

(2005) 05 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 10442 and 46517 of 2002

Jai Nath Prasad Maurya

APPELLANT

Vs

Joint Director of Education (Secondary), Vth Region, District
Inspector of Schools and Committee of Management of
Intermediate College

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 20

Citation : (2005) 4 AWC 3236 : (2005) 3 ESC 2103

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : V.K. Singh, Ravi Pratap, G.K. Singh, Sanjai Kumar Singh and
Pradeep Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri V.K. Singh for the petitioner and learned Standing Counsel.

2. The Intermediate College, Dharao, Chandauli, District-Chandauli is a recognised and aided educational institution. Sri Indrajeet Singh Assistant Teacher. L.T. Grade retired, on which Sri Arjun Prasad, Assistant Teacher in C.T. Grade was promoted in the vacancy of 50% quota. The promotion was approved by the District Inspector of Schools , Varanasi on 31.12.1993. The management advertised the resultant vacancy in C.T. Grade, and after selections on the basis of quality point marks, the management appointed the petitioner Sri Jai Nath Prasad Maurya in the alleged short term vacancy on 20.8.1998. The District Inspector of Schools , Varanasi did not accord financial approval on which the petitioner filed writ petition No. 45442 of 2000 in which directions were issued to decide his representation.

3. By the Government Order dated 11.8.1989 the C.T. grade was declared as a dying cadre. Thereafter no appointment could be made in C.T. Grade. The District

Inspector of Schools , Varanasi by his letter dated 31.12.1993 had restrained the management from filling up the vacancy caused on the ad hoc promotion of Sri Arjun Prasad. The management, however, proceeded to fill up the vacancy as a short term vacancy. Further there was a ban on fresh appointment by Government Order dated 30.7.2001 and the Departmental order dated 31.8.1991. The District Inspector of Schools Chandauli by his order dated 15.3.2001, rejected the representation holding that the petitioner was not appointed on any short term vacancy but on a substantive vacancy in C.T. Grade caused on promotion of Sri Arjun Prasad, and thus the appointment was illegal.

4. In writ petition No. 46517 of 2000, Sri Sabbir Ahmad was promoted from L.T. Grade as Lecturer in English in the same college on temporary basis. The short term vacancy in L.T. grade was advertised by the Committee of Management on 4.7.1998 and 6.7.1998 in newspapers, for the post of Assistant Teacher in L.T. grade. The petitioner Shri Khursheed Ahmad, applied and appeared in interview. The Selection Committee prepared quality point marks, selected the petitioner and made recommendations for appointment of the petitioner. The Committee of Management issued appointment letter on 28.8.1998. The papers were sent for approval to District Inspector of Schools , Chandauli. He did not pass any order, within seven days as provided in Sub-clause (III) of paragraph 2(3) of U.P. Secondary Education Services Commission (Removal of Difficulties) Second Order 1981. The petitioner filed writ petition No. 31294 of 2000 in which directions were issued to the District Inspector of Schools, Chandauli to decide his representation. The District Inspector of Schools , Chandauli, by his order dated 22.9.000, under challenge, found that the promotion of Sabbir Ahmad, Assistant Teacher, as Lecturer was approved by the District Inspector of Schools , Varanasi on 3.7.1995 and since then the post was lying vacant, It was found that the vacancy in existence since 1991 could not be treated as a short term vacancy. Where promotions were made on substantive vacancy in 50% quota, the resultant vacancies are not short terms vacancy and the representation was rejected.

5. Learned counsel for the petitioner has relied upon a Division Bench judgment of this Court in Arjun Kumar Jaiswal v. District Inspector of Schools and Ors. (1994) 2 UPLBEC 1250. In this case, the permanent Principal of the College had died. A permanent Lecturer was appointed in his place on ad hoc basis. The appointment was approved by the District Inspector of Schools. For filling up vacancy caused by ad hoc promotion, the management invited applications and appointed the petitioner. The District Inspector of Schools did not approve the appointment on the ground that the vacancy was not a short term vacancy. The Division Bench interpreted in Paragraph 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, and held that where the incumbent having lien on the post, is likely to return back and to join the post, such a vacancy cannot be considered to be a substantive vacancy. It could not be said that the Lecturer promoted on ad hoc basis as Principal had no prospect of returning to the post from which he had been promoted.

