

(1998) 07 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13591 of 1988 and Civil Miscellaneous Writ Petition No. 23829 of 1995

Ram Das Upadhya

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Citation : (1998) 07 AHC CK 0050

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

Final Decision : Disposed Of

Judgement

D. K. Seth, J.—In Writ Petition No. 13591 of 1988, the petitioner, who was a lecturer in Parvati Rastriya Inter College, Sidhpur, Etah, was appointed in the post of Principal on ad hoc basis, in the post whereof a substantive vacancy was created due to retirement of erstwhile Principal on 31.6.1985. The said vacancy was notified to the Commission. However, the Commission did not appoint any principal on the said post within the stipulated period. Therefore, the committee of management had appointed the petitioner as Principal on ad hoc basis and sought for approval of his appointment from the D.I.O.S., who having initially accorded approval on 13th August, 1987, ultimately had cancelled the said approval by a letter dated 17.6.1988 contained in Annexure 5 on the ground that despite several reminders the committee of management had not forwarded the names of two seniormost teachers. This order has since been challenged in this writ petition.

2. Mr. Pradeep Kumar Saxena, learned Counsel for the contents that nonsending of names of two seniormost teachers cannot be a ground for cancellation of the approval. Therefore, the order dated 17.6.1988 is liable to be quashed. He further, contends that no one else senior to the petitioner had ever led any claim to the said post. If the petitioner's appointment on the said post is unopposed, it is incumbent upon the D.I.O.S. to grant approval and he cannot cancel such approval on the alleged ground of nonfurnishing of names of seniormost

teachers. His third contention was that the question of seniority between three seniormost teachers being involved in Writ Petition No. 9242 of 1980 wherein an interim order was issued and neither respondent No. 3 and 4 nor the petitioner was to be granted selection grade in the meantime, therefore, by virtue of this dispute of seniority between those three persons, the petitioner was to be treated as seniormost teacher and, therefore there was no dispute that he was the senior most in the lecturer's grade for being appointed on the post of ad hoc Principal.

3. Though no counteraffidavit has been filed, but Mr. V.K. Rai, Brief Holder for the State, points out from the writ petition itself that from the statement made in paragraph 8 thereof, it appears that the petitioner was not the seniormost teacher and that the dispute involved in Writ Petition No.9242 of 1980 appears to be a dispute inter se between the said three seniormost teachers on the point as to who is entitled to get selection grade of pay. The interim order was not with regard to the seniority. However, by virtue of the said interim order the said three persons, who appear to be senior to petitioner, cannot be relegated to a position junior to the petitioner. He further contends that it is incumbent upon the management of the institution in view of paragraph 5 of the Removal of Difficulties Order to send the names of two senior most teachers and ad hoc appointment on the post of Principal can only be made from amongst the senior most teachers unless they are unwilling or for some other reason were found unfit. If the management does not forward the names of two senior most teachers, in that event, it will be an infraction of the procedure prescribe in the Removal of Difficulties Order 1991 and as such it was within the jurisdiction of D.I.O.S. to recall his approval which was granted without following the proper procedure. Therefore, according to him, the writ petition should fail.

4. In Writ Petition No. 23829 of 1995 the petitioner claims that since by virtue of an interim order passed in Writ Petition No.13591 of 1988 to the extent that the order dated 1761988 impugned in the said writ petition having been stayed, the petitioner is entitled to revised scale of pay on the post of Principal, therefore, he has prayed in the second writ petition for payment of revised scale of pay in the post of Principal. According to Mr. Saxena, learned Counsel for the petitioner, since the order dated 1761988 has been stayed, therefore, by fiction the petitioner had continued on the post of Principal and as such he is eligible and entitled to the said benefit of revised scale of pay of principal and the same cannot be denied to him. In the meantime, the petitioner having retired, he will be entitled for payment in the scale of pay payable to the Principal for the period during which he was appointed as ad hoc Principal namely 2261986.

