

(1985) 01 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1358 of 1982

Mehar Singh

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 09-01-1985

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 6, 6(2), 6(3)

Citation : (1985) AWC 699

Hon'ble Judges : A.N. Dikshita, J;A. Banerji, J

Bench : Division Bench

Advocate : Vijai Bahadur, for the Appellant; Vinod Kumar, for the Respondent

Final Decision : Allowed

Judgement

A. Banerji, J.—This writ petition has been filed by Mehar Singh, a lecturer in the H.A.V. Inter College, Deoband, district Saharanpur. He is aggrieved by an order dated 21-1-1982 by which the District Inspector of Schools had rescinded his earlier order approving his appointment as a lecturer in Civics in the aforementioned College. The Petitioner claims that the impugned order is bad in law and the District Inspector of Schools had no jurisdiction to review his previous order. He had been properly selected and appointed as the lecturer in Civics, and the Respondent No. 2 Jhabal Singh was not qualified even to be appointed as a lecturer in Civics. The writ petition was filed on 4-2-82 and an interim order was passed staying the operation of the impugned order passed by the District Inspector of Schools. The interim order was also confirmed on 27-5-82.

2. The Petitioner holds the degrees of Master of Arts (M.A.) in Hindi, Sanskrit, Political Science and Sociology and also has the degrees of Sahitya Ratna and Bachelor in Teaching. Initially the Petitioner was appointed in Sir Shree Ram Higher Secondary School, Daurala district Meerut in L.T. grade on 5-8-68. The Petitioner had applied and was selected for appointment as a teacher in L.T. grade in H.A.V. Inter College, Deoband, district Saharanpur, on 8-9-74,

hereinafter referred to as College. He resigned from the previous Institution at Daurala and joined the College with effect from 3-9-74. After sometime there was a vacancy in the lecturer grade in the College. The Committee of Management of the College met on 11-11-1981 and decided to promote the Petitioner in the Lecturer's grade to teach Civics. A resolution passed in the above meeting was forwarded to the District Inspector of Schools, Saharanpur for approval. The latter approved the promotion of the Petitioner in the lecturer's grade on 27-11-1981. One Shri Jhabal Singh, a teacher of the College was aggrieved by this promotion and made a representation to the District Inspector of Schools on 19-12-1981. This application was time-barred. The District Inspector of Schools called for a report from the Committee of Management on 26-12-1981. A reminder was sent on 4-1-1982. The Committee of Management submitted a report to the District Inspector of Schools on 11-1-1982. In the reply it was pointed out that Shri Jhabal Singh should have submitted his representation through proper channel viz., the Committee of Management. Secondly, the senior-most teacher in Hindi Sri Babu Ram Gupta was given promotion in the lecturer's grade in Hindi while the Petitioner was granted promotion in the lecturer's grade for teaching Civics. Shri Jhabal Singh was not eligible to teach Civics. He was eligible only for promotion in Hindi but since Sri Babu Ram Gupta was senior to him the latter was promoted. The District Inspector of Schools after considering the representation as well as the comments of the Committee of Management sent a letter dated 12-1-1982 to the Manager of the College indicating that the representation of Shri Jhaba Singh was baseless and without merits and the promotion made by the Committee of Management was in accordance with rules and correct and at such the earlier confirmation would stand. By a separate order the District Inspector of Schools also released the salary of the teachers who were promoted as lecturers. The Petitioner thereupon started drawing salary in the lecturer's grade. However, the Manager of the College received a letter of the District Inspector of Schools dated 21-1-1982 indicating that he had withdrawn the approval given for the promotion of the Petitioner. A copy of this letter has been marked as Annexure 7 to the writ petition. The reason given for withdrawing the earlier approval to the promotion of the Petitioner is that Shri Jhabal Singh was worried because his alleged seniority had been ignored. The Petitioner aggrieved by the above order has filed the present writ petition and sought the relief for quashing of the order (Annexure 7).

3. A counter affidavit has been filed by Jhabal Singh wherein he has alleged that he is senior to the Petitioner in service in the College. Shri Babu Ram Gupta who was selected for the post of lecturer in Hindi had also a Master's Degree in Political Science and as such he ought to have been appointed a lecturer in Civics and not the Petitioner. In that event Jhabal Singh, being senior to the Petitioner would have been appointed lecturer in Hindi. By ignoring Shri Jhabal Singh who was senior to the Petitioner, a grave injustice had been caused. According to him a junior teacher had been given preference over him and this could not be

sustained. Consequently, the District Inspector of Schools was justified in recalling the earlier approval granted to the Petitioner and there was no error or illegality in the impugned order passed by the District Inspector of Schools.