6. In the matter of Sri Jai Nath Prasad Maurya in writ petition No. 10442 of 2002 Sri Arjun Prasad was serving in C.T. grade which was declared as a dying cadre on 11.8.1989. The promotion of Sri Arjun Prasad in 50% quota in L.T. grade could not have caused a vacancy, either substantive or short term, as no one could be appointed in the dying cadre. The State Government by Government Order dated 11.8.1989 had placed a ban on sanction and appointment of any posts in C.T. grade. By the Government Order dated 4.9.1990, the State Government had answered the queries that where a C.T. grade teacher has been given L.T. grade, the short term vacancy caused on their leave without pay, medical leave, maternity leave and suspension, only could be filled on purely temporary basis, so that the teaching is not affected. It further clarified on query No. 2, in this Government Order dated 4.9.1990 that as the C.T. grade has been declared to be a dying cadre, no fresh appointment can be made on a substantive vacancy caused on the post and that the appointments could be made only in L.T. Grade.

7. In Rajasthan Public Service Commission Vs. Chanan Ram and Another, , the recruitment process initiated before the abolition of the cadre was given up. The Supreme Court held that no appointment could be made against the previously advertised vacancies as the cadre stood abolished.

8. Sri Arjun Prasad was serving in C. T. grade. He was not receiving L.T. grade as he had not completed 10 years of service in , C.T. grade. He was promoted on ad hoc basis in 50% quota in the substantive vacancy caused on the retirement of Indrajeet Singh. The resultant vacancy in C.T. Grade (the dead cadre) could not be filled even if the vacancy was short term or substantive in nature as the post itself stood abolished. Further the District Inspector of Schools also found that after the amendment of U.P. Secondary Education Services Selection Board Act, 1982, in 1995, the ad hoc appointment by direct recruitment could only be made by a Regional Committee. The District Inspector of Schools , as such, did not commit any illegality in refusing approval. The writ petition No. 10442 of 2002 is consequently dismissed. In case the petitioner has drawn any salary and allowances in between, he shall be entitled to keep the benefits provided he satisfies the District inspector of Schools that he has actually worked and taken classes in the institution.

9. The appointment of Sri Khurseed Ahmad in writ petition No. 46317 of 2000, however, is on different footing. He was appointed on 20.8.1998, as Assistant Teacher on a vacancy caused on the ad hoc promotion of Sri Sabbir Ahmad from L.T. grade to Lecturer's grade on the vacancy caused by adhoc promotion of Sri Ram Narain Pandey, the Principal who had retired on 30.6.1991. The management did not take any steps to fill up the short term vacancy, caused on 3.7.1991 inspite of permission given by District Inspector of Schools Varanasi on 3.7.1991 for seven years. There is nothing on record to show that the management has taken permission of the Director to revive the post. Under Regulation 20 of Chapter II of the Regulation made under U.P. Intermediate

Education Act, 1921, if a vacancy was not notified to the Board and was not filled up within three months, it could only be filled after the revival of the post by the Director of Education. The management, instead of following the procedure, for maintaining financial discipline, proceeded to advertise the vacancy and fill up the vacancy.

10. Learned counsel for the petitioner is correct in relying upon Arjun Kumar Jaiswal case (supra) and in submitting that the vacancy was a short term vacancy as Sabbir Ahmad had lien on the post, but since it was not filled up for seven years, the management could not have proceeded to advertise and select the petitioner unless fresh permission was taken from the Director of Education to revive and to fill up the post giving adequate reasons, as to why the management did not take steps to advertise and appoint a person and to justify its existence, specially when the Secondary Education Selection Board, was constituted and was functioning. The Rules of 1998, had come into operation on 13.7.1998, and that even ad hoc appointments on short term vacancies could be made only through the Regional Committees.

11. The writ petition No. 46517 of 2000 is also consequently dismissed. In case the petitioner has drawn any benefit, he will be allowed to keep the same only after verification of the District Inspector of Schools that the petitioner has actually attended the school and taken classes in the institution.