

(2009) 11 AHC CK 0219
In the Allahabad High Court

Narendra Kumar Shukla

APPELLANT

Vs

The State of U.P. and Others
Anil Kumar Misra Vs DIOS
and Another

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2009) 11 AHC CK 0219

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

A.P. Sahi, J.—The dispute that has arisen on account of passing of the order dated 1.10.2009 by the District Inspector of Schools in relation to the claim of seniority on the post of Clerk between the petitioner - Anil Kumar Misra in Writ Petition No. 28686 of 1993 and Narendra Kumar Shukla in Writ Petition No. 54594 of 2009, has made it imperative for the court to proceed to decide both the petitions together. The facts are so inter twined that both the petitions deserve to be disposed of simultaneously.

2. There is an institution by the name of Buddha Vidya Peeth Inter College, Birdpur, Siddharth Nagar. This institution is governed by the provisions of the U.P. Intermediate Education Act, 1921, and the Regulations framed thereunder. The power to make appointment against the post of Clerk (class-III) vests in the Committee of Management under Chapter-I Regulation 13 of the said Regulations. There are 4 posts in this cadre duly sanctioned by the State Government against which grant-in-aid is received. 3 out of the 4 posts are of Assistant Clerks and one post is of Head clerk. 2 of the posts were earlier occupied by one Indra Daman Pandey and Rajeshwar Chaudhary both of whom died. The third post of Assistant Clerk was occupied by Sri Narendra Mishra, who retired on 31.1.2009, and the post of Head-clerk which was occupied by Ram Saran Mishra, fell vacant on account of his retirement on 28.2.2009.

3. A permanent Lecturer in Biology of the institution Sri Vijay Kumar Mishra died-in-harness on 3.12.1992. The petitioner in the first writ petition, Anil Kumar Misra, is the son of Late Vijay Kumar Mishra, who claimed appointment on compassionate basis. Such appointment is contemplated under the amended Regulations that have been brought into force w.e.f. 30.7.1992 and contained in Regulations 101 to 106 of Chapter III of the same. It appears that Anil Kumar Mishra moved an application before the Manager of the institution who issued a letter of appointment in his favour on 24.2.1993. The claim of the petitioner had also been placed before the District Inspector of Schools seeking his approval and as per the Rules then existing, the District Level Committee appears to have processed the claim of the petitioner and pass an order for appointing Anil Kumar Mishra against a class-IV post. This is evident from the order of the District Inspector of Schools dated 15.2.1993 which is stated to have been dispatched from his office on 24.2.1993 and received by Anil Kumar Mishra on 27.2.1993. The contention of Sri Mishra is that as a matter of fact, the petitioner had already been appointed against a class-III post by the Manager and he joined on 1.3.1993 about which intimation had already been given to the District Inspector of Schools. The Manager of the institution also sent a letter to the District Inspector of Schools to grant approval to the appointment of Anil Kumar Mishra against a class-III post. It is to be noted that the appointment, which was offered to Anil Kumar Mishra by the District Inspector of Schools, was against a class-IV post in a different college namely Kisan Inter College, Uska Bazar, District - Siddharth Nagar.

4. The aforesaid appointment against a class-IV post offered to Anil Kumar Mishra appears to have not been accepted by him and he sent a representation to the District Inspector of Schools on 29.6.1993 that he is not ready to join against a class-IV post and that financial sanction should be granted to his appointment against a class-III post. The aforesaid representation of the petitioner had been sent in response to the communication of the District Inspector of Schools dated 22.6.1993 where it was clearly stated that no information has been received about the joining of Anil Kumar Mishra as a class-IV employee in Kisan Inter College, Uska Bazar, Siddharth Nagar, and in the event he does not proceed to join then the appointment offered to him, would be treated as cancelled. Even though it has not been pleaded but from the facts aforesaid, it appears that there was no class-III post available at the time when Anil Kumar Mishra had staked his claim and it is for this reason, he was offered a class-IV post.

5. Anil Kumar Mishra did not receive any further response from the District Inspector of School, as such, he filed writ petition No. 28686 of 1993 challenging that part of the order dated 15.2.1993 whereby he had been offered appointment as a class-IV employee in a different institution.

6. I have heard Sri A.N. Tripathi, learned Senior counsel in the said writ petition and Sri Tripathi informs that inspite of time having been granted on 17.8.1993,

no counter-affidavit has been served on him till date on behalf of the District Inspector of Schools or the Committee of Management. Learned Standing Counsel has also stated that no counter-affidavit has been filed on behalf of the District Inspector of Schools. Since a period of more than 16 years has elapsed and no counter-affidavit has been filed, there is no occasion or any valid reason for this Court to detain the hearing of the said writ petition any further and, as such, the petition is being disposed of finally.

