolution dated 6.3.1978 and the same shall be deemed to be approved and the petitioner would be treated to be duly approved Lecturer appointed by promotion. The other submission challenging the order dated 5.6.1980 is that the District Inspector of Schools had no authority and jurisdiction to issue order of appointment to respondent No. 2 by order dated 5.6.1980. The petitioner has also alleged that the respondent No. 2 did not possess the requisite qualification, i.e., M. A., in Sanskrit to claim appointment on the post of Lecturer.

7. The counter-affidavit has been filed by Sri Bhagwati Singh on behalf of opposite party No. 4 and by Sri Raghav Ram Dwivedi the respondent No. 2.

8. On perusal of these affidavits and the material which has been brought on record as also the detailed order passed by the District Inspector of Schools dated 5.4.1982, it is established that after the District Inspector of Schools received the resolution dated 6.3.1978 for appointment by promotion of Sri Govind Lal Misra on the post of Lecturer in Sanskrit, a representation was filed by Sri Raghav Ram Dwivedi on 11.3.1978. On receipt of the representation, the District Inspector of Schools had been corresponding with the Management to furnish the details and record of the case to ascertain the correctness with regard to the qualification of respondent No. 2 and the petitioner, so that he could give his decision under Regulation 6, sub-clause (6) of Chapter II. It is established from the record that despite repeated correspondence, the Management did not furnish the required information and the District Inspector of Schools in absence of complete record could not ascertain the facts and approval to the resolution dated 6.3.1978 could not be given within the stipulated period.

9. The provisions of sub-clause (6) of Regulation 6 require that within three weeks from the date of receipt of the proposal, the District Inspector of Schools shall communicate its decision to the Manager failing which it would be deemed that he has given his concurrence to the resolution of the Committee of Management. However, this deeming clause would operate only after the inspector is in possession of the full and complete record and information. The District Inspector of Schools on receipt of representation dated 11.3.1978 had been corresponding and asking the institution to furnish the full and complete

particulars of the rival candidates but the Institution failed to do so. In the above circumstances, the petitioner would not get any benefit of the aforesaid provisions of deemed approval. There was no delay on the part of the District Inspector of Schools as he was not supplied the full record and information by the institution, on the basis of which he could take the decision. The petitioner, thus, cannot claim his appointment on the post of Lecturer in Sanskrit as duly approved with effect from 1.9.1978.

10. It has been held in the case of Ram Chandra Sharma v. State of U. P. and others. 1980 UPLBEC 245 :

"Learned counsel then urged that since the management had forwarded the papers to the District Inspector of Schools on 14.7.1965 and as the Inspector failed to communicate his disapproval of the petitioner's promotion, the management's proposal stood automatically approved after the expiry of two weeks. Section 16F (2) of the Act lays down that the name of selected candidate shall be forwarded for approval by the management to the inspector along with a statement showing the names, qualifications and other particulars of all candidates. The Inspector of Schools shall give his decision within two weeks on receipt of the relevant papers, failing which the approval shall be deemed to have been accorded. Placing reliance on this provision, the petitioner claims that the proposal of the management stood approved. In the counter-affidavit filed on behalf of the District Inspector of Schools, it is asserted that the relevant papers which had been sent to the District Inspector of Schools by the management were not complete. The District Inspector of Schools asked for additional information and relevant papers. The enquiry into the matters took time and it was only on 6.4.1968 that the District Inspector of Schools approved the petitioner's appointment to Lecturer's grade. Since the management had failed to submit the relevant papers, the petitioner is not entitled to the benefit of deeming provision as contained in Section 16F (2) of the Act."

11. As regards the qualification of respondent No. 2, the affidavit filed by Principal indicates that the then Manager of the institution was interested in the petitioner and as such, ignoring the claim of the respondent No. 2 on false pretext that he did not possess the requisite qualification, considered the case of only those incumbents who were recommended by the alleged Sub-Committee and illegally recommended the name of the petitioner for promotion on the post of Lecturer in Sanskrit.

12. In the counter-affidavit, it has been further alleged that the petitioner did not complete 5 years of regular service in substantive capacity when the vacancy had occurred and he was not eligible for promotion. The educational qualification of respondent No. 2 as M. A. Sanskrit in 1972 was duly recorded in the service book which was counter-signed by Sri J. P. Shukla and the mark-sheet of the said examination also found place on the service record. The Managing Committee, to give undue favour to the petitioner, suppressed the educational qualification of respondent No. 2 and gave incorrect Information to the District Inspector of

Schools.

