
(2013) 07 AHC CK 0305

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1544 (SS) of 2010

Lal Bahadur

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2013) 4 UPLBEC 2769

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : Ajay Kumar Jaiswal and Sri Jay Narain Mishra, for the Appellant;

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri Jay Narain Mishra, learned Counsel for the petitioner and learned Standing Counsel appearing for the respondents. By means of the instant writ petition the petitioner, who is working on Class-IV post in Vasi Naqvi National Inter College, Raebareli, has prayed that appropriate direction be issued to the District Inspector of Schools, Raebareli to pay him alleged arrears of salary for the period from 26.5.2008 to 31.5.2009.

2. The facts of the case, which are not in dispute, are that on occurrence of a clear vacancy in Class-IV post, the Institution sought permission of the District Inspector of Schools, Raebareli to fill up the said vacancy which was granted by the District Inspector of Schools, Raebareli by means of letter/order dated 18.2.2008. On getting the permission of the District Inspector of Schools to fill up the post, selection procedure was resorted to and in the said selection it is alleged that petitioner was selected.

3. The necessary papers were sent to the office of District Inspector of Schools seeking his approval as required under Regulation 101 of Chapter III of the Regulations framed under U.P. Intermediate Education Act. District Inspector of Schools appears to have referred the matter to the Joint Director, Secondary Education, VI Region, Lucknow by means of his letter dated 11.11.2008. The

Joint Director, Secondary Education ultimately passed an order on 6.3.2009 for payment of salary to the petitioner after selection of the petitioner was approved.

4. Learned Counsel for the petitioner states that pursuant to the order dated 6.3.2009 whereby Joint Director, Secondary Education accorded financial approval to the appointment of the petitioner, District Inspector of Schools, Raebareli by means of letter dated 23.3.2009 accorded his approval to the selection of the petitioner and thus, according to the learned Counsel for the petitioner, petitioner became entitled to be paid his salary from the State Exchequer only after approval of his selection was accorded by the District Inspector of Schools by means of letter dated 23.3.2009 wherein it has been directed that petitioner be paid salary w.e.f. the date of his joining.

5. Learned Counsel for the petitioner has submitted that petitioner is regularly being paid his salary of the post being occupied by him with effect from the month of June, 2009. His submission, however, is that since the appointment of the petitioner was made with the prior permission of the District inspector of Schools, which undoubtedly was granted by him on 18.2.2008, as such, petitioner is entitled to be paid salary w.e.f. the date of issuance of appointment order to the petitioner i.e. 18.5.2008.

6. Having considered the respective arguments advanced by the learned Counsels for the petitioner and leaned Counsel for the State, the issue which arises for consideration is as to whether in the instant case appointment order to the petitioner was rightly issued by the appointing authority, namely, Principal of the Institution on 18.5.2008 with the approval of the District Inspector of Schools as required under Regulation 101 of Chapter III of the Regulations framed under U.P. Intermediate Education Act or not.

7. If it is found that the appointment order to the petitioner was issued rightly on 18.5.2008 by the appointing authority, it is only in this situation that the petitioner can be held to be entitled to be paid salary from the said date of appointment i.e. w.e.f. 18.5.2008.

8. The appointment of non-teaching staff in an Institution recognized under the U.P. Intermediate Education Act is governed by the Regulations framed under the Intermediate Education Act governing the service conditions of non-teaching staff. Prior to its amendment on 13.12.2009. Regulation 101 of Chapter III of the Regulations framed under U.P. Intermediate Education Act is as under:

9. In the year 2009, the aforesaid Regulation has, however, been substituted by the following:

10. In the instant case, selection was held in the year 2008 as such, the provision contained in Regulation 101 of Chapter III of the Regulations framed under U.P. Intermediate Education Act as it existed prior to its amendment in the year 2009 will be applicable.

11. A perusal of the unamended Regulation 101 clearly reveals that appointing

authority cannot make an appointment of non-teaching staff except with the prior approval of the District Inspector of Schools. The word "prior approval" has been subject matter of the discussion in various cases decided by this Court. In this regard reference may be had to the judgment of this Court in the case of Amit Kumar Vs. District Inspector of Schools, Jaunpur and another, wherein it has been held by this Court that Regulation 101 clearly expresses that prior approval of District Inspector of Schools is a condition precedent for making any appointment on a non-teaching post. Relevant extract of the aforesaid judgment is quoted below.

