
(2011) 04 AHC CK 0111
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 75078 of 2010

Mohd. Jumai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-04-2011

Acts Referred:

Citation : (2011) 4 ADJ 745

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Writ petition is directed against the order dated 16.8.2010 passed by District Inspector of Schools, Basti (hereinafter referred to as "DIOS") declining to grant permission/approval to appointment of Petitioner on the post of Sweeper on the ground that nothing has been placed before him to show that the prescribed procedure was followed such as proposal for appointment, advertisement in news paper, constitution of selection committee and appointment letter etc. Learned Counsel for Petitioner contended that there is no requirement of sending any document to the DIOS before the process of selection and appointment in respect to recruitment on the post of Sweeper in view of proviso to Regulation 101 as held by this Court in Mohan Ram v. State of U.P. and Ors. 2009 (4) ADJ 460 : 2009 (3) ESC 1730 (All). He further submitted that the vacancy was advertised in daily news paper "Swatantra Bharat" dated 7.10.2000, interview was held on 22.10.2000 wherein Petitioner was selected by the selection committee and thereafter he was appointed by order 23.10.2000. All these documents were made available to DIOS but ignoring the same, he has passed the impugned order for the reasons other than bona fide.

2. Learned Standing Counsel, on the contrary, tried to justify the impugned order for the reason stated therein.

3. From the perusal of record, it is evident that post of Sweeper was vacant in

Janta Shiksha Niketan Inter College, Odwara, District Basti, which is a privately managed Inter College, recognized by High School and Intermediate Board under the provisions of U.P. Intermediate Education Act, 1921 and is receiving grant-in-aid governed by provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teacher and Other Employees) Act, 1971. DIOS has observed that documents relating to appointment of Petitioner were neither available in the College nor he produced the same. However, lack of application of mind on the part of Respondent No. 2 is evident from the fact that in para 5 of writ petition, Petitioner has stated about publication of advertisement of the vacancy in daily news paper "Swatantra Bharat" dated 7.10.2000, photocopy whereof has been placed on record as Annexure-1 to writ petition wherein he has mentioned name of news paper and date of publication, but in the counter-affidavit in para 10 it is stated that from perusal of Annexure 1 to writ petition, it is not clear that in which news papers the same was published. Similarly it is admitted in para 11 of counter-affidavit that documents relating to appointment of Petitioner were filed in the office of DIOS but no evidence to show as to who were the member of selection committee and what proceeding was done was produced by Petitioner, hence, the appointment is against the provisions of Act. I required learned Standing Counsel to show as to under which provision all these orders were required to be placed before DIOS, if prima facie the documents like publication of vacancy in news paper and appointment letter are available and the existence of vacancy is also not in dispute. This is so particular when the matter relates to the post which is lowest in the institution concerned. For such an appointment, if a person is running from pillar to post for the last ten years, despite having been appointed as long back as on 23.10.2000. It is a matter of great concern as to in what matter, the educational authorities, instead of working for the welfare of institutions and public at large, are trying to act in a most unmindful illegal manner causing harassment to the public at large that too without any substantial justification.

4. In the circumstances, the writ petition is allowed. The impugned order dated 16.8.2010 (Annexure 10 to writ petition) passed by Respondent No. 2 is hereby set aside. The District Inspector of Schools, Basti, Respondent No. 2, shall pass a fresh order in accordance with law and in view of observations made hereinabove within fifteen days from the date of production of certified copy of this order and in case he decides to grant permission/approval to Petitioner's appointment from the respective date he was appointed, salary to Petitioner alongwith arrears, if any, shall be paid within one month thereafter.

5. Considering the fact that this is a second occasion that Petitioner had to come to this Court, when earlier also the stand of DIOS for declining to grant approval to Petitioner's appointment was found incorrect, in my view, Petitioner is entitled to cost which is quantified to Rs. 25,000/-, which shall be paid at the first instance by Respondent No. 1 to the Petitioner but it may be recovered personally from the officer concerned who held the office of DIOS at the relevant time and passed the impugned order, which has been set aside by this Court.