

(2003) 11 AHC CK 0143
In the Allahabad High Court

Case No : C.M.W.P. No's. 23270 and 30390 of 1993 and 11728 of 1994

Jagtendra Singh Jadon

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2004) 1 AWC 555

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : K.K. Dubey and Anil Bhushan, for the Appellant; R.C. Srivastava, Brijendra Kumar and Piyush Khanna and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Vineet Saran, J.—Since all the three writ petitions arise out of same cause of action, they have been heard together and are being decided by a common judgment.

2. Three posts of L.T. grade Assistant Teachers having fallen vacant in R.A. Janta Inter College, Paigu, district Firozabad, between the years 1988 and 1992, Committee of Management of the institution noticed such vacancies to the Secondary Education Service Commission through the District Inspector of Schools, Firozabad on 21.4.1992. It has been alleged that since there was urgent need of teachers in the college, thus, the Committee of Management advertised for filling up the three posts on ad hoc basis in the Newspaper "Dainik Aaj". In response, several candidates, including the petitioners in Writ Petition Nos. 30390 of 1993 and 23270 of 1993, namely, Jagtendra Singh Jadon, Prabhu Dayal and Balbir Singh (hereinafter referred to as the petitioners first set) ; as well as petitioners of Writ Petition No. 11728 of 1994, namely, Anil Kumar Singh, Yogendra Singh and Anil Kumar Jadon (hereinafter referred to as the petitioners second set) had applied.

3. It is the case of the petitioners first set that they were duly recommended for appointment by the Committee of Management vide its resolution dated 30.6.1992, which was also signed by the Chairman of the Selection Committee as a Member of the Management Committee. In pursuance thereof, the Committee of Management issued appointment letters in favour of the petitioners first set on 1.7.1992.

4. The petitioners second set claim that they were duly recommended for appointment by the Selection Committee on 30.6.1992 and on 1.7.1992, the Chairman of the Selection Committee issued appointment letters in favour of petitioners second set, copies of which have been filed as Annexures-4, 5 and 6 to Writ Petition No. 11728 of 1994.

5. The petitioners first set claim that the papers regarding approval of their appointment were sent by the management to the office of the District Inspector of Schools but the respondent No. 1, the District Inspector of Schools neither approved nor disapproved their appointment nor duly sanctioned payment of salary to them. The petitioners first set thus filed Writ Petition No. 5913 of 1993, praying for a direction to the District Inspector of Schools to pay them their salary, which was disposed of by this Court on 3.2.1993 with a direction to the District Inspector of Schools to consider, the case of the petitioners for grant of financial sanction. The District Inspector of Schools vide its order dated 19.3.1993 rejected the claim of the petitioners and hence, the petitioners first set have filed this writ petition with a prayer for quashing the order of the District Inspector of Schools refusing to grant financial sanction and also for a direction to the said respondent to sanction payment of salary to them as Assistant Teachers in L.G. Grade from July, 1992.

6. The petitioners second set filed Writ Petition No. 11728 of 1994, with a prayer for a direction to the respondents to make payment of salary to them as ad hoc Assistant Teachers in L.T. grade with effect from July, 1992, and continue to pay the same regularly.

7. I have heard Sri K.K. Dubey, learned counsel for the petitioners first set in Writ Petition Nos. 30390 of 1993 and 23270 of 1993 ; Sri Anil Bhushan, learned counsel for the petitioners second set in Writ Petition No. 11728 of 1994 ; as well as learned standing counsel for the State respondents, and have also perused the materials on record.

8. The common question involved in both sets of writ petitions is as to whether the Committee of Management or the Chairman of the Selection Committee had authority to make appointment of ad hoc Assistant Teachers in L.T. Grade on substantive vacancies which had fallen in the Institution in question, and further if the said authority was there, would the petitioners be entitled for payment of salary under the grant-in-aid scheme of the Government.

9. In the case of the petitioners first set, it has been alleged that on the recommendations having been made by the Selection Committee, the

appointment had been made by the competent authority, i.e., the Committee of Management. It has been urged that the Committee of Management was duly authorised to make such appointment under the First Removal of Difficulties Order, 1981, and Section 18 of the U.P. Secondary Education Services Commission and Selection Board Act, 1982 (Act No. 5 of 1982). The financial sanction has been refused by the District Inspector of Schools to the petitioners first set on the grounds that according to Sri Rajendra Singh, Chairman, of the Selection Committee, the appointment letters were said to be forged ; that the petitioners were neither selected by the Selection Committee nor appointed by the Committee of Management, and that the appointments were said to have been made on substantive post for which the management had no right in view of the Government Order dated 14.7.1992.

10. As regards the last ground for refusal to grant financial sanction, the contention of the learned counsel for the petitioners first set that the Government order dated 14.7.1992 would not be applicable has some force as the appointments are said to have been made on 1.7.1992 and thus the Government order which was Issued subsequently on 14.7.1992, would not apply in their case. However, with regard to other questions, which have been decided by the Committee of Management, this Court in writ Jurisdiction would not be competent to decide the factual controversy relating to as to whether the appointment letters Issued in favour of the petitioners first set were proper or forged, or whether the same had been issued by the Committee of Management on the recommendation of the Selection Committee or not.

