
(2004) 04 AHC CK 0159
In the Allahabad High Court
Case No : C.M.W.P. No. 17415 of 1992

Raghunandan Pandey

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Citation : (2004) 3 AWC 2535 : (2004) 2 UPLBEC 1965

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Ramesh Chandra and S.P. Misra, for the Appellant; S.K. Tripathi, Ashraf Ali and K.S. Tiwari, C.P. Gupta, S.C. and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—Petitioner was appointed on a class IV post on 1.12.1969 in the college of respondent No. 4. He was thereafter also confirmed in service. On a post of Assistant Clerk-cum-Librarian (a class III post) having fallen vacant in the college of respondent No. 4 on account of superannuation of the incumbent, the petitioner was promoted on such post, which, according to the petitioner, was a post falling in the quota to be filled up by promotion. The said promotion was granted to the petitioner vide order dated 13.1.1992.

2. The father of respondent No. 5 was an Assistant Teacher in some other college, who had died in harness in June, 1988. The respondent No. 5 had filed an earlier writ petition with a prayer for being given appointment under the Dying-in-Harness Rules. This Court, vide its order dated 13.12.1990, disposed of the said writ petition with a direction to the District Inspector of Schools to consider his (respondent No. 5 in the present writ petition) case and give him appointment under Dying-in-Harness Rules in accordance with his qualification, preferably in the college in which his father was working, or else, in case if there was no vacancy in the said college, in some other college of the district. Since there was no vacancy in the college in which the father of respondent No. 5 was working and a vacancy on a class IV post had occurred on 13.1.1992 in the

college of respondent No. 4 on account of the promotion having been granted to the petitioner as Assistant Clerk-cum-Librarian (a class III post), the respondent No. 5 was given appointment on class IV post in the college of respondent No. 4 vide order dated 21.1.1992. Admittedly, the respondent No. 5 joined on the said post. By the impugned order dated 11.5.1992 passed by the District Inspector of Schools, the promotion granted to the petitioner vide order dated 13.1.1992 has been withdrawn and the respondent No. 5 has been appointed on class III post on which the petitioner had been promoted. Aggrieved by the said order the petitioner has filed the present writ petition.

3. On 20.5.1992, by an interim order granted by this Court, the operation of the impugned order dated 11.5.1992 had been stayed and liberty had been granted to the District Inspector of Schools to pass a fresh order after giving an opportunity of hearing to the petitioner and if any such order was passed, the same was to be subject to the result of this writ petition.

4. Counter and rejoinder-affidavits have been exchanged between the petitioner and respondent No. 5. No counter-affidavit has been filed by other respondents nor has it been stated at the Bar that any fresh order has been passed by the respondent-authorities after passing of the interim order dated 20.5.1992. Learned counsel for the petitioner has submitted that on the strength of the interim order granted by this Court, the petitioner is continuing to work on the post of Assistant Clerk-cum-Librarian in the college of respondent No. 4.

5. I have heard Sri Shashi Prakash Misra, learned counsel for the petitioner, Sri C. P. Gupta, learned standing counsel appearing for the State-respondents and Sri S. K. Tripathi, learned counsel appearing on behalf of respondent No. 5 and have perused the record. With the consent of learned counsel for the parties, this writ petition has been heard and is being disposed of at this stage.

6. The challenge of the petitioner to the impugned order is three fold, namely :

(i) once the respondent No. 5 had availed the benefit of compassionate appointment under the Dying in Harness Rules, it was not open for him to claim fresh appointment on a higher post ;

(ii) no appointment on compassionate ground could be made on a post which was required to be filled up by promotion ; and

(iii) the said order has been passed without giving any opportunity of hearing to the petitioner.

7. Admittedly the initial appointment of respondent No. 5 had been made on 21.1.1992 on a class IV post, which had fallen vacant on account of promotion having been granted to the petitioner on a class III post. Once the respondent No. 5 had accepted the said appointment on 21.1.1992, his claim for appointment on compassionate ground under the Dying-in-Harness Rules cease to exist thereafter. The Apex Court in the case of State of Rajasthan v. Umrao Singh (1994) 6 SCC 657 has laid down that once the appointment has been

made on compassionate ground, the claimant would not be entitled to get another appointment on different post simply because he is qualified for other post. A Division Bench of this Court, in the case of Dinesh Chandra Sharma Vs. District Inspector of Schools, Meerut and others, has also taken a similar view that no one will be entitled to claim appointment under the Dying-in-Harness Rules more than once.

8. It is well-settled that appointment on compassionate ground is given only to tide away the sudden financial crisis which the family of the deceased employee faces because of the sudden death of the sole bread earner of the family. Thus, once a member of the family of the deceased employee is given appointment on such ground, which is also accepted by the claimant, the reason for giving such appointment, which is for support to the family of the deceased employee, does not exist thereafter.

The appointment under the Dying-in-Harness Rules cannot be made an alternate source or mode of appointment. The purpose for which the appointment had been given to respondent No. 5, had already been exhausted on 21.1.1992, when he accepted such appointment on a class IV post. The respondent No. 5 would thereafter be entitled for being appointed or promoted on a higher post only in due course.

9. As regards the other question that the petitioner had been given promotion on a class III post which post was meant only to be filled up by promotion and not by direct recruitment, the same has been disputed by the respondent No. 5 in his counter-affidavit. Although it is a settled principle of law that appointment on compassionate ground could not be given on a post reserved for promotion, but since as has already been held, once after having already been appointed on a class IV post, the respondent No. 5 would not be entitled for subsequent appointment on a class III post on compassionate ground, the said question, which involves disputed facts as to whether the said post was actually reserved for being filled up by promotion or not, need not be decided in this writ petition.

10. Further it is not disputed that the impugned order had been passed without affording any opportunity to the petitioner. The rights of the petitioner had already accrued in his favour once he had been granted promotion on a class III post vide order dated 13.1.1992. If the respondents were to pass an order to the detriment of the petitioner, it is well-settled law that the petitioner would necessarily be required to be given an opportunity of hearing, which has admittedly not been given in the present case. As such the impugned order is liable to be quashed on this ground also.

11. For the foregoing reasons the impugned order dated 11.5.1992 passed by the respondent No. 1 is quashed. The writ-petitioner shall be entitled to continue to work on the class III post on which he had been promoted by order dated 13.1.1992.

12. In the result the writ petition succeeds and is allowed. No order as to cost.