

(1987) 07 AHC CK 0053

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16813 of 1984

Radhey Shyam Dube

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 31-07-1987

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 9

Citation : (1987) 07 AHC CK 0053

Hon'ble Judges : S.K. Mookerji, J;A.N. Varma, J

Bench : Division Bench

Advocate : R.N. Singh, R.S. Misra, R.P. Misra, Murlidhar and S.N. Singh, for the Appellant; S.C., S.R. Misra, Sada Nand Shukla and M.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—This petition was filed on December 5, 1984 for a direction that the Respondents be asked to pay the Petitioner's salary for the post of Assistant Clerk in the concerned institution (for the period beginning August 6, 1984) on which, it was alleged, the Petitioner had been appointed to the said post. A further relief restraining the Respondents from making any selection or appointment to the post of Assistant Clerk in pursuance of an advertisement published on November 30, 1986 was also claimed.

2. In the petition the Managing Committee of the institution was arrayed as Respondent No. 2. The said Respondent did not file any counter affidavit. A counter affidavit was, however, filed by the District Inspector of Schools, Deoria. After hearing learned Counsel for the parties the petition was dismissed by a judgment and order dated February 11, 1986. Against this order the Petitioner appealed to the Supreme Court which, by its order dated September 16, 1986, set aside the order of the High Court and remitted the matter back to the High Court with a direction to permit Respondent No. 2 (Management) to file its affidavit in reply to the petition with leave to the Petitioner to file rejoinder affidavit in reply thereto. Lallan Singh arrayed as Respondent No. 4 in the

petition as well as in the appeal before the Supreme Court was also permitted by the Supreme Court to file a further affidavit. Lallan Singh was claiming to be entitled to be appointed substantively on the said post by virtue of the fact that he was already working on the same and, therefore, entitled to be absorbed therein under certain Government orders.

3. After the remand of the case the Respondent No. 2 (the Management") put in appearance and filed an affidavit of the present manager, namely, Jugul Kishore Singh, in reply to the averments made in the petition. The Petitioner on his part filed a rejoinder affidavit in reply thereto. Lallan Singh and Sri Abhai Nandan Singh, the erstwhile manager, also filed counter affidavits after the remand of the case. Sri Abhai Nandan Singh has supported the case of the Petitioner, while Lallan Singh is contesting the same.

4. Before we set out the pleadings of the parties certain facts which are not in dispute may be mentioned. The controversy is about the Petitioner's alleged appointment to the post of an Assistant Clerk in Sunari Intermediate College which is a recognised institution, and having been brought in the list of institutions receiving grant from the Government with effect from January 1984, the payment of salaries to its teachers and employees is governed by the provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.

5. Shortly, the Petitioner's case is that in pursuance of a notice pasted on the notice board of the college inviting applications for the post of an Assistant Clerk candidates were called for interview on August 5, 1984 at which he was selected and on the same date a resolution was passed by the Committee of Management whereupon a letter of appointment was issued to him the same day and he joined the College the next day, that is, August 6, 1984. By means of a letter dated August 12, 1984 the manager of the institution forwarded the papers relating to the Petitioner's selection and appointment to the District Inspector of Schools seeking the necessary financial approval. Though he received the papers on August 25, 1984, the District Inspector of Schools neither approved nor disapproved the appointment of the Petitioner and the matter was kept in abeyance. Thereupon Sri A.N. Singh, the manager of the institution, issued a fresh advertisement which was published in two newspapers on October 25, 1984 inviting applications for appointment to two posts of Assistant Clerks fixing November 11, 1984 for interviews. The advertisement states that those already working on the said post may also be present on that date along with the original certificates for interview. At this selection again the Petitioner was selected and necessary papers seeking financial approval of the District Inspector of Schools were forwarded to him but no action was taken thereon. The Petitioner himself made a representation to the District Inspector of Schools claiming his salary for the period beginning August 5, 1984 but there was no response. Hence this petition.

