
(1990) 01 AHC CK 0059

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14802 of 1989

Munish Kumar Sharma

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 02-01-1990

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 16

Citation : (1990) 1 AWC 463

Hon'ble Judges : R.M. Sahai, J; R.A. Sharma, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Could services of an ad-hoc appointee against a substantive vacancy in an institution governed by U.P. State Universities Act and U.P. Higher Education Service Commission Act be dispensed with at any time as it was contrary to the procedure provided under the Act.

2. Procedural irregularity in appointment may be there as appointment of Petitioner was neither u/s 16 of Act XVI of 1980 nor it was in accordance with procedure provided in the Statutes framed under State University Act; but it could not be disputed that he was appointed by the Manager, may be on direction of a heavy weight, is fully qualified and his work has been commended by the Principal. Can the management turn round after nearly three years and claim that since it did not notify the vacancy as contemplated u/s 16 of Act or it did not select and appoint Petitioner as provided in the Statutes, therefore, he should quit. It would amount to deriving advantage of your own wrong. That is where equitable principle of estoppel intervenes. Any person on whose assurance the other party alters his position is estopped from turning round or going back on his promise. The Management therefore, cannot be permitted to dispense with services of Petitioner for not appointing him in accordance with procedure provided in the Act or Rules.

3. Objection could no doubt be taken by educational authorities as payment of salary of teachers of government aided degree colleges is also responsibility of government. But that stage does not appear to have reached, probably because the management did not choose to forward papers to the Inspector of Schools. In counter affidavit it is stated that Petitioner was appointed by Chhetra which runs the institution and paid the salary so that the cause of students may not suffer and now Chhetra was not willing to bear the expenses. May be, but these internal matters of the institution of which Petitioner could not have been aware. Management is the appointing authority its manager issued the appointment letter. Whether it was at the instance of Committee of Management or the Committee of Management accepted the recommendation made by Chhetra, could not have been known to Petitioner nor it was intimated to him. In ad-hoc appointments the scope for scrutiny by Educational Authorities is limited, namely, if appointee fulfilled qualifications, was appointed against the sanctioned strength and whether procedure provided under the Act was followed or not? It has not been stated in the counter-affidavit that Petitioner's appointment was against sanctioned strength nor it has been stated that he was not qualified. What is stated is that the appointment was made without issuing advertisement and constituting a selection committee. Although factum of notifying and advertising is disputed but assuming it was not issued the Management being authority it does not lie in its mouth to say that as Petitioner was not appointed by following procedure which did not touch upon eligibility, qualification or merit, therefore, his appointment was illegal no assistance can be derived from *A.K. Pathak v. Manorma Agniholri* 1971 ALJ 983 as an appointment made without approval of educational authorities under the Statute or rules cannot be placed at par with ad-hoc appointments where the scope of scrutiny by the Inspector of Schools or educational authorities is very limited Appointment without non approval provided by Act or rules is invalid. But ad-hoc appointments by Managements in absence of any provision for approval can be scrutinised primarily to ascertain if it was not beyond sanctioned strength or that the appointee was not qualified. In any case, after expiry of three years it does not lie in the mouth of management to say that the appointment was void as advertisement was not issued and the name of Petitioner was not processed by the Selection Committee, even though the appointment was made by Committee of Management. However, since the payment has to be made by the government, the management may now forward the papers to Inspector of Schools as was directed by this Court in Civil Misc. Writ No. 8694 of 1978 decided on 17th January, 1983 for scrutiny and appropriate orders.

4. In the result this petition succeeds and is allowed. The order dated 3rd July 1989 passed by the Principal is quashed. The Committee of Management is directed to send the papers about the ad-hoc appointment of Petitioner to Inspector of Schools for scrutiny, in light of observations made above. The Petitioner shall continue to work as teacher and paid his salary till a regularly selected candidate from the Commission joins or the appropriate orders are

passed by Inspector of Schools, whichever is earlier.