
(2013) 05 AHC CK 0224

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27700 of 2013

Kamta Prasad Dubey

APPELLANT

Vs

State of U.P. Through Its Secretary, Ministry of Basic Educa-
tion, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2013) 05 AHC CK 0224

Hon'ble Judges : Amreshwar Pratap Sahi, J

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.

Heard learned counsel for the petitioner and Sri Mrigraj Singh for the District Basic Education Officer.

The claim of the petitioner for payment of salary from government funds has been rejected on the ground that the petitioner's appointment is in violation of the upper age limit prescribed under the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Ministerial Staff and Group "D" Employees) Rules, 1984.

The institution was brought under the grantinaid list in 2006. The petitioner claims that he was appointed in the institution in 1982 but on the posts being sanctioned the claim of the petitioner was forwarded to the District Basic Education Officer, Jaunpur for approval which was granted on 18.8.1990. A copy of the approval order has been filed as Annexure 3 to the writ petition.

Learned counsel for the petitioner contends that when salary was not being paid, he approached this Court by filing writ petition no. 45451 of 2012 which was disposed of on 7th September, 2012 with a direction to the Regional Level Committee to decide the claim of the petitioner. This had been done when the petitioner had not been extended the benefit of payment of salary after the institution was brought under the grantinaid list in 2006. The District Basic

Education Officer on the basis of such grant had extended the benefit to only four employees as indicated in the order dated 28.3.2007. With regard to balance of the employees including the petitioner it was observed that their claim shall be examined by the Regional Level Committee and appropriate orders shall be passed.

Accordingly, in view of the directions issued by this Court the matter was examined by the Assistant Director of Education (Basic) who has passed the order after a direction was issued in a contempt application subsequently filed. The impugned order records that the petitioner would not be entitled for payment of salary as his very appointment is invalid and as such he is not entitled to the salary from government funds. The reasoning given is that the petitioner was appointed subsequent to the approval order dated 18.8.1990 on which date he had crossed the age limit of 35 years as prescribed under the rules and was aged 36 years 8 months and 17 days, and consequently, was not entitled to payment of salary. It is this reason which has been assailed by the petitioner contending that his appointment was of 1982 and not as projected in the impugned order.

Having heard learned counsel for the parties, the fact that the petitioner had crossed the age of 35 years on the date when approval was granted is undisputed. The claim of the petitioner rests on the fact that he had been appointed much earlier in 1982.

In the opinion of the court, Rule 16 of the 1984 Rules, clearly prescribes that the management has to offer appointment to the candidates selected only on receipt of the communication of approval from the competent authority, namely, the Basic Education Officer. The letter of appointment therefore can be dispatched and the post can be offered only after the approval is made by the District Basic Education Officer.

In the instant case the approval is of 1990 which fact remains undisputed. The petitioner claims appointment in 1982 which is impermissible as the alleged appointment of 1982 was prior to the enforcement of the 1984 Rules and was not even approved or sanctioned by any rule. The petitioner accepted his fresh engagement on approval in 1990 which also stands reflected by the language employed in the approval order. The claim of 1982 therefore has no significance in law. In the aforesaid circumstances, the relevant date for computing the upper age limit of the petitioner has been rightly assessed in the impugned order which does not call for any interference.

The writ petition is dismissed with the aforesaid observations.