4. A rejoinder affidavit has been filed reiterating the stand taken by the Petitioner in the writ petition. It is significant to note that the District Inspector of Schools, although served, did not file any counter affidavit.

5. Learned Counsel for the Petitioner raised three contentions. Firstly, the District Inspector of Schools had no power to review his order giving approval to the appointment of the Petitioner as lecturer. Secondly, no reasons had been set out for withdrawing the grant of approval earlier and as such the impugned order (Annexure 7) was bad in law. Thirdly, even by setting aside the order of approval Shri Jhabal Singh could not get any relief for the post of lecturer in Hindi as it had already been filled up by Shri Babu Ram Gupta and Shri Jhabal Singh was not eligible to be appointed a lecturer in Civics being not qualified for the same. We have heard learned Counsel for the parties, Sarvasri R.C. Srivastava and B.D. Agarwal.

6. It is apparent from the material on record that there were two posts for lecturers in the College to be filled up in the year 1981. The Committee of Management recommended the names of the Petitioner as the lecturer for Civics and Shri Babu Ram Gupta as the lecturer for Hindi. Shri Jhabal Singh, who was also a senior teacher in the College and taught Hindi, was not recommended. He was junior to Shri Babu Ram Gupta who had been selected for the post of lecturer in Hindi. Shri Jhabal Singh was of course senior to the Petitioner, as far as the length of service in the College was concerned but Shri Jhabal Singh only taught Hindi and had neither any degree in Political Science nor taught Civics. The Petitioner, on the other hand, had Master's degrees in four subjects including Political Science and had also teaching experience in Civics, these two persons were selected and their names were recommended for approval by the District Inspector of Schools. Their names were approved by the District Inspector of Schools by an order dated 27-11-1981. However by an order dated 21-1-1982 the approval was withdrawn by the District Inspector of Schools.

7. The first question to be considered now is whether there is any power in the District Inspector of Schools to review his order giving approval to the promotion of the Petitioner. It is well settled that review is a creature of statute. There can be no review unless the law provides for it. There is nothing in the U.P. Intermediate Education Act or the Regulations framed thereunder giving power of review to the District Inspector of Schools. We are fortified in our opinion for a Division Bench of this Court in the case of *Radhey Shyam Chaube v. District Inspector of Schools* 1977 ALJ 451 has taken a similar view. Further in the case of *Committee of Management, Inter College, Nonapur v. District Inspector of Schools, Kanpur* 1979 ALJ 33 a Division Bench of this Court reiterated the above view and made the following further observation:

An exception to this rule has, however, been made and it is to the effect that the District Inspector of Schools could recall or revoke his order if it is obtained by mistake, misrepresentation or fraud. And even this cannot be done unless an opportunity of hearing or explanation has been given to the person who will be affected by such order.

8. Reference may also be made to another Division Bench decision of this Court in the case of Gauri Shanker Rai v. Dr. Ram Lakhan Pandey 1964 fid. Cases 39 wherein it has been laid down that the District Inspector of Schools has no power to review his order passed on merits recognising the Managing Committee as a body which is for the time being in effective control of the management of the institution. The Division Bench further observed that the order of review by the District Inspector of Schools without affording an opportunity to the parties rendered the order as being without jurisdiction.

9. In the present case once the District Inspector of Schools granted approval to the promotion and appointment of (he Petitioner as a lecturer in Civics in the College by his order dated 27-11-1981, he had no power to review that order unless it was held by the District Inspector of Schools that the approval had been obtained by mistake, misrepresentation or fraud practised upon the District Inspector of Schools. A perusal of the impugned order, Annexure 7, does not real any case of mistake, misrepresentation or fraud practised upon the District Inspector of Schools. The earlier order of 27-11-1961 unmistakably shows that representation of Shri Jhabal Singh was without merits whereas the appointment of the Petitioner was in accordance with rules, this was a decision on the merits, it could not be interfered with or set aside on review. Further, there was nothing to show that the order suffered from any mistake, misrepresentation or fraud. Consequently, the impugned order passed by the District Inspector of Schools was wholly without jurisdiction and is liable to be set aside.

