

(2009) 04 AHC CK 0328
In the Allahabad High Court

Parmanand Yadav

APPELLANT

Vs

District Inspector of Schools, Sant Kabir Nagar & Ors.

RESPONDENT

Date of Decision : 08-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0328

Hon'ble Judges : Dilip Gupta, J

Final Decision : Allowed

Judgement

Dilip Gupta, J.

This petition seeks the quashing of the order dated 10th July, 2006 passed by the District Inspector of Schools, Sant Kabir Nagar by which approval to the appointment of the petitioner as Class IV employee has not been granted as there was no vacancy and nor any selection procedure was adopted.

The petitioner claims that on the basis of the appointment order dated 5th July, 2001 issued by the Principal of ""Sant Kabir Acharya Ram Vilas Inter College, Maghar", District Sant Kabir Nagar (hereinafter referred to as the ""College""), the petitioner joined as Class IV employee in the College and the papers were also forwarded by the Principal to the District Inspector of Schools for grant of approval. However, as no orders were passed by the District Inspector of Schools, the petitioner filed a Writ Petition in this Court which was disposed of on 15th February, 2004 with a direction to the District Inspector of Schools to consider the matter within two months. The District Inspector of Schools then passed an order on 8th July, 2004 that there was no vacancy when the petitioner was appointed but in order to honour the order passed by this Court, the financial approval was given with the condition that he would be adjusted against future vacancy. The petitioner asserts that still salary was not paid and by the order dated 10th July, 2006 the appointment was not approved.

A perusal of the order dated 10th July, 2006 shows that the version of the Manager/Principal of the College was that one Hari Bans who was working as a

Class IV employee retired on 31st December, 1992. However, Smt. Vinod Kumari had earlier been appointed as a Class IV employee against a supernumerary post on compassionate grounds on 14th October, 1992 and, therefore, when the said vacancy arose on 31st December, 1992, she was adjusted against the said post. The Principal of the College, however, proceeded to appoint the petitioner even though there was no vacant post of Class IV employee. The Principal of the College also informed that the District Inspector of Schools had cancelled the order dated 8th June, 2004 on 15th June, 2005. It is in the light of the aforesaid facts that the District Inspector of Schools held that the petitioner had been appointed against a nonexistent vacancy and even the Selection Committee had not conducted the proceedings in accordance with law and nor the proceedings had been signed by the members of the Selection Committee.

Sri D.K. Singh, learned counsel for the petitioner submitted that though it is correct that the petitioner claims appointment against the post vacated by Hari Bans on 31st December, 1992 but the proceedings for selection of the petitioner had been initiated prior to the absorption of Smt. Vinod Kumari and, therefore, the appointment of the petitioner does not suffer from any infirmity.

Sri S.P. Bhati, holding brief of Sri R.K. Ojha, learned counsel appearing for the College, however, submitted that the impugned order passed by the District Inspector of Schools does not suffer from any infirmity.

The provisions relating to appointments on Class IV posts in Intermediate Colleges is contained in Regulation 101 to 106 contained in Chapter III of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act"). Regulation 101 clearly provides that the post shall not be filled up without the prior approval of the District Inspector of Schools. In the present case, the vacancy had arisen on 31st December, 1992 when Hari Bans who was working as a Class IV employee in the College retired. It is not in dispute that Smt. Vinod Kumari had been granted compassionate appointment under the dying in harness rules in the College on 14th October, 1992 by creating a supernumerary post. This is in accordance with the proviso to Regulation 106. The said proviso also stipulates that on occurrence of a vacancy in the College, the candidate shall be adjusted against such a vacancy. The petitioner claims appointment on the vacancy that had occurred on 31st December, 1992 against which Smt. Vinod Kumari had to be adjusted and it does not matter that the procedure for appointment of the petitioner was initiated prior to the actual absorption of Smt. Vinod Kumari on the Class IV post because the Principal was under an obligation to intimate the District Inspector of Schools about this vacancy prior to taking any steps for filling up the post.

There is, therefore, no error in the findings recorded by the District Inspector of Schools that there did not exist any vacancy against which the petitioner had been appointed. Learned counsel for the petitioner has also not been able to show that the finding recorded by the District Inspector of Schools that the procedure had not been followed while making the selection, is perverse.

In such circumstances, there is no good reason to interfere with the impugned order. The writ petition is, accordingly, dismissed.