
(1978) 01 AHC CK 0048
In the Allahabad High Court
Case No : Second Appeal No. 1717 of 1976

Janta Higher Secondary School Society	APPELLANT
Vs	
Anirudh Prasad Dwivedi	RESPONDENT

Date of Decision : 13-01-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Citation : (1978) 01 AHC CK 0048

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Dismissed

Judgement

M. P. Mehrotra, J.

This second appeal lacks merit. The brief facts are these.

The plaintiff appellant is a society which runs a Higher Secondary School. It seems that the defendant respondent was appointed as a teacher in J.T.C. grade and the approval of the Inspector of Schools was sought on 28th July, 1970. The approval was granted by the Inspector on 28th August, 1970. This approval was however, in the C. T. grade. The services of the defendant respondent were terminated on 6th February, 1971. The District Inspector of Schools, by his letter dated 17th March, 1971 took exception to the termination of the defendant respondent's services by the plaintiff appellant and directed that the former should be reinstated and allowed to work and paid the C. T. grade. The plaintiff appellant felt aggrieved with the said direction of the District Inspector of Schools and, therefore, instituted the suit claiming a declaration that the defendant respondent ceased to be in its service with effect from 6th February, 1971. An injunction was sought against the defendant respondent restraining him from claiming any salary in C. T. grade from the District Inspector of Schools for the period ending 6th February, 1971 and from claiming any salary whatsoever in respect of the period subsequent to the said date.

The Courts below have dismissed the suit and the plaintiff has come up in the

instant second appeal and in support and opposition, I have heard learned counsel for the parties. Initially, it was not the case of the plaintiff that the defendant's appointment was not valid on account of the lack of prior approval from the Inspector. However, subsequently by amendment of para 7 of the plaint, the said contention was also raised. This was done during the pendency of the appeal in the lower appellate court. The defendant filed an additional written statement and a plea was raised that as the District Inspector of School did not pass any order within two weeks of the papers of approval being sent to him, therefore, under law, it should be deemed to be an implied approval of the Inspector for the appointment of the defendant. Therefore, two additional issues were framed in the lower appellate court as follows:

"1. Whether the defendant's appointment shall be deemed to have been approved by D.I.O.S., Deoria ? If so its effect ?

2. Whether the defendant was appointed without the prior approval of D. I. O.S. ? If so its effect ?"

The lower appellate court has recorded a clear finding in these words:

"The D.I.O.S. however did not give any decision within two weeks and, therefore, the respondent shall be deemed to have been approved."

This is a finding of fact and cannot be questioned in second appeal. In this view of the matter, I do not think that the learned counsel for the appellant is right in contending that the prior approval of the Inspector was not there. In my opinion, the law laid down by the Division Bench in *Arya Kanya Pathshala and others v, Smt. Manorama Devi Agnihotri and others* (1971 ALJ 983.), has not been properly understood. The said case is not an authority for the contention that the approval subsequent to the appointment cannot be granted by the Inspector to be effective in respect of the future. If an appointment is made without prior approval then till the approval is granted, the same will be ineffective. However if the approval is subsequently granted, then, in my opinion, the same will be operative with effect from the date of approval. It is not the law that if an appointment is made without the prior approval, then the Inspector cannot grant approval subsequently. Such an approval can be granted subsequently but may not be effective in respect of the past but will certainly be effective in respect of the future. Therefore, it cannot be said that the appointment of the defendant/respondent continued to remain invalid despite the implied approval which has been held by the lower appellate court to have been given to his appointment in terms of section 16F (2) of the Intermediate Education Act.

In this view of the matter, there can be no doubt that prior approval of the Inspector was needed to terminate the defendant's services and for want of such approval, his termination was ineffective in view of the provisions contained in section 16G(3).

This conclusion is not affected by the fact that the Inspector's implied approval

was with reference to the J.T.C. grade and not with reference to the C. T. grade. A dispute about grades cannot affect the appointment itself.

It has also to be seen that the salaries of teachers have become Payable under the provisions of U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. In this view of the matter, the plaintiff did not stand to suffer by the insistence of the Inspector that C. T. grade should be paid to the defendant. I am not suggesting that it is open to the Inspector to grant grades at his discretion without proper approval being sought by the management. I leave that question open but it seems to me that in this case the plaintiff's real grievance was against the Inspector's insistence that the defendant's services were wrongly terminated and that was the central point of controversy between the parties. The question of grade was secondary.

In My view, therefore, the suit was rightly dismissed by the courts below. This appeal accordingly fails and is dismissed with costs.