
(1995) 07 AHC CK 0054

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. 6991 of 1981

Ram Jiwan Singh and Others

APPELLANT

Vs

D.I.O.S., Kanpur and Others

RESPONDENT

Date of Decision : 06-07-1995

Acts Referred:

Citation : (1995) 07 AHC CK 0054

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Allowed

Judgement

R. H. Zaidi, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioners, who are three in number challenge the validity of the orders dated 1251981 and 361981 passed by the respondent Nos. 1 and 2 contained in Annexures 6 and 10 to the writ petition. Ram Jiwan Singh, petitioner No. 1 has died during the pendency of the present writ petition. Counsel for the petitioner No. 1 has filed substitution application, the said substitution application is apparently misconceived and there is no question of substitution of his heirs in the present case inasmuch as right of appointment to and hold the post in dispute was the purely personal right of the deceased petitioner and, therefore, on his death right to sue does not survive to his heirs and legal representatives, the substitution application is therefore, rejected. The rejection of the application of substitution filed on behalf of petitioner No. 1 however, will not affect the maintainability of the writ petition filed by the petitioner Nos. 2 and 3.

2. The facts of the case in brief are, in Har Sahai Jagdamba Inter College, Kanpur five vacancies (three of Assistant Teachers and two of clerks) were advertised. In the advertisement it was specifically mentioned that out of aforesaid five posts three posts of teachers and one post of clerk were reserved for Scheduled Caste candidates, The petitioners who belong to the category of general candidates applied for their appointment on the said posts. On 18101980 selection was held since no candidate belonging Scheduled Caste, except one who was not found to

be qualified, turned up, consequently, the Managing Committee of the schools referred the matter to the District Inspector of Schools with a prayer that the committee be permitted to fill up the vacancy by the recruitment of the candidates belonging to the general category. On the application made by the Managing Committee on 1810*1980 the District Inspector of Schools by his order dated 25101980 permitted the Managing Committee to recruit the candidates belonging to the general category on the aforesaid posts. In pursuance to the order passed by the District Inspector of Schools the petitioners were selected for appointment on 16111980 as Assistant Teachers in the institution and it was on 17111980 that they were appointed on the said posts.

3. It appears that some one raised objection to the appointment of the petitioners on the ground that the posts in question was reserved for Scheduled Caste candidate and the petitioner who belong to the general category had no right to be appointed on the said posts. By his order dated 1251981 the management terminated the services of the petitioner on the ground that the posts in question were reserved for Scheduled Caste candidates.

4. As soon as the petitioner came to know about the order passed by the manager dated 1251981 they approached the District Inspector of Schools. The District Inspector of Schools by his order dated 2051981 permitted the petitioners to continue to hold the said posts.

5. It appears that the association known as Scheduled Caste Uplift Union also raised some objection against the appointment of the petitioners before the District Inspector of Schools. The District Inspector of Schools without affording any opportunity of being heard to the petitioner vide his order dated 361981, quashed the order dated 2051981. The petitioner as stated, aggrieved by the said order filed present petition.

6. I have heard learned counsel for the petitioners and learned standing counsel. On behalf of the petitioners it has been submitted that before passing the impugned order, dated 361981 the District Inspector of Schools did not afford any opportunity of being heard to the petitioners and the impugned order was passed in violation of the principle of natural justice. Learned counsel for the petitioner has also urged that the District Inspector of Schools had no jurisdiction to review his order. The impugned order passed by the respondent No. 1 was thus, wholly without jurisdiction learned counsel appearing for the petitioners further submitted that the appointment of the petitioners, who belong to the general category was quite valid inasmuch as the Government Order dated 1271978 contained in Annexure2 to the writ petition itself permitted the appointment of the candidates belonging to the general category on the post in question in the event the candidates belonging to the Scheduled Caste were not available. In the present case, stated above the candidates belonging to the Scheduled Caste were not available. The Managing Committee, as required under law, already notified the said vacancies to be reserved for Scheduled Caste candidates but after obtaining the necessary permission from the District

Inspector of Schools made selection of the petitioners, therefore, the petitioners were legally entitled to hold the posts in question.

7. On the other hand learned counsel for the respondents contended that the post in question were reserved for the Scheduled Caste candidates and in any view of the matter the candidates belonging to the general category could not be appointed on the said posts. The District Inspector of Schools was thus, right in setting aside the order, dated 2051981 and in passing the impugned order.

8. I have perused the record of the case and the Government Order referred to above. In my opinion the submissions made on behalf of the petitioners have got substance. Admittedly, vide order dated 24101980 the District Inspector of Schools permitted the recruitment of the candidate belonging to the general category when the candidates belonging to the Scheduled Caste category were not available. The Government Order, dated 1271978 provides as under ;

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9. In view of the aforesaid provisions it was open to the Managing Committee to appoint the candidates belonging to the general category on the posts in question after taking permission from the District Inspector of Schools. The view taken by the District Inspector of Schools and the contention of the learned counsel for the respondents to the contrary is not correct. It is also wellsettled in law that the District Inspector of Schools has got no power of review. Reference in this regard may be made to the case of the Committee of Management Inter College, Nonapur v. The District Inspector of Schools, 1979 ALJ 33. The District Inspector of Schools, therefore, exceeded his jurisdiction and passed the impugned order, dated 361981 after passing orders dated 24101980 and 2051981.

10. It has not been disputed by the learned counsel for the respondent that the order dated 361981 was passed by the District Inspector of Schools without affording an opportunity of being heard to the petitioners. The impugned order was, thus, also passed in violation of the principle of natural justice. The impugned order dated 361981 is thus, wholly illegal and deserves to be quashed.

11. The writ petition is allowed and the order dated 361981 is quashed. The respondents are restrained from interfering in the petitioners working as Assistant Teachers in the institution. No order as to costs.