

(1999) 08 AHC CK 0161
In the Allahabad High Court
Case No : C.M.W.P. No. 33087 of 1997

Raghuvendra Sharan Singh	Vs	APPELLANT
District Inspector of Schools, Kushinagar and another		RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (1999) 4 AWC 3091 : (1999) AWC 3091 : (1999) 3 UPLBEC 1908

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : T.N. Tiwari, for the Appellant; K.R. Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner's ad hoc appointment against a short-term vacancy was not accorded financial sanction by the District Inspector of Schools. In paragraph 4 of the writ petition, the petitioner has pointed out that one Shri Navnath Dubey was promoted to the next higher grade i.e.. L. T. grade.

2. Shri T. N. Tiwari, learned counsel for the petitioner contends that by reason of such promotion, a vacancy was created in C. T. grade. Relying on the statement made in paragraph 5 of the rejoinder-affidavit, he contends that the said vacancy in C.T. Grade would be treated to be a vacancy in L. T. grade and appointment against existing vacancy in C.T. grade is to be filled up treating them in L.T. grade. Thus, in view of promotion of Navanath Dubey according to the petitioner, a short-term vacancy had come into being. The petitioner was appointed in the said short-term vacancy in accordance with the provisions contained in U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order. 1981, after publishing advertisements in two newspapers on 11.12.1996 as well as notifying in the notice board. The petitioner was appointed pursuant to the resolution dated 30.12.1996. The papers of said selection was forwarded to the office of the District Inspector of Schools, which had received the same on

3.1.1997. Since after expiry of seven days from 3.1.1997. no approval had come, an appointment letter was Issued to the petitioner on 15.1.1997. in terms thereof, the petitioner had Joined on 16.1.1997. But the financial approval to the appointment of the petitioner was refused by the District Inspector of Schools by order dated 28.7.1997, contained in Annexure-8 to the writ petition. It is this order which has since been challenged in this writ petition.

3. Shri T. N. Tiwari, learned counsel for the petitioner contends that since the petitioner has been appointed following due process. therefore, by reason of the provision of paragraph 2 (iii) of Second Removal of Difficulties Order, the appointment of the petitioner shall be deemed to have been approved on expiry of seven days from the date when the papers were received in the Office of the District Inspector of Schools, viz., on 3.1.1997. The appointment having been made on 15.1.1997. 12 days after receipt of the papers in the office, therefore, the petitioner is fully covered by provisions of para 2 (iii) of the Second Removal of Difficulties Order and as such, the financial approval could not have been declined. Mr. Tiwari further contends that the disapproval was based on the ground that there was no vested power in the Committee of Management to make appointment. Such ground may be available if the appointment was against a substantive vacancy and sought to be made under the First Removal of Difficulties Orders. Whereas under the Second Removal of Difficulties Order, the management has the right to appoint but following the procedure laid down in the Second Removal of Difficulties Order. In the present case the procedure laid down in the Second Removal of Difficulties Order having since been followed, the provisions for deemed approval has become operative. Therefore. financial sanction could not be refused on the ground that the management had no power to appoint.

4. Shri K. R. Singh. learned standing counsel, on the other hand. contends that the petitioner himself had pointed out that Navnath Dubey was promoted to L. T. grade in paragraph 4 of the writ petition. This presupposes that the said Shri Navanth Dubey was holding post in the C. T. grade from which he has been promoted to the post of L. T. grade. According to him C. T. grade was declared a dying cadre, therefore, the promotion to Navanath Dubey on 1.12.1996 cannot be an ad hoc promotion. It is in effect a conversion of C. T. Grade into L. T. grade. Navanath Dubey was holding C. T. grade and he was given L. T. grade. Thus, it was though a notional promotion but in effect it was simply a conversion. The same very C. T. grade which was held by Navnath Dubey has been converted into L. T. grade. Therefore, there cannot be any vacancy and the promotion to L. T. grade would not be an ad hoc arrangement. Thus, there cannot be any question of short-term vacancy. Even if there being any vacancy, the same would be a substantive vacancy as Navnath Dubey would not be reverted to the post of C. T. grade again. Neither it was a regular promotion. In the counter affidavit it has been pointed out that by reason of grant of L. T. grade to Navnath Dubey no vacancy had been created and there was no vacancy existing against which the petitioner could have been appointed. The contention of Mr. Tiwari according to

