
(1976) 04 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6674 of 1975

Rajendra Tripathi

APPELLANT

Vs

Deputy Director of Education, Gorakhpur and others

RESPONDENT

Date of Decision : 12-04-1976

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F

Citation : (1976) 04 AHC CK 0038

Hon'ble Judges : K.N.Singh, J

Final Decision : Allowed

Judgement

K. N. Singh, J.

The petitioner was appointed as teacher in the C.T. Grade in the Patel Memorial Intermediate College, Atraulia, Azamgarh an institution aided and recognised by the Board of High School and Intermediate Education. He was later on promoted to the L.T. Grade. In 1973, there was a vacancy in the higher grade of lecturer in the subject of economics. The petitioner as well as certain other teachers applied for the same. The Committee of Management decided to fill up this vacancy by promotion. After selection the name of Surya Narain Dhar Dwivedi, another teacher of the College and the petitioner's name was forwarded to the District Inspector of Schools for his approval. The recommendation was made in the order of preference. The District Inspector of Schools by his order dated January 25, 1974 held that Surya Narain Dhar Dwivedi was not entitled to promotion as he did not fulfil the requisite qualifications laid down in the Regulations, he accorded approval to the petitioner's appointment. The Committee of Management thereafter appointed the petitioner and he commenced functioning as lecturer. Thereupon Surya Narain Dhar Dwivedi and one Shyam Narain Singh, another teacher who was a candidate for promotion to the lecturer's grade made representation before the Regional Deputy Director of Education. After obtaining report from the District Inspector of Schools, the Deputy Director of Education by his order dated July 20, 1974 directed the District Inspector of School to review

and recall his order granting approval to the petitioner's promotion in the lecturer's grade and issued directions to the Managing Committee to hold fresh selection. In pursuance of the direction issued by the Deputy Director of Education, the District Inspector of Schools by his letter dated January 16, 1975 informed the Managing Committee that the order dated January 25, 1974 granting approval for the petitioner's promotion to the lecturer's grade is set aside and the Managing Committee is directed to hold fresh selection. It appears that since the Managing Committee was satisfied with the petitioner's work it did not take any action in the matter. The District Inspector of Schools thereupon addressed another letter to the Managing Committee on May 3, 1975 directing it to comply with his salary already paid to the petitioner in the lecturer's grade. Aggrieved the petitioner filed this petition challenging the validity of the orders of the Deputy Director of Education as well as that of the District Inspector of Schools.

Learned counsel for the petitioner urged that the Deputy Director of Education has no jurisdiction to issue directions to the District Inspector of Schools for recalling his orders granting approval to the petitioner's promotion to the lecturer's grade, as no appeal had been preferred by the Managing Committee against the orders of the District Inspector of Schools dated January 25, 1974. Section 16F of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act) lays down that no person shall be appointed as a Principal, Headmaster or teacher in a recognised institution unless he possesses the prescribed qualifications and he is recommended by the Selection Committee constituted under the Act and his appointment is approved by the District Inspector of Schools in the case of a teacher and the Deputy Director of Education in the case of Headmaster and Principal of the Institution subsection (3) of Section 16F provides that where the Regional Deputy Director of Education or the District Inspector of Schools as the case may be disapproved any name proposed by the management for appointment as Principal, Headmaster or teacher, the management may within three weeks of the receipt of the disapproval make a representation against it to the Director, in the case of disapproval being given by the Deputy Director of Education, but in the case of teacher the representation may be made before the Regional Deputy Director of Education and his decision is final in the matter. Subsection (4) further provides that if the recommendations made by the Selection Committee or the Managing Committee is disapproved and the representation of the management is rejected either by the Deputy Director or Director of Education, the Selection Committee or the Managing Committee may proceed to recommend another name for approval as provided under Section 16F of the Act.