6. It may be mentioned that the Petitioner's Claim for the salary was founded

entirely on his alleged appointment" letter dated August 5, 1984. The main contention was that though validly appointed on August 5, 1984, the District Inspector of Schools was neither approving the proposal nor disapproving it and was wrongly declining to pay his salary. However, by means of a supplementary affidavit filed on February 4, 1985 the Petitioner brought on record two orders passed by the District Inspector of Schools dated November 12, 1984 and November 27, 1984 alleging that these orders were issued after the filing of the petition. By the order dated November 12, 1984 the District Inspector of Schools refused to approve the alleged proposal sent by the manager of the institution on the ground that there were two posts of Assistant Clerks and that till the employees already working on the post were absorbed, the question of direct recruitment did not arise. By the second order dated November 27, 1984 the District Inspector of Schools simply informed Sri A.N. Singh that since a new Committee of Management had been elected that action would be taken only on communications received under the signatures of the new manager. In the supplementary affidavit though these orders were generally criticized the Petitioner did not seek amendment of the petition specifically bringing under these orders or claiming a further relief by quashing the same. However, learned Counsel did challenge these orders in his oral submission, on which we shall make our comments later, in spite of vehement objection of the counsel for the Respondents on the ground that without amending the petition, the Petitioner ought not to be permitted to challenge these orders. As, however, the parties appear to have been fully aware of this challenge as disclosed by their affidavits, we permitted the Petitioner to address us on the validity of the said orders.

7. After the remand of the case a detailed counter affidavit was filed on behalf of the Management by its present manager Sri Jugul Kishore Singh. In this counter affidavit it has been asserted that a motion of no-confidence was passed against Sri Abhai Nandan Singh by the Committee of Management by its resolution dated October 1, 1984 from which date he ceased to be the manager. The entire proceedings pertaining to the Petitioner's appointment on August 5, 1984 were sham. No interview took place on August 5, 1984, nor, indeed, was any notice issued or published in the newspapers inviting applications for the post as required by law. No meeting of the Committee of Management was held on August 5, 1984 approving the appointment of the Petitioner, nor was even selection held. The Petitioner is the own brother of the clerk of Sri Abhai Nandan Singh who is a practising lawyer. All the documents pertaining to the appointment of the Petitioner on August 5, 1984 relied on by the Petitioner were fictitious and fabricated on which no reliance should be placed. The same is true also of the alleged selection stated to have been held on November 11, 1984. Sri Abhai Nandan Singh had ceased to be the manager since October 1, 1984 and any action taken by him or proceedings initiated in regard to the Petitioner's appointment was unauthorised. In any case, no meeting of the Managing Committee was held on November 11, 1984 and the Petitioner's alleged appointment was never approved. Lallan Singh, on the other hand, was working

in the institution since 1972 as confirmed by the Principal of the institution (vide annexure 1 and 2 to the counter affidavit) and was appointed as a clerk to look after the library under the resolution of the Committee of Management dated September 27, 1981. The Petitioner hence could not be legally appointed without considering the claim of Lallan Singh for absorption. The Principal of the institution never counter signed any appointment letter alleged to have been issued to the Petitioner nor did the Petitioner work on the post even for a single day.

8. Sri A.N. Singh has also filed an affidavit supporting the claim of the Petitioner and asserting that till November 18, 1984 when Sri Jugul Kishore Singh became the manager he continued to be the manager of the institution. No resolution expressing lack of confidence in him was ever passed by the Committee of Management. The Petitioner was validly appointed on August 5, 1984 and was again properly selected by the Selection Committee on November 11, 1984 and the said selection was approved by the Committee of Management under its resolution dated November 12, 1984 with effect from August 5, 1984.

9. Lallan Singh also filed affidavits and supplementary affidavits denying the claim of the Petitioner and asserting his own rights to have been validly appointed on the post.