11. It is the specific case of the petitioners first set that the impugned order dated 19.3.1993, had been passed by the District Inspector of Schools without issuing notice or affording any opportunity of hearing to the petitioners first set. Such averments have not been controverted by the State-respondents. In such view of the matter, since the impugned order has been passed in violation of the principles of natural justice as no opportunity had been afforded to the petitioners, the same is liable to be set aside and is hereby quashed. As suggested by the learned standing counsel and accepted by the learned counsel for the petitioners in all the writ petitions, the present controversy regarding the appointment on the three posts of Assistant Teachers of the institution may now be considered and decided by the Joint Director of Education, Agra Region, Agra, after giving opportunity of hearing to the petitioners first set, the petitioners second set, as well as the Committee of Management and the Principal of the institution. The said authority shall decide the controversy in issue in accordance with law, by a speaking and reasoned order, as expeditiously as possible, preferably within a period of three months from the date of filing a certified copy of this order before the said authority.

12. It has been brought to the notice of this Court that despite the vacancies having been notified to the District Inspector of Schools for being forwarded to the Commission for regular appointment, no steps have yet been taken. The

Joint Director of Education shall also consider this aspect of the case and issue requisite directions to the District Inspector of Schools to take necessary steps to have the said substantive posts filled up through the Commission.

13. As regards the case of the petitioners second set, it is admitted case that their appointments had been Issued by the Chairman of the Selection Committee and not the Committee of Management. The petitioners second set have not even brought on record any resolution of the Committee of Management which is said to have been passed before the issuance of the appointment letters dated 1.7.1992 in their favour, by the Chairman of the Selection Committee. The alleged resolution which is said to have been passed subsequently on 27.9.1992 is of much later date. It is the case of the petitioners first set that the said resolution is said to have been passed only after the Chairman of the Selection Committee, namely Rajendra Singh, had been subsequently appointed and recognised as Manager of the Institution.

14. Be that as it may, this Court has to examine as to whether the initial appointment as claimed by the petitioners second set was made validly or not. Sri Anil Bhushan, learned counsel appearing for the petitioners second set has not been able to place before me any provision under the U.P. Intermediate Education Act or the Act of 1982, and the Rules, empowering the Chairman of the Selection Committee to issue the appointment letters. It has merely been urged that since the Committee of Management was refusing to issue appointment letters in favour of the petitioners second set, the same had to be issued by the Chairman of the Selection Committee. From the record, it is clear that the alleged recommendation of the Selection Committee in favour of the petitioners second set was made only on 30.6.1992 and the appointment letters have been issued by the Chairman of the Selection Committee on the very next day i.e., 1.7.1992. In my view, the said submission of the learned counsel for the petitioners second set does not have force as from the facts as noticed above, even the Committee of Management, cannot be said to have been given sufficient time to issue such appointment letters, if at all the names of the petitioners second set had been validly recommended. Thus, since the appointment letters issued in favour of the petitioners second set were by the Chairman of the Selection Committee, who was not authorised under law to appoint teachers, the appointment of the petitioners second set cannot be held to be valid. Thus, the petitioners second set are not entitled to the relief claimed and the Writ Petition No. 11728 of 1994 is dismissed, being devoid of merits.

15. Before parting with this case, it may be observed that the conduct of the respondent No. 2 in Writ Petition No. 11728 of 1994 in pursuing this case is highly deprecated. In Writ Petition No. 11728 of 1994, on 12.4.1994, an interim order had been passed which reads as follows :

"Meanwhile, respondent No. 2 is directed to pay salary to the petitioners in accordance with law or show cause before the next date of hearing."

16. The then respondent No. 2, who is the Accounts Officer In the office of the District Inspector of Schools, Firozabad chose to pay salary to the petitioners second set Instead of showing case. It was only on 15.10.2003, that a counter-affidavit has been filed by the District Inspector of Schools on behalf of respondent Nos. 1 and 2 wherein it has categorically been stated that the appointment of the petitioners second set had not been validly made and the writ petition deserves to be dismissed. However, it has been admitted that the payment of salary has been made to the petitioners second set on the basis of the interim order dated 12.4.1994, which as per the counter-affidavit now filed, had been obtained by concealing material facts.

17. The Joint Director of Education is thus directed to take suitable action against the Officer who had taken the decision to make payment of salary to the petitioners second set instead of bringing on record of this case that the appointment of the petitioners second set had not even been made by the competent authority and no approval had been granted for such appointment.

18. In the result, Writ Petition Nos. 30390 of 1993 and 23270 of 1993 are partly allowed and Writ Petition No. 11728 of 1994 is dismissed. However, there shall be no order as to costs.