13. The District inspector of Schools, has on the basis of record, recorded specific finding in this regard. It has been held that the respondent No. 2 was possessed of the educational qualification and had passed M. A. in Sanskrit and was fully qualified for appointment.

14. Apart from this, the District Inspector of Schools has also held that the institution had permitted the respondent No. 2 to join M. A. course and to appear in the Examination and from the service record, it is established that the respondent No. 2 had passed his M. A. examination in the year 1971 in Sanskrit and the mark-sheet was also on record.

15. The District Inspector of Schools further held that petitioner Govind Lal Misra did not possess minimum five years of continuous service to his credit on the date of occurrence of vacancies.

16. The District Inspector of Schools has given the details of the petitioner's appointment on the basis of service record and it was held that the substantive service of the petitioner was only four years seven months and eighteen days or; the date when the vacancy occurred and on the date when he was recommended for promotion, it was four years five months and ten days. On the basis of the above findings, the appointment of respondent No. 2 was liable to be made and the representation of the petitioner was rejected by order dated 5.4.1982.

17. The last submission of the petitioner that the District Inspector of Schools has no authority to issue the order of promotion by order dated 5.6.1980 cannot be accepted. The order dated 5.6.1980 was passed in proceedings under Regulation 8 of Chapter II. The respondent No. 2 was aggrieved by the decision of the Committee of Management in recommending the promotion of petitioner in contravention of the Regulations 5. 6 and 7 and as such, he has filed the representation. The impugned order dated 5.6.1980 was passed by the District Inspector of Schools after adjudicating the dispute and in that context, he has directed for promotion of Sri Raghav Ram Dwivedi on probation of one year. The Direction was given by the District Inspector of Schools to promote Sri Raghav Ram Dwivedi from the date of representation on one year probation. This was required as the Committee of Management after the vacancy occurred had not recommended the name of respondent No. 2 and there was no resolution for his appointment. The direction for appointment by promotion of respondent No. 2 was given so that the Committee of Management may ratify and comply the same. The Committee of Management had submitted to the said direction without any objection and the said direction would be treated to have been complied by the Committee of Management and the appointment, thus, would be treated as an appointment made by the Committee of Management. The District Inspector of Schools under Regulation 8 has been given the quasi-Judicial powers to adjudicate and pass such order as he may deem fit on the representation and as such the District Inspector of Schools after adjudicating the dispute and after

considering the representation of the respondent No. 2. directed for appointment of respondent No. 2 on the post of Lecturer in Sanskrit with effect from 11.1.1978. In my opinion, this direction does not suffer from any infirmity or illegality so as to invalidate the appointment of respondent No. 2 on the post of Lecturer in Sanskrit.

18. I am further satisfied that in view of the serious infirmity in the qualification of the petitioner who himself was not eligible to be appointed, the District Inspector of Schools did not commit any error of law nor there is any error apparent on the face of record in rejecting the case of the petitioner for appointment on the post of Lecturer in Sanskrit.

19. The provisions of Regulation 6 of the Chapter II require that all teachers working in L.T. grade having minimum 5 years" continuous substantive service to their credit shall be considered for promotion by the Committee of Management without their having to apply for the same provided they possess the prescribed minimum qualifications for teaching the subject in which the teacher in the Lecturer"s grade or in the L.T. grade is required. The plea of the petitioner that the respondent No. 2 did not apply or that applications were invited by the Sub-Committee or the Sub-Committee did not recommend the name of the respondent No. 2 does not appear to be correct. The Committee was required to consider the case of all the teachers irrespective of any application being made by them and there was no valid reason for the case pf the respondent No. 2 to be excluded from consideration. The reason that he did not possess requisite educational qualification was not correct and was not borne out from the record.

20. There is no dispute that the respondent No. 2 is continuing on the post of Lecturer in Sanskrit after passing of the impugned orders and is also being paid his salary on that basis.

21. Considering the facts and circumstances of the case. I am of the opinion that the orders of the District Inspector of Schools dated 22.1.1980 and 5.4.1982 are in accordance with law and no interference is required in exercise of jurisdiction under Article 226 of the Constitution. The petition is accordingly dismissed.