
(2010) 04 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16323 of 2010

Krishna Kant Soni

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : (2010) 04 AHC CK 0172

Hon'ble Judges : Arun Tandon, J

Final Decision : Disposed Of

Judgement

Arun Tandon, J.—This petition is one of the classic case where the authorities of Education Department of State of U. P., have been passing orders without actually verifying the correct position with regards to the availability of vacancies against sanctioned post in recognized intermediate colleges as would be clear from following facts.

2. The Director Secondary Education U.P. Lucknow vide order dated 8.2.2007 directed that Shiv Kumar Khare and Saket Kumar Pateriya who were working as subject experts in the institution to be absorbed against two vacancies of lecturer mathematics in Vipin Bihari Inter College, Jhansi herein after referred to as the institution. The Regional Joint Director of Education, Jhansi Mandal, Jhansi on 30.5.2007 forwarded a letter dated 15.5.2007 to the Director informing him that such absorption has been made against two posts which were within the quota for promotion of lecturer Mathematics and therefore, Shiv Kumar Khare and Saket Kumar Pateriya be absorbed in any other institution. By means of other letter dated 30.5.2007 the Joint Director of Education realizing that no Amelan against such vacancy within the promotion quota was permissible stayed the payment of salary to the aforesaid two teachers till further orders. With the change of the Joint Director of Education, Jhansi on 5.10.2007 another order was issued stating that since instructions from the Director are awaited, the payment of salary to the aforesaid two teachers be continued and the order dated 30.5.2007 is set aside. The payment of salary to the teachers accordingly started

from the said exchequer.

3. This writ petition was filed by one Sri Krishna Kant Soni who has been selected for the post of lecturer mathematics and was recommended for appointment in Vipin Bihari Inter College, Jhansi by the U.P. Secondary Education Service Selection Board. He has not been permitted to join on the post of lecturer mathematics in Vipin Bihari Inter College, Jhansi because of non availability of the post. On the application of the petitioner the District Inspector of Schools and Joint Director of Education recommended placement of petitioner in another institution vide letter dated 6.6.2008 which was followed by the order of Director of Education dated 5.9.2008. Petitioner has therefore, approached this Court by this petition. A plea has been raised that two subject experts have wrongly been absorbed against the post of lecturer mathematics in the institution because of which his appointment is not being made to.

4. This Court while entertaining the writ petition on 29.3.2010 required the Joint Director of Education to explain as to how Shiv Kumar Khare and Saket Kumar Pateriya could be absorbed against post of lecturer mathematics in the institution.

5. A counteraffidavit has been filed by the Regional Joint Director of Education and following facts have been stated :

6. According to the report of the Committee constituted for verifying the number of posts created in the institution it has been reported that there are only two sanctioned posts of lecturer mathematics in the institution and against these two posts four persons are actually working and are being paid salary through State exchequer. It has been stated that in view of said fact a recommendation has been made to the Director of Education for necessary action in the matter and till then, the payment of salary to the two teachers who were absorbed as subject experts has been stayed.

7. An affidavit has been filed by one L.T. Grade Teacher of the institution namely Arun Kumar Verma claiming promotion on the post of lecturer mathematics in the institution. In the affidavit it is stated that he has filed a writ petition in the year 2007 wherein the Secretary of Secondary Education, Director Secondary Education, Joint Director of Education, Jhansi Region, Jhansi and District Inspector of Schools are parties. The authorities have not chosen to file any counteraffidavit in the said writ petition although more than 3 years have been passed and in between all kind of adjustment have been made against the vacancies which are either non existent or within the promotion quota.

8. Today, on instructions from Joint Director of Education, it has been stated by the Standing Counsel that it is the Management which has been misleading the authorities and that the authorities are not aware about the exact number of posts available in the institution, as no letters creating the posts are available. They have acted in good faith in believing the Management.

9. It is beyond comprehension of any reasonable man that the officers of the

State who are entrusted with the duty to ensure that appointments are made in accordance with the statutory provisions and against available vacancies only within the existing posts, can take such a stand i.e., they are not aware of the number of posts created for the institution and have relied upon the information supplied by the Management. Such stand of the Department only leads to a situation where unauthorized payment from State exchequer is made to the persons against vacancies which are in fact not available in the institution.

10. Learned Standing Counsel has been fair enough to state before this Court that since actual strength district wise and institution wise of Intermediate Colleges is not known, orders resulting in payment of salary are issued against posts in excess of those actually created under Section 9 of U.P. Act No. 24 of 1971. This Court may record that situation has been so created by the State authorities themselves inasmuch as no authority has cared till date to either determine the cadre strength institution wise, district wise or to limit the appointments in recognized and aided institutions strictly in accordance with the Manak which has been prescribed under the Government order dated 20.9.1977.

11. The Government order dated 20.9.1977 is not being given effect to by the officers, including the Director. In result, uncalled for litigation is generated and loss to public exchequer is caused. The money which could be utilized for appointment of valid teachers and for other purposes for imparting education, is being wasted because of illegal payments being made to persons working against non sanctioned posts.

12. Let the Secretary file his personal affidavit after obtaining necessary information from the Regional Joint Director of Education as well as from the District Inspector of Schools qua the number of posts created for each institution in the District of Jhansi within two weeks from today. In order to curb such uncalled for situations, he is further directed to ensure that district wise and institution wise cadre is determined. The State may with reference to the Government order dated 20.9.1977 determine the sanctioned posts wherever letters creating the posts of Competent Authorities under Section 9 of U.P. Act No. 24 of 1971 are not available.

13. For the purpose, the Secretary will appoint the Regional Joint Director of Education as the Nodal Officer who will obtain information from all the recognized and aided institutions qua the number of posts duly created and sanctioned for the institution alongwith original documents which could establish the said creation.

14. In case, letters creating the posts are not available and teachers are getting salary through State exchequer, necessary action shall be taken in accordance with the Government order dated 20.9.1977 which provides that if any employee in excess of manak is actually working in the institution since prior to 1977, his services may be continued as such but no fresh appointment shall be made after he relinquish the post.

15. Secretary shall ensure that determination of posts created is completed during summer vacations.

16. In any case, no appointment beyond that permissible under law namely against sanctioned post, or those working since prior to the issuance of the Government order dated 20.9.1977 shall be made. In order to award further complications, the Secretary is also at liberty to issue such further directions qua future appointment being kept in abeyance (except appointment of substantive vacancies on the recommendation of the U.P. Secondary Education Board). This Court has been informed that similar orders asking the Secretary to furnish information qua number of posts created district wise and institution wise have already been passed in respect of District Ballia, Basti and Kushinigar.

17. The Director is required to take appropriate action on the recommendation in terms of the letter of the District Inspector of Schools dated 3.4.2010 and 17.4.2010. The inquiry against all responsible as recommended must be completed and appropriate action be taken by 17.5.2010.

Decided accordingly