5. On the other hand, Mr. Rai submits that even if the operation of the order dated 1761988 has been stayed, but the same was subject to the result of the writ petition. The petitioner can claim the scale of Principal provided he is successful in Writ Petition No. 13591 of 1988. According to him, the grant of scale of pay of Principal to the petitioner is dependent on the result of the first

petition.

6. I have heard Mr. Saxena and Mr. Rai both at length. From paragraph 8 of the first writ petition, it appears that writ petition No. 9242 of 1980 was filed before this Court in which dispute between three teachers was involved relating to grant of selection grade of pay. In his writ petition, the petitioner has nowhere claimed that he is the seniormost teacher in the lecturer's grade. Mr. Saxena however, disputes the said proposition.

7. In the second writ petition, counteraffidavit has been filed, in which it was pointed out that the petitioner was on 4th position in the seniority list. The said statement made in paragraph 4 of the counteraffidavit has not been denied specifically in the rejoinder affidavit filed by the petitioner. On the other hand, he has avoided to answer the same in paragraph 4 of the rejoinder affidavit and had contended that he was the seniormost teachers without denying that he was not on 4th position in the seniority list and has also not denied anything about the said three persons, who were involved in Writ Petition No. 9142 of 1980. It is also not alleged that the petitioner was getting selection grade of pay. If the dispute between those three teachers was with regard to grant of selection grade of pay in Writ Petition No. 9242 of 1980 in which the Petitioner was not a party, presumption would be that the petitioner was not getting the selection grade scale of pay which itself shows that the petitioner was not senior to those three teachers who were claiming seniority against each other for grant of selection grade scale of pay. In paragraph 6 of the counter affidavit, it is again repeated that the petitioner was on 4th position in the seniority list. While dealing with the said paragraph, the petitioner in paragraph 6 of his rejoinder affidavit did not say anything about the said statement nor he denied the said statement in he said paragraph of rejoinder affidavit. He had only purported to say that he reiterates the statement made in paragraph 8 of the writ petition.

8. Thus, in the absence of specific denial, having regard to the facts and circumstances and pleadings of both the writ petitions, it appears that the petitioner was not be seniormost and, therefore, the other three teachers were above him.

9. Ad hoc appointment by promotion in the post of Head of the institution is provided in paragraph 4 of the U.P. Secondary Service Commission (Removal of Difficulties) Order 1981 which prescribes that every vacancy in the post of Head of institution will be filled up by promotion in the case of intermediate college by the senior most teacher in the lecturer's grade. Admittedly, the petitioner was a teacher in Lecturer's grade at the relevant point of time. But in order to claim appointment on the basis of paragraph 4 (1) of the said Removal of Difficulties Order, the petitioner has to claim that he is the senior most teacher. In writ petition No. 13591 of 1988 the petitioner has no where pleaded that he is the senior most teacher. In the absence of such pleadings and having regard to the statement made in paragraph 8 and other materials as has been referred to above, it cannot be said that the petitioner was the senior most teacher in order

to enable him to claim the benefit of paragraph 4 (1) of the Removal of Difficulties Order. The procedure for making ad hoc appointment on the post of Principal is provided in paragraph 5 of the said order. By reason of paragraph 4 of the Order, it is only the seniormost teacher in the lecturer's grade, who is eligible for appointment in the post of Principal. In the present case, there was nothing on record to show as to why said other three persons, who were senior to the petitioner, were ignored and for what reason. The petitioner though having been on 4th position, was given appointment inspite of his being not the senior most teacher. It appears from the order dated 17/6/1988 that the said order was passed on the ground that despite there being successive letters, records of the senior most teachers have not been forwarded to the D.I.O.S. In the said order, the date and particulars of the successive letters issued to that extent has been mentioned. It appears that there were as may as 12 letters starting right from 23/11/1987 till 28th May 1988 requiring the committee of management to forward the records of seniormost teachers, but the committee of management did not comply with the same. In the writ petition also, the petitioner had contended that the management could not place any reliance on the seniority list and was unable to send the names of two seniormost teachers to the D.I.O.S. in view of the interim order passed in Writ Petition No. 9242 of 1980. Nothing has been shown to this Court why the seniority list was disputed one and what prevented the management from forwarding seniority list according to their own determination. There being no order determinating seniority in between the said three persons, it was not open to the management to interpret it in a different way. The said interim order did not prevent the management from sending the names of said three persons. There was nothing in the order which had stayed the seniority list. Only the grant of selection grade scale of pay was stayed. But that will not be a ground to refuse sending of names of senior most teachers. It was open to the management to forward the names of senior most teachers together with a copy of the order passed in Writ Petition No. 9242 of 1980 and intimating the situation. The management could not have refused to do so.

