
(1996) 11 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1540 of 1994

Markandey Singh

APPELLANT

Vs

State of U.P.through Education Secy.U.P.Lucknow & Ors.

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Citation : (1996) 11 AHC CK 0079

Hon'ble Judges : M.Katju, J

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned order dated 23111993. Annexure8 to the writ petition and for a mandamus directing the respondents to permit the petitioner to continue to function as an ad hoc teacher in Lecturer's grade in Hindi in National Inter College, Harraiya, district Basti and to pay the arrears of salary to him.

2. I have heard learned counsel for the petitioner and learned Standing Counsel. It is alleged in Paragraph 2 of the writ petition that a substantive vacancy of lecturer had occurred on the retirement of a permanent lecturer on 3061987. The petitioner had been working as L.T. grade teacher since August 1970. On 241991 the petitioner wrote an application to the Manager requesting for his promotion as lecturer in Hindi. He sent another application on 2441991. True copies of the said applications are Annexures 1, 2 and 3 to the writ petition. Thereafter, the Committee of Management promoted the petitioner vide resolution dated 3061991 and promotion letter dated 171991 was issued, true copy of which is Annexure4. Thereafter the Committee of Management sent the papers for approval to the District Inspector of School on 171991 vide Annexure 5 to the petition. However, despite several reminders the District Inspector of Schools did not give approval to the petitioner's promotion and the petitioner was not being paid salary of lecturer. The petitioner made a representation to the District Inspector of Schools which was rejected on 23111993. Hence this petition.

3. A counteraffidavit has been filed on behalf of the respondent No. 4. In paragraph 4 of the same it is alleged that although a vacancy of lecturer in Hindi occurred on 3061987 on the retirement of one Bramanand Srivastava but for four years this vacancy was not filled in and thereafter on 3061991 it was filled in without taking permission of the Department. It was not permissible to fill in the vacancy as was done by the Manager on 3061991 as it was in violation of Chapter II Rule 26 of the Regulations. In view of this provision it is alleged that three months after the occurrence of the vacancy the post lapsed. In paragraph 6 it is alleged that the papers dated 171991 were not sent to the District Inspector of Schools. In paragraph 8 of the counteraffidavit it is stated that the requisite papers were not sent by the Manager to the Secondary Education Service Commission and hence the ad hoc promotion of the petitioner was not valid. Moreover, there was violation of Chapter II Rule 20 because the post had lapsed. In paragraph 10 it is stated that the petitioner's representation was rejected on 23111993 after hearing the parties and this was communicated to the petitioner and hence the allegation that no action was taken by the District Inspector of Schools was not correct.

4. The contention on behalf of the respondent that the post had lapsed because it was not filled in with in three months cannot be accepted in view of the decision of this Court in *Yogendra Nath Singh v. District Inspector of Schools, Jaunpur* and another, 1991 (1) UPLBEC 484 where it has been held that after the enforcement of the U.P. Secondary Education Service Commission, Act, 1982 the legal position has been altered and the mere fact that the vacancy was not filled in with in three months is no longer a ground for holding that the post had lapsed. However, in the impugned order dated 23111993 several reasons have been given for rejecting the claim of the petitioner for promotion e.g. it is stated there in that the relevant papers were not sent along with the letter of the Manager dated 1681993. It is also stated that there is some doubt about the resolution of the Committee of Management dated 3061991 for the reasons mentioned in the order dated 23111993. The Principal was not present in the meeting of the Committee of Management for deciding the promotion and some members were not given notices of the meeting which again creates some suspicions about the resolution. The statement in the impugned order dated 23111993 are statements of fact and it is not possible for this Court in writ jurisdiction to go into the correctness of these statements. Hence this petition is dismissed. However, it is left open to the respondents to fill in the vacancy in accordance with law.