There is no dispute that selection for appointment to the post of Lecturer in Economics was made by the Managing Committee in accordance with the provisions contained in the Act and the Regulations framed there under and all the requisite procedure was followed. There is further no dispute that the Committee of Management made its recommendation to the District Inspector of

Schools in order of preference. It placed Surya Narain Dhar Dwivedi a teacher of the College at serial No. 1 while the petitioner's name was placed at serial No. 2. There is further no dispute that Surya Narain Dhar Dwivedi who was recommended at serial No. 1 was not qualified for promotion to the lecturer's post as he had not completed 5 years of service as required by the Regulations. The District Inspector of Schools accorded approval to the petitioner's appointment. Admittedly the Committee of Management was satisfied with the order of the District Inspector of Schools as it did not prefer any representation against the disapproval of its proposal in respect of Surya Narain Dhar Dwivedi, instead the Committee of Management appointed the petitioner as lecturer in Economic and it appears to be fully satisfied with his work. In the absence of any representation as contemplated by subsection (3) of Section 16F of the Act, the Deputy Director of Education had no authority or jurisdiction to set aside the order of District Inspector of Schools. The Act and the Regulations framed thereunder do not contain any provision conferring any right of representation to a rival candidate to challenge the order of the District Inspector of Schools granting approval. While granting approval or disapproval the Deputy Director of Education as well as the District Inspector of Schools exercised statutory functions in accordance with the provisions conferred in the Act and Regulation. They are not entitled to exercise any power which is not conferred on them by the statutory provisions in matters relating to the grant of approval. The Deputy Director of Education is a higher authority and in administrative matters he is entitled to issue directions to the District Inspector of Schools who is a subordinate authority, but in matter relating to grant of approval the Deputy Director of Education has jurisdiction to issue direction or set aside the order of approval only when a representation as contemplated by subsection (3) of Section 16F is made before him. In the absence of any representation of the Managing Committee the Deputy Director has no jurisdiction to set aside the order of the District Inspector of Schools granting approval or to issue directions to him to review or recall his order.

It is urged that the District Inspector of Schools has no jurisdiction to review or recall any order granting approval for the appointment of a teacher. The Act and the Regulations do not confer power on the District Inspector of Schools to review or recall his order suo motu or on the application made by any aggrieved party. In the absence of any statutory provisions, once the District Inspector of Schools accords approval or disapproves the proposed appointment of a teacher, he is not empowered to review his order, but there is exception to this rule well recognised by the general law of review. It is well settled principal that a public authority while exercising statutory powers is entitled to review its orders if it is satisfied that the order was obtained by fraud or misrepresentation. If an order is obtained by practising fraud or misrepresentation, the order is nullity and as such the authority concerned is empowered to review its order and pass a fresh order. But in a case where the order is not obtained by fraud or misrepresentation the statutory authority has no jurisdiction to review its order unless provision to that

effect is contained in the Act or the Rules. In the instant case there is no statutory provision either under the Act or under the Regulations conferring power on the District Inspector of Schools to review his order granting approval. There is further no dispute that the order of approval was not obtained by fraud or misrepresentation. All the necessary papers and facts were placed by the Managing Committee before the District Inspector of Schools and he passed the order on merits. The District Inspector of Schools had no jurisdiction to review his order.

But assuming that the District Inspector of Schools could review his order dated January 25, 1974 granting approval to the petitioner's appointment as lecturer, he could not do so, on the mere direction of the Deputy Director of Education without applying his own mind. The counter affidavit filed on behalf of the District Inspector of Schools does not show that there was any valid ground or reason for recalling his order granting approval to the petitioner's appointment. On the other hand it is conceded that since the Deputy Director of Education directed him to withdraw his order, he complied with that direction by recalling his order dated January 25, 1974 granting approval to the petitioner's appointment and issued direction to the Managing Committee for holding fresh selection. It is thus clear that the District Inspector of Schools failed to exercise his own discretion, instead he acted in a mechanical manner to give effect to the order of the Deputy Director of Education.

There is yet another infirmity in the impugned order of the District Inspector of Schools. Admittedly the petitioner was appointed and he had been working on the post of lecturer after approval was accorded by the District Inspector of Schools. He thus acquired a right to hold the post of teacher in the lecturer's grade. But he was not heard or given any opportunity by the District Inspector of Schools before setting aside the order of approval. The impugned orders were passed in violation of the principles of natural justice. The order of the District Inspector of Schools is vitiated on this ground also.

In the result I allow the petition and quash the impugned orders of the Deputy Director of Education dated July 20, 1975 and the two orders of the District Inspector of Schools dated January 16, 1975 and May 3, 1975. The petitioner is entitled to his costs.