10. A counter affidavit has been filed by the District Inspector of Schools Sri Ram Adhar Rao asserting that salary could not be sanctioned to the Petitioner because he was in fact not appointed by the Management. Further a motion of no-confidence having been passed against Sri A.N. Singh and a new manager having been elected he could not act on the basis of any intimation sent by Sri A.N. Singh. Still further it was asserted that the president of the Managing Committee had informed him that the entire proceeding pertaining to the Petitioner's appointment were sham. Besides till the employees already working on the post were absorbed the question of direct recruitment did not arise.

11. It has also come in evidence that after the filing of the petition in pursuance of the impugned advertisement one Udai Pratap Singh was selected and has been appointed as a direct recruit and been working on one of the two posts of Assistant Clerks.

12. The Petitioner has filed rejoinder affidavit and supplementary rejoinder affidavit in reply to the various counter affidavits filed by the Respondents.

13. Having summarised the entire pleadings and the evidence as emerging from a whole mass of affidavits filed by the parties we now proceed to consider the submissions of the learned Counsel.

14. The first point urged by the learned Counsel was that the District Inspector of Schools has no power to approve or disapprove the appointment of a teacher or an employee of an institution. He could not hence go into the validity of the Petitioner's appointment. The submission is devoid of any merit. The Petitioner

himself has repeatedly asserted that what was sought by the District Inspector of Schools was financial approval which was undeniably necessary under the U.P. High School and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971 (the " Payment of Salaries Act " in brief) and the District Inspector of Schools has done neither more nor less than refused to accord the same. That the District Inspector of Schools does have that limited power is fully borne out by this Act which was passed with the object of regulating the payment of salaries to teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the State funds and to provide for matters connected therewith. Under this Act the responsibility for payment of salary to teachers and employees of such institution has been cast on the State Government (vide Section 10). The Act requires the institution governed by it to open an account in a bank a separate account to be operated jointly by a representative of the Managing Committee and by the District Inspector of Schools for purposes of disbursement of salaries to its teachers and employees. Eighty per cent of the fees realised by the Management has to be deposited in that account. It is from this fund and the Government grant that the salaries of teachers and employees are disbursed under the signatures of the representative of the Management and the District Inspector of Schools. Under certain circumstances the account can be operated by the District Inspector of Schools singly without the association of the Management. The responsibility cast on the District Inspector of Schools to disburse salaries necessarily carries with it an implied power to satisfy himself that the appointment of the teacher or employee whose salary he is called upon to disburse was appointed in accordance with law and in a bonafide manner. For that limited purpose he is free to make an enquiry and satisfy himself within a reasonable time.

15. It is in the exercise of this power and duty that the District Inspector of Schools passed the orders dated November 10, 1984 and November 27, 1984 referred to hereinabove. The grounds on which he disapproved the Petitioner's appointment or the proposals forwarded by Sri A.N. Singh were as we shall presently demonstrate, perfectly proper and germane to the nature of function which he was called upon to perform under the Act. Indeed Sri A.N. Singh himself had no doubt that the District Inspector of Schools was possessed of such powers. He himself forwarded the papers for necessary approval of the District Inspector of Schools. The approval was specifically sought by him.

16. The next submission was that even if it be assumed that a motion of no-confidence had been passed against Sri A.N. Singh on October 1, 1984 the Petitioner was entitled to the reliefs claimed on the basis of his appointment on August 5, 1984 on which date admittedly Sri A.N. Singh was the manager.

17. There is no substance in this submission either. It is not disputed that the notice inviting application was pasted on the notice board of the institution on August 5, 1984 and on the same date interviews were held, and there so called selection committee of which Sri A.N. Singh was Chairman recommended the

Petitioner's name for appointment. We are then asked to believe that the same day the Committee of Management met and approved the Petitioner's selection. Learned Counsel for the Petitioner was entirely unable to cite any rule, statutory or otherwise, which authorised publication of a notice inviting applications for direct recruitment by pasting a copy of the same on the notice board of the institution. The so called notice was thus ex-facie an eye-wash. The entire proceedings appear to have been carried out in an unseemly haste and in a manner which no court or authority can countenance, particularly, when viewed in the light of subsequent developments as well as the fact that the Petitioner was none other than the brother of Sri A.N. Singh's own clerk. Indeed Sri A.N. Singh himself appears to have felt that the Petitioner's appointment of August 5, 1984 would not sustain and was bound to be disapproved by any authority judicial or otherwise and consequently he is alleged to have decided to issue a fresh advertisement by publication in newspapers inviting applications for interview on November 11, 1984. It may be mentioned that according to the advertisement (annexure 4 to the petition) issued by Sri A.N. Singh the employees already working on the post of clerks were also invited to be present on that date for interview.