7. During the pendency of the said writ petition, certain facts have intervened which have come on record through the pleadings that have been exchanged between the contesting parties in the second writ petition namely Writ Petition No. 54594 of 2009. In view of the facts that have emerged from the Affidavits filed on behalf of Sri Narendra Kumar Shukla, the petitioner in the second writ petition and Sri Anil Kumar Mishra - the respondent No. 5 in the said writ petition and the Committee of Management, learned Standing Counsel states that the said matter be also disposed of finally on the legal submissions that are being advanced as the facts necessary for deciding the claim of the respective parties have already been brought on record through the aforesaid Affidavits.

8. I have heard Sri R.K. Ojha, learned Counsel for the petitioner-Sri N.K. Shukla, Sri A.N. Tripathi, learned Senior Counsel for Respondent No. 5 - Sri Anil Kumar Mishra and Sri Ashish Ojha for the Committee of Management as well as the learned Standing Counsel for the State Government and its authorities.

9. This Court, while entertaining the writ petition filed by Anil Kumar Mishra in the year 1993, passed the following interim order on 17.8.1993:

Until further order, petitioner will be continued in service as class-III employee and shall get salary regularly.

10. The aforesaid interim order has neither been vacated nor modified and continues to be in force till today.

11. It appears that an Assistant Teacher of the same institution Sri Harish Chandra Shukla died-in-harness. His son N.K. Shukla, the petitioner in the second writ petition, applied for compassionate appointment and in terms of the regulations referred to herein above, the District Inspector of Schools vide order dated 17.7.1996 offered him an appointment against a class-III post in another school namely Chhedi Lal Inter College, Biskohar Bazar, Siddharth Nagar. This appointment was offered to him on account of a vacancy in that institution that had been caused on account of the retirement of one Sri Bhanu Dutt Upadhyay.

12. Sri Narendra Kumar Shukla was not allowed to join in the said institution as a result whereof the District Inspector of Schools passed an order on 20.8.1996 modifying the appointment offered to N.K. Shukla to the extent that he would be accommodated temporarily against a supernumerary post in the present institution itself till appropriate action is taken against the Management of Chhedi Lal Inter College. The aforesaid document has been brought on record as

Annexure-17 to the counter-affidavit filed by Sri Anil Kumar Mishra.

13. There is yet another complication which has been introduced on account of another compassionate appointment offered by the Management of the institution on 26.12.1994 to one Sri Abrar Ahmad. The Management offered him a class-III post in Buddha Vidya Peeth Inter College and it is not known as to how this offer was made. However, the District Inspector of Schools appears to have offered Sri Abrar Ahmad an appointment against a class IV post in Kisan Inter College, Uska Bazar, Siddharth Nagar, where Sri Abrar Ahmad appears to have not joined. Sri Abrar Ahmad on the same pattern as Sri Anil Kumar Mishra is stated to have filed a Writ Petition, being Civil Misc. Writ Petition No. 1107 of 1995, and continues to work as a class-III employee under the interim orders dated 12.1.1995 passed therein. According to Sri N.K. Shukla, the said Sri Abrar Ahmad even though having appointed earlier than the petitioner and working under an interim order of this Court, has not staked his claim for the post of Head clerk. It has also been pointed out that the said Sri Abrar Ahmad has been absorbed under an order dated 23.7.2005 passed by the District Inspector of Schools against a class-III post. The recital of this fact was necessary as the same has appeared in the pleading of the parties and the order passed by the District Inspector of Schools but the claim of Sri Abrar Ahmad is not being adjudicated as he is neither a party nor he appears to have questioned the order dated 1.10.2009.

14. From the facts as enumerated above, it is, therefore, clear that the petitioner N.K. Shukla is continuing under the orders of the District Inspector of Schools dated 20.8.1996, even though he had been appointed against a class-III post on compassionate basis in a different College vide order dated 17.7.1996.

15. The new dimension and the relevant fact which has made it necessary to decide the writ petition of 1993 is the order dated 19.10.1996 of the District Inspector of Schools by which Sri Anil Kumar Mishra, the petitioner in the first writ petition and the respondent No. 5 in the second writ petition, has been adjusted against the post which fell vacant in the institution on account of the death of Rajeshwar Chaudhary as mentioned in the order of the District Inspector of Schools dated 1.10.2009. The said order dated 19.10.1996 nowhere indicates the continuance of Anil Kumar Mishra on the strength of the interim order dated 17.8.1993 passed by this Court. It also does not refer to any order of approval in favour of Sri Anil Kumar Mishra passed by the District Inspector of Schools against a class-III post at any earlier point of time. This fact is to be necessarily noted inasmuch as there is no order of the District Inspector of Schools approving the appointment of Sri Anil Kumar Mishra against a class-III post prior to 19.10.1996.