From the aforesaid meaning of the word "except" it is clear that the expression "except" has been used in Regulation 101 to mean "only". Therefore, the appointing authority before making appointment on a non-teaching post could make any appointment only after obtaining prior approval of DIOS. In my opinion use of these two words "shall" and "except" have been used in imperative terms. And clearly express that prior approval of DIOS is a condition precedent for making any appointment on a non-teaching post. Use of word "except" with the prior approval of DIOS does not leave any discretion to the appointing authority to make any appointment without obtaining his prior approval. If Regulation 101 is treated to be directory then the appointing authority could make appointment on non-teaching post even without prior approval of the DIOS. It would result in giving power to the appointing authority to make appointment first and thereafter obtain financial approval. This was not the intention of legislature or the Rule making authority. And it clearly intended that before making any appointment the appointing authority must obtain prior approval of the DIOS. The legislative intent has to be given effect to while interpreting regulatory provisions of Regulation 101. Regulations 103 to 106 to Regulations further make it clear that the Regulation 101 cannot be construed as permissive or directory. Further the procedural safeguard contained in Regulation 101, making it obligatory for the appointing authority in matters of making appointment on non-teaching posts, not to fill the vacancy except with the prior approval of the DIOS, has an element of public interest. Regulation 103 providing for appointments under the Dying in Harness Rules makes it obligatory on the DIOS to provide appointment to dependents not only in the institution where the deceased was working but any other institution, therefore, the only reasonable interpretation which can be given to the two words "shall" and "except" used in Regulation 101 is that these expressions are imperative and the regulatory provision contained in Regulation 101 is mandatory and cannot be treated to be directory. The requirement of obtaining prior approval of DIOS is not an empty formality. It is in public interest. The appointment of petitioner being contrary to Regulation 101 did not vest any right in him either to claim his appointment as regular or any salary.

12. Regulation 101 was again interpreted by a Division Bench of this Court in the case of Jagdish Singh v. State of U.P. and others, reported in 2006 (24) LCD 1712, wherein after discussing entire provisions on the subject, the Division

Bench of this Court has clearly held that prior approval contemplated in Regulation 101 is the prior approval of the District Inspector of Schools after completion of the process of selection and before issuance of appointment letter to the selected candidates. This Court in the aforesaid judgment of Jagdish Singh v. State of U.P. and others (supra) has clearly discussed the difference between and i.e. "prior approval" and "permission". After discussing the issue, it has been held by this Court in the said case that what Regulation 101 requires is that District Inspector of Schools will accord his approval to the selection made by the appointing authority and it is only after approval of the District Inspector of Schools to the selection that appointing authority can issue appointment order to the selected candidate.

13. In the instant case, admittedly, the approval by the District Inspector of Schools to the selection held by the appointing authority, namely, Principal was given only on 23.3.2009 and not prior to the said date. Thus, any action on the part of the Principal of the Institution in issuing the appointment letter to the petitioner prior to the aforesaid date i.e. prior to 23.3.2009 does not carry any meaning. Reliance being placed by the learned Counsel for the petitioner on the appointment letter dated 17.5.2008, in this view of the matter, is not tenable. His submission that entire process was held after seeking permission of the District Inspector of Schools also does not come to the rescue of the petitioner so far as his claim for payment of salary w.e.f. 18.5.2008 is concerned for the reason that this Court in the case of Jagdish Singh v. State of U.P. and others (supra) has clarified that it is not the permission to proceed with the selection to fill up the post which is required to be obtained; rather it is the selection process which is required to be approved before issuance of the appointment letter.

14. The Court has no hesitation to hold that Principal of the Institution concerned could not have issued any appointment letter on 17.5.2008 or even on any other subsequent date prior to the date of approval of the selection by the District Inspector of Schools i.e. prior to 23.3.2009.

15. Learned Counsel for the petitioner has, however, placed reliance on judgment of this Court in the case of Ajit Ram Vs. District Inspector of Schools, Joint Director of Education, Azamgarh Region, State of U.P., . A perusal of the aforesaid judgment in the case of Ajit Ram v. District Inspector of Schools, Ballia and others (supra) reveals that the said judgment does not have any application to the facts of the instant case for the reason that the aforesaid judgment deals with the power of the Regional Level Committee in respect of payment of salary under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. The said judgment does not deal with issue of "prior" "approval" occurring in Regulation 101 of Chapter III of Regulations framed under U.P. Intermediate Education Act.

16. In view of discussions made and reasons given above, I am of the considered opinion that writ petition lacks merit and is, thus, liable to be dismissed.

17. Accordingly, writ petition is dismissed. However, there will be no order as to costs.