18. The aforesaid facts coupled with the ground on which Sri A.N. Singh's proposal dated August 12, 1984 was rejected by the District Inspector of Schools by his order dated November 10, 1984 leaves no manner of doubt that the Petitioner's appointment dated August 5, 1984 limited as it was for one year, was completely null and void. It was not disputed that under the Government Orders issued u/s 9 of the U.P. Intermediate Education Act, 50% of the posts were reserved for promotees or those already working on the posts by way of absorption and consequently" so long as Sri Lallan Singh was not absorbed, the post could not be filled by direct recruitment. The District Inspector of Schools, therefore, rightly disapproved Sri A.N. Singh's proposal dated August 12, 1984. In this view, no claim could be founded by the Petitioner on the basis of his supposed selection or appointment dated August 5, 1984.

19. In regard to the alleged selection of the Petitioner on November 11, 1984 it has been categorically asserted by Sri Jugul Kishore Singh who was elected as the manager on November 18, 1984 that the entire proceedings pertaining to the alleged selection of the Petitioner on November 11, 1984 were completely null and void, firstly because Sri A.N. Singh had ceased to be the manager since October 1, 1984 and, secondly the Committee of Management did not pass any resolution whatever deciding to advertise the post or to hold any selections. At any rate, no resolution either approving the selection of the Petitioner or for forwarding the papers relating to his selection to the District Inspector of Schools was ever passed. The entire proceedings relied on by the Petitioner or Sri A.N. Singh in this behalf are, according to the Management, completely farzi (sham). The assertions of Sri Jugul Kishore Singh are supported by the register containing the minutes of the meetings of the Committee of Management and the resolutions passed thereat. An attempt was made to challenge the

authenticity or genuineness of this register but, after a close examination of the same, we find no reason to suspect its genuineness or that of the proceedings recorded therein. There is no reference in this register to any meeting of the management approving the selection of the Petitioner.

20. Counsel for the Petitioner, however, submitted that November 10, 1984 on which the District Inspector of Schools is supposed to have disapproved the proposal forwarded by Sri A.N. Singh pertaining to the Petitioner's appointment dated August 5, 1984 was a second Saturday and consequently it must be held that the District Inspector of Schools had ante-dated his order.

21. We are unable to agree. Apart from pointing out that November 10, 1984 was second Saturday the Petitioner led no foundation in support of the learned Counsel's oral submission that the District Inspector of Schools had ante dated his order. In the first place, it was not established with reference to any authentic material that November 10, 1984 was closed day for the office of the District Inspector of Schools. At any rate, it was not established that the District Inspector of Schools had no access to the record of the case on November 10, 1984 or that he could not have passed that order on that date in the usual course. Further, learned Counsel was completely unable to specify any reason why the District Inspector of Schools ante-dated that order. The mere fact that the petition was presented on December 7, 1984 could not necessarily lead to the conclusion that the District Inspector of Schools would ante-date his order. It is a different matter that the Petitioner was unaware of that order when he filed the petition. Moreover, the reason disclosed in the order for disapproving the Petitioner's appointment is purely legal and not factual as to justify any inference of tampering with the record. We, therefore, reject this submission without the least hesitation.

22. Learned Counsel then made a feeble attempt to submit that Lallan Singh was not an existing employee entitled to be absorbed under the Government order reserving 50% posts in favour of the employees already officiating on the post. It was urged that there were only two posts of Assistant Clerks, one of which was held by Baij Nath Singh who was promoted as head clerk in June, 1984 and inasmuch as the second post was sanctioned only in July, 1984 Lallan Singh could not validly claim to have been working as an Assistant Clerk from 1972.