10. Thus, it appears that the management was interested in giving appointment to the petitioner though he was not the seniormost teacher and had refused to comply with the requirements of D. I. O.S.

11. Since there was nothings on record to show that the other three persons above the petitioner were ineligible, it is not possible for this Court to hold that the petitioner would supersede those three persons only on the basis of his ad hoc appointment in the post of Principal. Approval is to be accorded by the D.I.O.S. according to law prescribed. He being a creature of the statute, he cannot act de hors the law governing the subject. Since law permits appointment of senior most teacher as Principal, it was not to be management to appoint the petitioner, who was on 4th position without any ground for superseding those three senior most teachers. Therefore, it was well with in the jurisdiction of the D.I.O.S. either to grant or refuse approval to the ad hoc appointment. If approval in obtained without furnishing proper particulars, in that event, such approval

can be recalled by the D.I.O.S. In the present case, sufficient materials having not been furnished and admittedly there being teachers senior to the petitioner and there being no material showing them to be disqualified, the D.I.O.S. had rightly recalled the order of approval accorded to ad hoc appointment in the post of Principal given to the petitioner.

12. In that view of the matter, I do not find any infirmity in the order dated 1761988. Writ Petition No. 13591 of 1988, therefore, fails and is therefore, dismissed.

13. The order dated 2171988 being an interim order is always subject to the order that might be passed finally in the writ petition itself. The order dated 1761988, operation of which was stayed, having been held to be a valid one and the writ petition having been dismissed, the order dated 2171988 having merged in the final order passed in this writ petition, claim of the petitioner would be governed by this order.

14. In the light of the above observations, Writ Petition No. 23829 of 1995 is required to be decided. In the counteraffidavit, it appears that one Pyare Lal Verma was the acting Principal in the said institution. The petitioner did not make him a party either in the first writ petition or in the second writ petition. Said Pyare Lal Verma had filed a counteraffidavit which is on record. Thus, it appears that the petitioner did not work in the post of Principal. In the meantime, the petitioner having retired, he now cannot claim scale of pay payable for the post of Principal for the period during which he claims to have been appointed as Principal on ad hoc basis. Therefore, the petitioner is not entitled to revised scale of pay for the post of Principal as prayed for in the present writ petition. Mr. Saxena, learned Counsel for the petitioner submits that the petitioner has also not been given revised scale of pay on the post of lecturer on account of pendency of the writ petition. If it is so, in that event, it is observed that there was no interim order which prevented the respondents from granting revised scale of pay in lecturer's grade to the petitioner, therefore, nonpayment of lecturer's grade scale of pay as revised to the petitioner appears to be wholly arbitrary and illegal. The petitioner as such is entitled and eligible to the lecturer's grade scale of pay as revised from time to time and therefore, the respondents are hereby directed to pay to the petitioner within a period of six months the entire difference of pay calculated on the basis of revised scale of pay of lecturer's grade for the entire period the petitioner was deprived of such scale together with interest at the rate of 18% from the date on which such scale was payable and salary fell due months by month. Retirement benefits of the petitioner shall also be calculated on the basis of such revised scale and if the retirement benefits are not paid till date, the same of the difference, as, the case may be should be made available to the petitioner within a period of six months on the basis of revised scale of pay in lecturer's grade.

15. Writ Petition No. 23829 of 1995 thus stands finally disposed of with the above observations. There will, however, be no order as to costs.

16. Let a copy of this order be issued to the learned Counsel for the petitioner on payment of usual charges within seven days.