16. It is in the aforesaid background of the rival contenders that the present dispute has to be adjudicated. The occasion arose when the Head-clerk of the institution Ram Saran Mishra retired on 28.2.2009 on which date Sri N.K. Shukla, Sri Anil Kumar Mishra and Sri Abrar Ahmad were working as Assistant Clerks in

the institution. The manner and the status attained by these 3 employees has already been detailed herein above. Sri N.K. Shukla objected to a claim of Sri Anil Kumar Mishra, who aspired to become the Head clerk of the institution.

17. This claim and dispute between the aforesaid 3 persons came to be decided by the Management on 6.7.2009 whereby N.K. Shukla was found entitled by the Management to be senior as against Sri Anil Kumar Mishra and was called upon to discharge the duties of Head-clerk on promotion. Sri Anil Kumar Mishra raised the dispute before the District Inspector of Schools objecting to the said decision and claiming seniority over and above Sri N.K. Shukla and a right to function as Head-clerk. The District Inspector of Schools by the impugned order 1.10.2009 concluded that the appointment of Sri N.K. Shukla was conditional vide order dated 20.8.1996 and his adjustment has not been made in the present institution till date. Accordingly, on the strength of the adjustment order of Sri Anil Kumar Mishra dated 19.10.1996, he was found entitled for being promoted as Sri Abrar Ahmad had been favoured with an order of adjustment only in the year 2005.

18. The claim of Sri N.K. Shukla was rejected on the ground that he still continues to be continuing against a supernumerary post in the institution. Consequently aggrieved by the order of the District Inspector of Schools, Sri N.K. Shukla has filed this petition questioning the authority of the District Inspector of Schools to determine the seniority and also the erroneous assumption of fact on the basis whereof the claim of Anil Kumar Mishra has been accepted.

19. Sri R.K. Ojha, learned Counsel for the petitioner, contends that there is no appointment order in favour of Sri Anil Kumar Mishra against a class-III post. The order which is being relied upon by Sri Anil Kumar Mishra said to have been passed by the Manager on 24.2.1993 does not confer any right as the Manager had no authority to issue any appointment letter to Sri Anil Kumar Mishra which could have been done only after approval of the District Inspector of Schools under the Regulations 101 to 106 of Chapter III referred to herein above. Even otherwise the permission to Sri Anil Kumar Mishra to join in the institution as Clerk was made subject to approval by the District Inspector of schools on 1.3.1993. Thirdly, the District Inspector of Schools had offered appointment prior to this vide order dated 15.2.1993 to Sri Anil Kumar Mishra as a class IV employee in Kisan Inter College, Uska Bazar, Siddharth Nagar, which he refused to join and, therefore, he has lost his lien to claim appointment against a class-III post. Lastly, it is submitted that Sri Anil Kumar Mishra is continuing on the strength of the interim order dated 17.8.1993 referred to herein above and his writ petition deserves to be dismissed and the interim order deserves to be vacated inasmuch as he cannot claim a class-III post as a matter of right. To support his submissions, Sri Ojha has also invited the attention of the Court to the order dated 19.10.1996 whereby Sri Anil Kumar Mishra has been accommodated and adjusted against a class-III post treating him to have been appointed as such. Sri Ojha contends that the recital in the order dated 19.10.1996 is absolutely wrong inasmuch as he was never appointed against any

supernumerary post and as a matter of fact it was only by virtue of the interim order dated 17.8.1993 that he was continuing in the institution. He, therefore, submits that the order dated 19.10.1996 does not in any way confer any right on Sri Anil Kumar Mishra and, therefore, the impugned order dated 1.10.2009 is vitiated.

20. Replying to the said submissions, Sri A.N. Tripathi, learned Senior Counsel for Anil Kumar Mishra, contends that he had a right to be appointed as a class-III employee and, as such, the adjustment order dated 19.10.1996 simply acknowledges this right of the petitioner independent of the interim order passed by this Court on 17.8.1993. He submits that the interim order simply protects what is otherwise legally available to Sri Anil Kumar Mishra, who under the then existing regulations could have been appointed only as a class III employee. Sri Tripathi submits that so far as Sri N.K. Shukla is concerned, he has no order of appointment against any substantive post in the institution and his continuance is a temporary continuance under the order dated 20.8.1996, according to which, he is to continue temporarily till the matter is decided relating to his appointment in Chhedi Lal Inter College and action taken in this regard.