23. The version of the Management, on the other hand, is that Lallan Singh had been employed as a clerk in the year 1972. The payment of his salary was being made by the funds of the society running the institution. On September 27, 1981 the Committee of Management passed a resolution appointing Lallan Singh to the post of Assistant Clerk to look after the library work. These assertions are supported by the two certificates issued by the principal of the institution Sri Parmanand Singh who has confirmed that Sri Lallan Singh has been working in the institution since September 2, 1972 and is currently looking after the library. It has also been stated in these certificates that from September 2, 1972 to June 30, 1975 Lallan Singh's basic salary was Rs. 56/-plus the dearness allowance

sanctioned by the State Government from time to time and that his salary and allowances were being paid by the funds of the college. In the rejoinder affidavit filed by the Petitioner these assertions have been sought to be met by alleging that the principal is in collusion with Lallan Singh. We are not prepared to place any reliance on the Petitioner's interested version in preference to the certificates issued by the principal. The allegation of collusion made against the principal has not been substantiated with reference to any reliable material. The fact that Lallan Singh has been working in the institution since 1972 is further confirmed by the resolution of the Committee of Management passed on September 27, 1981 a true copy whereof is annexure 3 to the counter affidavit of Sri Jugul Kishore Singh, the present manager. In the register containing the minutes of the meetings produced before us the said resolution has been recorded among the resolutions passed on September 27, 1981. We have already observed that though the authenticity of this register and the proceedings contained therein were challenged by the learned Counsel for the Petitioner, we have found no ground for suspecting its genuineness. The proceedings appear to have been recorded in the usual course and the charge that the whole thing has been fabricated has remained unsubstantiated by any reliable evidence.

24. In the counter affidavit of Sri Jugul Kishore Singh it has been asserted that even though the services of Lallan Singh stood regularised, in order, however, to put the controversy beyond any debate the Managing Committee passed a fresh resolution on December 9, 1984 appointing Sri Lallan Singh to one of the two posts in the quota reserved for being filled up by absorption of existing employees and Udai Pratap Singh to the other posts of Assistant Clerk as a direct recruit. This resolution also stands recorded in the said register. A look at the register and the proceedings recorded therein completely excludes the possibility of the same as something which has been prepared for the purposes of this litigation. Intrinsically it appears perfectly genuine and authentic. We, therefore, hold that Lallan Singh has been since 1972 on the relevant date or dates till his claim for being absorbed was examined the Petitioner could not be appointed being an outsider.

25. We have already found above that the Petitioner was not appointed on August 5, 1984 by the Managing Committee of the institution and that the entire proceedings alleged to have been taken in connection therewith are ex-facie unsustainable. We have further found that the alleged selection of the Petitioner on November 11, 1984 was void and ineffectual in law. That being so, even on the own case of the Petitioner there were clearly two posts of Assistant Clerks at least in November and December, 1984 even if we do not accept the Respondent's plea that Lallan Singh had already been working on the post entitled to be absorbed against the 50% quota. With the result that with the fresh appointment of Lallan Singh under the resolution of the Committee of Management dated April 9, 1984 and Sri Udai Bhan Singh, both the posts stand filled up in accordance with law. Consequently, the Petitioner cannot be granted

the reliefs sought in this petition.

