
(1997) 04 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1555 of 1994

Ram Kumar and Anr.

APPELLANT

Vs

District Inspector of Schools, Jalaun at Orai, & Ors.

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Citation : (1997) 04 AHC CK 0117

Hon'ble Judges : S.K. Phaujdar, J

Final Decision : Allowed

Judgement

S. K. Phaujdar, J.—This writ petition was presented on 411994. The Hon'ble Judge taking up the matters on that date directed the case to come after 6 weeks. The learned Standing Counsel was directed to submit a counteraffidavit by that time. The respondents were directed not to insist for refund of the salary already paid to the petitioners, unless further directed. The orders in the ordersheet indicate that the matter was next put up on 1291996 only. No counteraffidavit was filed. The learned Standing Counsel was allowed a further time of two months to put in the counteraffidavit. In spite of this order dated 1291996, no counteraffidavit came on record on behalf of the State. Even thereafter further chances were given but the State failed to controvert the averments made in the petition. The matter had to be heard on 141997 on the basis of the averments in the writ petition only. However, the learned Standing Counsel relied on averments in annexures to the writ petition.

2. The petitioner made a prayer for a writ, order or direction in the nature of certiorari quashing the impugned order dated 3121993 passed by the respondent No. 2. A copy of this order is in Annexure 12 to the writ petition. It was sent by the Assistant Accounts Officer, respondent No. 2, to the Manager of the Janata Inter College, Akniba, Jalaun. It was stated in this letter that enquiries were going on against the two petitioners and others and till the enquiries were completed payment to them would not be made. It was stated that they were appointed against non existing posts.

3. The petitioners averred that Janata Inter College in question was a recognised and aided institution receiving grantinaid from the State Government. The said institution is managed by a duly constituted Committee of Management. The appointment of the staff and their payments were covered by the provisions of the Intermediate Education Act. The petitioners were appointed as peons in the institution by the Principal thereof after obtaining financial sanction from the District Inspector of Schools (for short, "DIOS"). The petitioners had been receiving salary regularly in accordance with the provisions of the Payments of Salaries Act, 1971. The petitioners were appointed against two available Class IV posts and approval was accorded to such appointment by the DIOS with financial concurrence of the Assistant Accounts Officer (respondent No. 2). Papers were filed to show that they had drawn their pay for different months. However, without any reasons and without any authority the Asstt. Accounts Officer, Jalaun, had withheld the salary bills of the petitioners for the month of November, 1993 and had recorded the impugned order dated 3121993, as per Annexure12 to the writ petition. It was stated that under the provisions of the Intermediate Education Act, the power of appointment of Class IV employees lay with the Principal and the only condition for such appointment was that an appointment was to be made against a vacant post and financial sanction was to be obtained. The financial sanction given for appointment of the petitioners was never withdrawn and, as such, the salary bills could not have been withheld and the direction for stopping the salary of the petitioners and for recovery of the salary already paid to them were not according to law. There was no allegation, according to the petitioners, that they had managed to obtain employment by practising fraud or misrepresentation. If at all any action was to be taken against the petitioners, it could have flowed from the Principal of the institution or, at best, by the DIOS and not by the Assistant Accounts Officer. It was denied that any enquiry was pending or contemplated against the petitioners. No notice)f any enquiry was ever served on them and alary could not have been stopped on unfunded allegations. The petitioners also pleaded hardship for the reason of stoppage of their salary.

4. The State had not controverted that factual aspects of the averments made in the writ petition. But the learned Standing Counsel referred to papers in Annexures 1, 2 and 12 to the petition. Annexure1 is the appointment letter of the two petitioners. It indicates that they were appointed as peons against vacant posts on temporary/ad/ioc basis. Their scale of pay was indicated in the appointment letter and they were directed to join within one week. This letter is dated 2671992. Annexure 2 is the letter from the DIOS to the Principal in the matter of appointment of Class IV employees. This is dated 2571992. This indicates that the Principal had prayed for financial sanction for appointment of petitioners in Class IV posts. The letter indicate that both these persons could be appointed against available vacancies on the basis of financial sanction granted by the Assistant Accounts Officer on condition that the appointment would be effective after the issuance of this order and from the date of taking charge. As

already indicated, the letter of appointment was issued on 28/7/1992, i.e. after the letter in Annexure 2. Annexure 12 has also been relied on by the learned Standing Counsel to say that these employees were appointed against nonexisting posts and enquiries were pending as regards the appointment of these persons and certain others. Payments were directed to be stopped till such enquiry was concluded. The learned standing counsel proposed to say that when appointment was made against a nonexisting post, state cannot be made liable to make payment for such appointments. It was stated that there was no averment in the petition that the petitioners were appointed against sanctioned vacant posts.

5. In the absence of any averments to controvert, the version of the petitioners in the petition must be accepted to be correct. Moreover, Annexure 2 suggests that the Principal had sought financial sanction for appointment of these two persons prior to actual appointment and his letter to the DIOS was dated 6/7/1992. Annexure 2 further indicates that the Asstt. Accounts Officer had accorded financial sanction and the appointments were accepted against available vacancies. The only condition that was indicated in the letter of the DIOS dated 25/7/1992 was that the appointment would be effective from a date after the date of this letter, i.e. after 25/7/1992 and from the date of actual taking charge. This sanction letter of the DIOS does not indicate that the posts were not sanctioned or were not vacant. It is the duty of the DIOS to accord sanction and no appointment would be made without such sanction. It naturally follows that while granting sanction or approval the DIOS would look to all aspects, that is, availability of the posts and desirability of the proposed appointees. When such sanction was once given by the DIOS, it could be cancelled or withdrawn on sufficient grounds only and not at the whims of any particular officer. Annexure 12 suggests that the authorities were making some enquiries into the proceedings for appointment of these two persons. The petitioners asserted that no such enquiry was pending nor had they been noticed to face any such enquiry. Not a single paper has been brought on record to show when the enquiry was initiated and what is the stage of the enquiry at present. Annexure 12 suggests that the appointments were made against non existing posts. Annexure 2 indicates that copy of this letter was sent to the Asstt. Accounts Officer for information and necessary action. Different salary bills ranging for more than a year that have been annexed to the petition indicate that payments were made to the petitioners against the concerned appointments. The very conduct of the authorities who are liable to make payments indicates *lhalprima facie* there was no material to infer that the appointments were made against nonexisting posts. In the absence of any denial of the averments and in the absence of any materials to conclude that enquiries were pending, it may not held that any enquiry was really being made as regards validity of the appointments of the two petitioners. Even if it is conceded for the sake of argument that such an enquiry had been pending on the date Annexure 12 was written, nothing has been brought on record to show that it is

still pending. In a matter like the present one, enquiries may not be allowed to be pending for three years or so and even if the same are pending, an employee may not be asked to suffer withholding of his salary only for the result of such enquiry.

6. In any view of the matter, it must be held that the respondents have shown extreme callousness, firstly, in holding and concluding an enquiry, as indicated in Annexure12 and, secondly, in making out no case in support of any action taken the said application. Nothing has been brought in record by the State, by the Officer of the DIOS or elsewhere that the appointments were made against nonexisting posts.

7. Accordingly, the writ petition is allowed. The order dated 3121993, as per Annexure12 so far the present petitioners are concerned, is quashed. The respondents 1 and 2 are directed to pay to the petitioners all unpaid dues including salary and allowances within 3 months of receipt of copy of this order at their end and to continue to pay the same in future also regularly till their services are brought to an end by legal process. Petition allowed