10. Secondly, the order is liable to be quashed on another ground. There is nothing to indicate that the District Inspector of Schools gave any opportunity to the Petitioner to show cause -as to why the order be not set aside. Neither any notice nor any opportunity was given to the Petitioner before the order dated 27-11-1981 was recalled by the order dated 21-1-1982. This failure on the part of the District Inspector of Schools was in breach of the rules of natural justice and consequently vitiated his order. Further, the reason set out by the District Inspector of Schools for withdrawing the order of approval dated 27-11-1981 is no reason in the eye of law. Merely because one party was dissatisfied or worried that he had not been given his due seniority is no ground at all. As seen above, unless there was a mistake, misrepresentation or fraud practised upon the District Inspector of Schools his order could not be challenged.

11. The last contention raised on behalf of the Petitioner was that even on merits the Respondent Jhabal Singh had no case. Jhabal Singh was eligible to be appointed a lecturer in Hindi only. However since Sri Babu Ram Gupta was senior to him as a teacher in Hindi, the latter was entitled to be appointed in preference

to Jhabal Singh and this had been done. Babu Ram Gupta's appointment had not been called in question by Jhabal Singh consequently Jhabal Singh is not entitled to be appointed a lecturer in Hindi. He has, however challenged the appointment of the Petitioner, who has been appointed a lecturer in Civics. Jhabal Singh is not eligible to be appointed a lecturer in Civics. He has no Master's degree in Political Science nor has he any teaching experience in the subject. Being ineligible for being appointed a lecturer in Civics his application for withdrawing the approval to the appointment of the Petitioner as a lecturer in Civics is wholly without merits. We are, therefore, of the opinion that Jhabal Singh was not eligible to be appointed a lecturer in Civics and as such he had no right to challenge the appointment of the Petitioner as a lecturer in Civics.

12. The contention of Jhabal Singh that he was senior to the Petitioner has also no merits. Jhabal Singh was certainly appointed as a teacher in the College earlier than the Petitioner but that would not decide the matter. Regulation 6 of Chapter II of the Regulations made under the U.P. Intermediate Education Act makes it clear that for the purpose of eligibility the length of service of a person as a teacher in the LT or CT grade shall count unless interrupted by removal, dismissal or reduction to a lower post. The Petitioner was appointed as a lecturer in L.T. grade in the earlier institution in August 1968. He had put in more than six year's service as such in the previous institution before he joined the College. Shri Jhabal Singh got the L.T. grade only on 7-8-1983. His length of service as a teacher in the L.T. grade was undoubtedly less than that of the Petitioner. However it is true that in the College the length of service of Jhabal Singh was more than that of the Petitioner but we are primarily concerned with the question of eligibility under Regulation 6. Reference may also be made to Regulation 6(2) which says that selection for promotion to the next higher grade shall be made on the basis of service-standing, achievements in service, academic qualification and integrity. It is obvious from the above that the mere length of service in the Institution is not the only factor for promotion to the next higher grade. Regulation 6(3) also makes it clear that where there are more than one teacher in the L.T. grade eligible for promotion to the post of lecturer in any subject preference is to be given to the teacher who is the senior most amongst them in that grade. This has a reference to the subject. In the present case for the post of lecturer in Civics, there was only one teacher in L.T. grade eligible and that was the Petitioner. The Respondent was not a lecturer in the subject of Civics and as such he could not be a candidate for promotion to the post of lecturer in Civics.

13. Learned Counsel for the Respondent raised a contention that in any event even if the impugned order is quashed a direction should be issued to the District Inspector of schools to reconsider the matter in accordance with law. We see no justification for doing so. The District Inspector of Schools having given his approval to the promotion of the Petitioner by the order dated 27-11-1981 had no jurisdiction to recall that order unless he found that the order was vitiated by some mistake, misrepresentation or fraud on the District Inspector of Schools. Since no such plea was raised, we see no reason to direct the District Inspector

of Schools to re-consider the matter.

14. For the reasons given above, this writ petition must succeed and is accordingly allowed. The impugned order dated 21-1-1982 is hereby quashed and set aside. However, considering that the parties are teachers in the College, we direct them to bear their own costs.