26. This brings us to the last point urged by the learned Counsel for the Petitioner, namely, that the resolution of no-confidence was not passed against Sri A.N. Singh. On this point we have the affidavits of the Petitioner, Sri Lallan Singh, Sri A.N. Singh, the District Inspector of Schools and Sri Jugul Kishore Singh, the present manager. The Petitioner is hardly expected to have any personal knowledge of whether such a resolution was passed or not. His version cannot hence be of much assistance. So is the case with the affidavit of Sri Lallan Singh. We are then left with the affidavits of Sri Jugul Kishore Singh and Sri A.N. Singh. Counsel for the Respondents vehemently contended that Sri A.N. Singh's version is not entirely disinterested as the Petitioner is none other than the brother of Sri A.N. Singh's clerk. He would hence have some degree of consideration or sympathy with the Petitioner. We would, however, not like to make any comments nor base our conclusion on this issue on the fact that the Petitioner is the brother of Sri A.N. Singh's clerk. It is not disputed, however, that Sri Jugul Kishore Singh was admittedly a member of the Committee of Management on October 1, 1984 when the resolution was passed against Sri A.N. Singh. He asserts that he was present on the occasion. In the register containing the minutes of meetings the resolution dated October 1, 1984 finds recorded. The signature of Sri Jugul Kishore Singh is also there among the signatures of 51 members who are alleged to have attended the said meeting. We compared the signature of Sri Jugul Kishore Singh in the minutes of this meeting with the signatures of Sri Jugul Kishore Singh appearing at numerous other places in this register and find that they are identical. His presence in the meeting, therefore, cannot be doubted. The resolution passed at that meeting states that the members have unanimously decided that on account of the activities of Sri A.N. Singh it has become impossible to run the institution and that they have ceased to have any confidence in him. The resolution further states that the District Inspector of Schools be, therefore, requested to accord approval for fresh elections. Again, learned Counsel attempted to establish that this resolution has been manufactured and that no such meeting was held nor any resolution passed against him.

27. As between the version of Sri A.N. Singh on the one hand and that of Sri Jugul Kishore, the present manager, on the other, we are inclined to accept the latter as it is supported by concrete evidence in the shape of the minutes of the meeting as recorded in the aforesaid register. With regard to the genuineness of this register we have already made out comments. It is, however, noteworthy that the same register contains the minutes of meeting held on November 18, 1984 at which the new Committee of Management was elected with Sri Jugul Kishore Singh as the manager and Sri Sharda Singh as the President. This resolution was produced before the District Inspector of Schools the same day who has signed at the bottom of the resolution with the endorsement "seen". Between October 1, 1984 and November 18, 1984 another meeting was held on November 4, 1984 the minutes of which also find recorded in the said register.

28. Looking to the entire evidence on record we are clearly of the opinion that the version of Sri Jugul Kishore Singh must be accepted and it must be held that a resolution of no-confidence was in fact passed against Sri A.N. Singh of October 1, 1984. It also appears that the immediate cause for this was the attempt to appoint the Petitioner as Assistant Clerk.

29. At all events, even if it be assumed that no such resolution was passed against Sri A.N. Singh, in view of our finding that Lallan Singh was already working in the institution, the Petitioner could not be appointed through direct recruitment without considering the claim of Lallan Singh for absorption. This circumstance was hence rightly treated by the District Inspector of Schools in his order dated 12.11.84 as a ground for refusing financial approval to the appointment of the Petitioner. The order dated November 27, 1984 passed by the District Inspector of Schools seems clearly unexceptionable. Earlier the District Inspector of Schools had declined to accept the proposal dated August 12, 1984 submitted by Sri A.N. Singh on the ground that till the existing employees were absorbed there was no question of direct recruitment. By his order dated November 27, 1984 the District Inspector of Schools sent back the proposal submitted by Sri A.N. Singh with the remark that a new committee having come into existence he could not act at the instance of Sri A.N. Singh. No fault can be found with this decision. Admittedly, a new Committee of Management had come into office on November 18, 1984. Prudence, therefore, demanded that the District Inspector of Schools should, before acting on the proposal of Sri A.N. Singh, insist on consulting the new Committee of Management and, as mentioned above, the new Committee of Management had promptly informed the District Inspector of Schools not to act on any communication from Sri A.N. Singh against whom a vote of no-confidence had been passed. Thus neither of the two orders passed by the District Inspector of Schools suffers from any illegality or impropriety.

30. In the result, the petition fails and is dismissed with costs. The interim orders are hereby vacated.