21. Learned Standing Counsel contends that as a matter of fact a claim with regard to appointment or promotion on the post of class-III employee has to be made by the competent authority only after an approval is granted by the Regional Level Committee headed by the Joint Director of Education under the Government Order dated 19.12.2000. He, therefore, submits that in order to ensure a comprehensive analysis of the documents and the facts of the case and an appropriate decision thereon, this Court may relegate the parties to the Regional Level Committee instead of proceeding to decide the matter on merits.

22. Having heard learned Counsel for the parties and having perused the records, there is no doubt that the appointment on compassionate basis after 30.7.1992 in an Intermediate College governed by the U.P. Intermediate Education Act, 1921, has to be made under the provisions of Regulations framed under the U.P. Intermediate Education Act. Regulations 101 to 106 of Chapter III clearly deal with such contingencies. It is for this reason that Regulation 101 directs that a permission has to be sought by the appointing authority before proceeding to make an appointment or hold selection against a non-teaching post.

23. In the instant case, the claim of Sri Anil Kumar Mishra is not preceded by any such prior permission. His continuance appears to be at the initial stage on the strength of the interim order dated 17.8.1993. His representation dated 29.6.1993 seeking an order from the District Inspector of Schools to be approved against a class-III post does not appear to have been attended to or decided. On the contrary, the appointment offered to him is against a class-IV post.

24. Similarly, the appointment of Sri Narendra Kumar Shukla in Chhedi Lal Inter College does not appear to have been annulled till date. The order dated

20.8.1996 modifying the said appointment order dated 17.7.1996 also continues to operate without having been annulled or modified subsequently. Thus, there is no final decision with regard to the permanent lien of Sri N.K. Shukla in either Chhedi Lal Inter College or in the present institution.

25. In the absence of any adjudication by the competent authority namely the Regional Level Committee through the Joint Director of Education, it could not have been concluded as to who was senior inasmuch as the very basis of seniority, namely the date of substantive appointment followed by an approval of the competent authority is yet to be determined. As a matter of fact Sri Anil Kumar Mishra, taking advantage of the interim order dated 17.8.1993, has continued and thereafter was favoured with an order dated 19.10.1996 which proceeds on a non-existent fact, namely his appointment against a supernumerary post of class-III. It may be repeated that Sri Anil Kumar Mishra had been appointed by the District Inspector of Schools only against a class-IV post and there is no further order prior to 19.10.1996 which may indicate that Sri Anil Kumar Mishra was appointed against a supernumerary post in class-III cadre.

26. The aforesaid facts in the light of the regulations aforesaid, have not been examined by the District Inspector of Schools. The District Inspector of Schools has simply drawn his conclusions without proceeding to consider the impact of the orders passed from time to time and the interim order of this Court. In view of this, the order dated 1.10.2009 passed by the District Inspector of Schools, Siddharth Nagar, is unsustainable. For the reasons aforesaid, the order dated 1.10.2009 is set aside.

27. So far as the writ petition No. 28686 of 1993 is concerned, there is no decision by the competent authority about the claim of the petitioner Anil Kumar Mishra to switch over as a class-III employee. Accordingly, the said writ petition is disposed of with the liberty to the Regional Level Committee to consider the said claim of the petitioner Sri Anil Kumar Mishra in view of the recital contained in the letter of the District Inspector of Schools dated 15.2.1993 to the effect that such claim would be considered as and when a post of class-III becomes vacant and is available. For the said reason, writ petition No. 28686 of 1993 is disposed of with a direction to the Regional Level Committee headed by the Joint Director of education of the region concerned to decide the claim of Sri Anil Kumar Mishra independent of the interim order dated 17.8.1993.

28. The question of seniority of the petitioner and the respondent - Anil Kumar Mishra would be dependent on the declaration by the competent authority of their respective claims of substantive appointment and thereafter the consequential orders shall be issued by the District Inspector of Schools, Basti, directing the Management to proceed accordingly.

29. A certified copy of this order shall be presented before the Regional Joint Director of Education, Basti, who shall examine the claim as directed herein

above and decide the dispute in accordance with law preferably within a period of 8 weeks from the date of presentation of a certified copy of this order before him.

30. Till such decision is taken, the status-quo as directed by the Court on 26.10.2009 shall continue.

31. Accordingly, both the writ petitions stand disposed of.