

(2010) 09 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15638 of 2008

Indu Kant Dixit and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Citation : (2011) 2 UPLBEC 1019

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Adarsh Bhushan learned Counsel for the petitioners and the learned Standing Counsel for the respondents.

2. The two petitioners are aggrieved by the order of the District Inspector of Schools dated 28th December 2007 whereby they have been denied continuance as Assistant Teachers in L.T. grade in the Institution known as Intermediate College, Kanchausi Bazar, Aurraiya. The Institution is governed by the provisions of the U.P. Intermediate Education Act 1921 and the appointments are governed by the provisions of the U.P. Secondary Education (Services Selection Boards) Act, 1982 and the regulations framed there under.

3. The petitioner No. 1 Indukant Dixit has been appointed against a short term vacancy that fell vacant due to the ad-hoc promotion of one Shiv Kumar Tewari and the petitioner No. 2 Pramod Kumar was appointed on ad-hoc basis on account of the ad-hoc promotion of Raghvendra Singh Sonkar.

4. It is undisputed that the above appointments of Shiv Kumar Tewari and Raghvendra Singh, the said adhoc appointees, was approved by the District Inspector of Schools vide orders dated 19.12.1998 and 2.12.1998 respectively. The petitioners therefore were selected and appointed thereafter upon publication in two newspapers and upon being satisfied that they possessed the qualifications as prescribed under the provisions of the U.P. Intermediate

Education Act, 1921.

5. The petitioners were issued letters of appointment on 17th January 1999 and the papers were submitted before the District Inspector of Schools for grant of financial sanction. The District Inspector of Schools did not pass any orders as a result whereof the petitioners approached this Court by filing Writ Petition No. 53909 of 1999 and the writ petition was disposed of on 22nd December 1999 with a direction to the District Inspector of Schools to pass an appropriate order keeping in view the claim of the petitioners.

6. The District Inspector of Schools rejected the claim vide order dated 7th/9th May 2002 which was again assailed by the petitioners in Writ Petition No. 32064 of 2004. The said writ petition was allowed on 6th February 2007 quashing the order of the District Inspector of Schools with a direction to consider the matter afresh in the light of the observations made therein.

7. The District Inspector of Schools has again repeated his performance by passing the impugned order on the ground that the Committee of Management had no competence to make appointments against short term vacancies keeping in view the provisions of the notification dated 20th April 1998. It has further been held that the advertisement was made in local newspapers and not in national newspapers therefore the selections are vitiated.

8. The petitioner contends that both the newspapers have wide circulation and apart from this the ground taken that the Committee had no competence to proceed to make appointments against short term vacancies is no longer res Integra in view of the law declared by the Division Bench of this Court in the judgment dated 31st April 2010 in Writ Petition No. 20843 of 2002 (Daya Shanker Mishra v. District Inspector of Schools and Others. It is further submitted that according to the respondents themselves the petitioners have obtained the highest quality point marks and therefore the allegations that they are not capable on merit to be selected is erroneous and against the records.

9. Learned Standing Counsel on the other hand contends that so far as the selections are concerned, at the relevant time the Management had no authority to make the appointments nor had the selections been held in accordance with the procedure prescribed in law, therefore the conclusions drawn by the District Inspector of Schools cannot be said to be erroneous. He has further invited the attention of the Court to Paragraph 7 of the counter affidavit to contend that even otherwise the selections have not been fair and therefore there is no occasion to grant financial sanction.

10. I have heard learned Counsel for the parties and perused the records as also the averments contained in the counter affidavit.

11. The first issue relating to the competence of the Committee to proceed to hold selections against short term vacancies has already been answered by the Division Bench as rightly pointed out by Sri Adarsh Bhushan in the judgment of

Daya Shanker Mishra (*supra*). In view of this, the reason given in the impugned order is unsustainable.

12. The stand taken in the counter affidavit that the selections cannot with stand scrutiny on merit is also erroneous inasmuch as the chart categorically records that the petitioners were highest in merit. The averment in the counter affidavit that candidates having similar percentage of marks in their academic qualifications have been treated differently for award of Interview marks is a misconceived approach inasmuch as it is the discretion of the selection Committee to award interview marks according to the performance of the candidates during interview. This squarely falls within the realm of the selecting body and the District Inspector of Schools cannot proceed to sit in judgment over the said proceedings unless any perversity can be pointed out.

13. In my opinion, such a course is not permissible and the Interview marks awarded by the selecting board has to be accepted. There is no material which may indicate that the marks had been awarded erroneously or with any mala fide intention. In such a situation the contention as raised in Paragraph 7 of the counter affidavit is unacceptable.

14. The third issue is relating to the publication of the advertisement in the Newspapers. This was not the case of the District Inspector of Schools on earlier occasions that it has not been published in any widely circulated newspaper. It is now that the District Inspector of Schools has come out with a case that the newspapers in which the advertisement has been made are not widely circulated in the District of Auraiya.

15. In view of the law laid down by the Full Bench of this Court in the case of Radha Raizada and Others v. Committee of Management, Vidyaxwati Darbari Girls Inter College and Others, reported in (1994) 3 UPLBEC 1551, the aforesaid contention as raised on behalf of the respondents is also unacceptable. It is not the case of the respondents that the newspapers have inadequate circulation in the District Etawah.

16. The respondents in the counter affidavit have urged that the ad-hoc promotions of Shiv Kumar Tewari and Raghvendra Singh could have been regularized but the Management has deliberately not sent documents as that would convert the vacancies into substantive vacancies, against which the petitioners have been appointed. The submission appears to be that if posts against which the petitioners are working are substantive posts then in that view of the matter they would not be allowed to continue any further. The aforesaid submission is purely hypothetical and. this Court cannot proceed on the basis of mere hypothesis. The fact remains that the vacancies against which the petitioners are continuing have not yet been converted into substantive vacancies as per the own assertion of the respondents in the counter affidavit. This argument also therefore cannot be countenanced.

17. The writ petition therefore deserves to be allowed on all three counts.

Accordingly, the impugned order dated 21/28.12.2007 is hereby set aside. The respondents are directed to treat the petitioners to have been validly appointed ad-hoc teachers against short term vacancies and to ensure payment of salary together with all arrears on that account as expeditiously as possible but not later than three months from the date of presentation of a certified copy of this order before the District Inspector of Schools.

18. Needless to say that since the petitioners have been continuing in service and there was an interim order passed in their favour on 1st April 2008, the petitioners shall be entitled for all consequential benefits.

19. The writ petition is allowed. Petition allowed.