
(2009) 08 AHC CK 0189

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3239 of 1985

Jawahar Singh

APPELLANT

Vs

District Inspector of Schools, District Deoria and others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16GG

Citation : (2009) 08 AHC CK 0189

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Matter is taken up in the revised list. None appears on behalf of the petitioner to argue the case. Counsel for respondent No. 4 and the Standing Counsel are present.

2. A dispute arose with regard to management of Udit Narain Intermediate College, Padrauna, Deoria of which Kr. Ram Pratap Narain Singh admittedly was the Manager/Secretary since 1955. It was claimed by the other faction that Kr. Ram Pratap Narain Singh, Plaintiff No. 2 in O.S. No. 751 of 1972 had been removed. Kr. Ram Pratap Narain Singh instituted O.S. Wherein the Trial Court held that plaintiff No. 2, Kr. Ram Pratap Narain Singh is the Secretary and continued to be the Secretary of the Committee and that the defendant was not even a member of the committee. The temporary injunction was granted and the injunction application thereafter was disposed of in favour of the plaintiff vide order dated 2.6.1975. It is further brought on record that the order of injunction passed by the Trial Court was confirmed by setting aside the order of the Lower Appellate Court which disagreed with the Trial Court. The injunction granted by the Trial Court dated 2.6.1975 was restored by the High Court vide judgment dated 9.2.1976.

3. The petitioner claims to have been appointed by Sri Vasudeo Pratap Narain Singh as C.T. Grade teacher in science claiming through defendant No. 1 in O.S. No. 751 of 1972 who had already been enjoined from interfering in the affairs of

the management. Thus, the alleged appointment claimed by the petitioner is by a person who was not only a stranger but had been enjoined by the Civil Court from interfering in any manner into management and working of plaintiff and college. The alleged appointment of the petitioner therefore, is void having been made by a stranger who had already been restrained from functioning and interfering in the affairs of the institution. It is also brought on record that taking advantage of the ongoing dispute and the conduct of the then Principal, who was also restrained vide injunction suit colluded with a complete stranger in forging the appointment of the petitioner. The alleged appointment of the petitioner therefore, having been made by a stranger and being in teeth of an injunction order, cannot confer any right upon the petitioner.

4. Taking advantage of managerial dispute and in teeth of the injunction order Sri Vasudeo Pratap Narain Singh claiming through the defendant in O.S. No. 751 appointed the petitioner as Wood Craft Teacher and cancelled the earlier appointment of the petitioner made on 31.7.1974. This appointment letter dated 16.1.1976 also is void as it is in teeth of the order and injunction passed by the Competent Court and it cannot be relied upon.

5. The contesting respondent No. 4 who possessed the requisite qualification, was appointed by the management led by Kr. Ram Pratap Narain Singh. In Para 3 of the counteraffidavit of respondent No. 4, it is clearly stated that the contesting respondent was informed by Kr. Ram Pratap Narain Singh that he had never appointed the petitioner. Again in Para Nos. 3 and 4 of the supplementary counteraffidavit it is categorically stated that neither the petitioner was ever appointed nor he possessed qualification for appointment.

6. Section 16GG was added in U.P. Intermediate Education Act by virtue of which the ad hoc appointment of contesting respondent made on 2.8.1976 stood protected by the amended provision of Section 16GG as a result of which the appointment of respondent No. 4 became substantive in nature and character.

7. The State Government directed the Director of Education to verify the dispute with regard to appointment in the institution. This had to be done in view of serious managerial dispute which was doing on between the contesting factions and taking advantage of which appointments were shown of persons like the petitioner who were actually never appointed by the valid Committee of Management.

The Deputy Director of Education informed the Director that while the contesting respondent is working, yet he was not being paid salary by the State.

The appointment of contesting respondent was regularised against the post of Teacher in C.T. Grade as the petitioner was not validly appointed and also did not continue as he was not found eligible and qualified.

Counsel for respondent submits that the petitioner is not entitled to any relief in this writ petition for the following reasons :

1. The petitioner was not appointed by the duly recognized Committee of Management and rather his appointment was made by a complete stranger and imposter on 16.1.1976 and in breach of injunction order granted by the Competent Court on 2.6.1975 as was affirmed by the High Court on 19.2.1976 in Civil Revision No. 1873 of 1975. Thus, since the appointment of the petitioner itself was in disobedience of the stay order/injunction order of the Civil Court, it was null and void and such right cannot be enforced in proceedings under Article 226 of the Constitution of India. The contesting respondent relies upon Division Bench judgment of this Court reported in *Satyendra Pal v. Regional Transport Authority, Agra and another*, 1982 All LJ 310;

2. The petitioner is also not entitled to any relief as he does not fulfil the minimum qualification required for appointment to the post of Wood Craft Teacher. The relevant qualification has been annexed at page 8 of the supplementary counteraffidavit of opposite party No. 4, dated 8.5.2005. The petitioner has not been able to show that he possesses any of the three qualifications prescribed under Regulations and as such in the absence of requisite qualification possessed by the petitioner, his appointment cannot be enforced in proceedings under Article 226 of the Constitution of India;

3. The appointment of respondent No. 4 was made against the vacant post of teacher in Wood Craft and was made substantive by virtue of Section 16GG. The contesting respondent also relies upon the direction of the State Government contained in Government Order dated 19.11.1977; and

4. It is also contended that in the writ petition prayer for grant of stay was refused by the Division Bench vide order dated 29.10.1985 and the contesting respondent has been continuously and uninterruptedly working and got payment of salary in accordance with law. The contesting respondent is almost nearing the age of superannuation, so is also the petitioner and in view of this fact the petitioner is not entitled to any relief prayed and the writ petition deserves to be rejected with cost.

The objections of the respondents have force.

8. According to the age given in the affidavit, the petitioner was 36 years of age in 1985. He is now more than 60 years of age and his application for interim order was rejected vide order dated 29.10.1985, hence now the petitioner cannot be granted relief of quashing of appointment of respondent No. 4 on the post which is claimed by him, by quashing of order dated 25.1.1985. Similarly, neither relief (b) for a mandamus directing the respondents to pay month to month salary to him nor relief (c) for directing the respondents not to appoint any person, can be granted now particularly in view of order dated 29.10.1985 at this late stage when he has crossed 60 years of age. Respondent No. 4 is stated to be working on substantive post of teacher in Wood Craft and petitioner is out of service for last about 25 years. His appointment having been made by Sri Vasudeo Pratap Narain Singh who had been injuncted in O.S. No. 751 of 1972

from interfering with affairs of the management, cannot be said to be valid.

9. For all the reasons stated above, the writ petition appears to have become infructuous by efflux of time and it is accordingly dismissed. No order as to costs. Writ petition dismissed.