

(2003) 12 AHC CK 0117

In the Allahabad High Court

Case No : C.M.W.P. No's. 3716 of 1989 and 41560 of 1996

Raj Mani Tripathi

APPELLANT

Vs

Joint Director of Education (Higher Education) and Another

RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Citation : (2004) 2 UPLBEC 1210

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : R.N. Tripathi, A. Wahal and R.K. Ojha, for the Appellant; A.K. Singh and B.N. Mishra and S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Vineet Saran, J.—Civil Misc. Writ Petition No. 3716 of 1989 has been filed by Raj Mani Tripathi with the prayer for quashing the order dated 25.1.1989 passed by the Joint Director of Education (Higher Education), U. P., Allahabad, respondent No. 1 and also for a direction to the respondents to treat the petitioner as having been legally appointed on the post of Deputy Librarian in the institution in question. The other Civil Misc. Writ Petition No. 41560 of 1996 has been filed by the Committee of Management Budh Snatakottar Mahavidyalaya, Kushi Nagar (Padrauna) with the prayer for quashing the order dated 30.3.1995 passed by the respondent No. 2, Director of Higher Education, U. P., Allahabad and also for a direction to the respondents to make payment of salary to Raj Mani Tripathi on the post of Deputy Librarian in the institution.

2. Since both these writ petitions relate to the same matter that is the appointment of Raj Mani Tripathi as Deputy Librarian in the institution in question, they are being heard and decided together by a common judgment. Civil Misc. Writ Petition No. 3716 of 1989 shall be treated as leading case.

3. I have heard Sri R. K. Ojha, learned counsel appearing for the petitioner, Raj Mani Tripathi as well as learned standing counsel for the State-respondents and

Sri A. K. Singh, learned counsel appearing for the Committee of Management and also perused the record.

4. The brief facts of this case are that in the year 1972 the petitioner was appointed as library clerk in the institution in question. The petitioner is Post Graduate and also possessed the degree of B.Ed. in the year 1979 the petitioner had also obtained a degree of Library Science from the Banaras Hindu University. In the year 1979 one Shyam Narain Mani Tripathi, who was the Deputy Librarian, in the institution, proceeded on leave. In 1980, by orders of the Principal of the institution, the petitioner was given ad hoc charge of the post of Deputy Librarian till the regularly selected Deputy Librarian took charge. Thereafter in November 1981, the said Shyam Narain Mani Tripathi resigned from the post of Deputy Librarian and hence a substantive vacancy occurred on the said post. On 1.2.1983 the Director of Higher Education permitted that post of Deputy Librarian may be filled up by regular selection. On 26.2.1988 an advertisement was issued in the daily newspaper "Dainik Jagran" for filling up the post of Deputy Librarian. Subsequently another advertisement was issued in the daily newspaper "Aaj" on 24.4.1988 for filling up the vacancy wherein the requisite qualification for such appointment was also provided. In response, the petitioner as well as the certain other candidates had applied. On 1.6.1988 the Selection Committee, duly constituted under the Gorakhpur University Statutes recommended the name of petitioner for appointment on the post of Deputy Librarian. In pursuance of the aforesaid recommendation of the Selection Committee on 2.6.1988 the Committee of Management forwarded the papers to the Joint Director of Education (Higher Education), U. P. Directorate of Higher Education, Allahabad, respondent No. 1 for necessary approval. By the impugned order dated 25.1.1989 the Joint Director of Education (Higher Education), U. P., Allahabad refused to grant approval for the appointment of the petitioner as Deputy Librarian on the ground that the experience certificate produced by the petitioner, Raj Mani Tripathi was not in accordance with the Government Order. The petitioner thus filed Writ Petition No. 3716 of 1989 for quashing the said order. In this writ petition on 6.4.1992 the specific directions were issued to the respondents to pay salary to the petitioner admissible to the post of Deputy Librarian provided he was discharging the duties attached to the said post. In pursuance thereof the Committee of Management forwarded the papers to the Director of Higher Education, U.P., Allahabad for payment of salary to the petitioner on the post of Deputy Librarian. The Joint Director of Education passed the order dated 30.3.1995 impugned in Writ Petition No. 41560 of 1996, whereby it was directed that the Committee of Management may make payment of salary on the post of Deputy Librarian from their own resources.

5. By the impugned order dated 25.1.1989 approval for appointment of the petitioner as Deputy Librarian on the question has been refused merely on the ground that the experience certificate was not in accordance with the Government Order. A perusal of the Government Order dated 18.10.1986 shows that the person applying for the post of Deputy Librarian should have two years

experience on the post of Cataloger, Classification, Assistant Librarian or Deputy Librarian. In the present case, it is not disputed that the petitioner has been working on the post of library clerk in the institution since the year 1972, which has not been denied by the respondents. In such capacity, the petitioner contends that he had been doing work of Cataloger and Classification. Further the fact that the petitioner had been working as ad hoc Deputy Librarian since the year 1980 has not been denied and thus it cannot be said that he did not possess the requisite qualification for appointment as permanent Deputy Librarian.

6. Sri R. K. Ojha, learned counsel appearing for the petitioner, Raj Mani Tripathi has very fairly submitted that in case if the petitioner is granted relief for appointment as Deputy Librarian in pursuance of the selection held in the year 1988 and is given seniority on the such post from the date of his selection, he shall not claim the difference in the salary on the post of library clerk for which he has been paid and the salary for the Deputy Librarian.

7. In view of the fact that the petitioner was selected as Deputy Librarian by the duly constituted Selection Committee and he did possess the requisite qualification for appointment on such post, the impugned order dated 25.1.1989 refusing to grant approval for such appointment as well as the order dated 30.3.1995 directing the Committee of Management to make payment from its own resources, passed by the Joint Director of Higher Education, U. P., Allahabad deserve to be set aside and are hereby quashed. It is further directed that the petitioner shall be entitled to his seniority as Deputy Librarian and other consequential benefits from the date of his selection as Deputy Librarian in the year 1988. However, in view of fact and circumstances of the case as well as the statement made by Sri R. K. Ojha, learned counsel for the petitioner, Raj Mani Tripathi, he shall be paid salary on the post of Deputy Librarian only with effect from the date of this judgment after giving the benefit of the due increments that he may be entitled to in view of his appointment having been made with effect from 1.6.1988. He shall also be entitled all the consequential benefits and he shall be permitted to work on the post of Deputy Librarian in accordance with law.

8. In the result, both the writ petitions are partly allowed. There shall be no order as to costs.