him since cuts either way. In case Navnath Dubey is promoted to L. T. grade by reason of C. T. grade having declared dying cadre, there cannot be any vacancy at all. On the other hand. If there is a vacancy by reason of such conversion, in that event, that vacancy could not be a short-term vacancy since Navnath Dubey is not expected to be reverted to C. T. grade which has since been declared dying cadre. Therefore, according to him though the refusal to grant financial sanction was altogether for a different ground but on the merit of the case the; petitioner has not been able to establish any legal right on the basis whereof he can invoke writ jurisdiction. Unless there is a legal right, the petitioner cannot maintain the writ petition.

5. Mr. Tiwari, in reply contended that by reason of the Government Order dated 4.9.1990 vacancy in C. T. grade will be a vacancy In L. T. grade and appointment in such vacancy is to be made treating the same in L. T. grade. Therefore, by reason of promotion of Navnath Dubey, there has been vacancy in C. T. grade which is to be filled in L. T. grade. The stand taken In the counter affidavit, therefore, is wholly misconceived.

6. I have heard the learned counsel for the petitioner and learned standing counsel.

7. It is an admitted position that C. T. grade has been declared as a dying cadre by the Government as a policy. In the said order, it has been provided that all persons holding the C. T. grade for a particular period would be entitled to L. T. grade. By reason of grant of L. T. grade to the teacher holding C. T. grade, no vacancy is created since the said order itself provided that as soon L. T. grade is granted to a teacher holding C. T. grade, the post in the C. T. grade ceases, meaning thereby the post would be carried with the incumbent whom the L. T. grade have been granted. Thus by reason of grant of L. T. grade to Navnath Dubey from C. T. grade, which had since been declared as a dying cadre, no vacancy can be conceived in C. T. grade which could be treated as L. T. grade by reason of subsequent Government Order dated 4.9.1990. If for some reason or other, the teacher holding C. T. grade is not granted L. T. grade and he had retired, or for some other reason, he ceases to hold the post of C. T. grade, in that event, if there Is a vacancy in C. T. grade, the same may be treated as L. T. grade but where a person holding C. T. grade is being granted L. T. grade, then it cannot be said that a vacancy occurred In C. T. grade. Because it is the same person who was holding C. T. grade is being granted L. T. grade even without creation of any post in the C. T. or L. T. grade. Thus, on the other hand, it is a conversion of the C. T. grade held by the incumbent into L. T. grade. Thus, the promotion of Navnath Dubey did not create any vacancy.

8. Then again the C. T. grade having been declared as dying cadre and the incumbent having been granted L. T. grade, there is no scope for reversion of the said Shri Navnath Dubey to C. T. grade again and thus the vacancy, even assuming that the submission of Shri Tiwari is correct, but not admitting then also it cannot be a short-term vacancy. If Navnath Dubey cannot be reverted to

C. T. grade, since declared dying cadre In that event if there Is any vacancy, the vacancy would be a substantive one. If it is a substantive vacancy, then as rightly stated by the District Inspector of Schools, that the Committee of Management did not have power to appointed after Act No. 24 of 1999 was promulgated substituting Section 18 at par with First Removal of Difficulties Order, and again since been substituted in 1995. Thus if it Is not a short-term vacancy, the petitioner could not have been appointed under para 2 (iii) of Second Removal of Difficulties Order. Thus, the contention of Mr. Tiwari does not appear to be" sound.

9. In the facts and circumstances of the case, for the reasons above, it appears that the petitioner has not been able to, establish any legal right which can be espoused through writ jurisdiction. Unless a legal right is established, a person is not entitled to invoke writ jurisdiction.

10. In that view of the matter, the writ petition fails and is accordingly dismissed. However, there will be no order as to cost.