
(2000) 09 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26994 of 2000

Ram Naresh Tripathi

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Citation : (2000) 3 UPLBEC 2754

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Yog, J.—Sri Bihari Ji Inter College, Aheripur, District Etawah (called the college at Etawah) is a recognised Intermediate College as contemplated under the provisions of U.P. Intermediate Education Act, 1921 and the regulation framed thereunder. Provisions of Payment of Salaries Act, 1971 as well as U.P. Secondary Education Service Commission are also applicable. Ram Naresh Tripathi was appointed on the post of Assistant Teacher (L.T. Grade) in the institution with effect from September, 1972. The said Ram Naresh Tripathi continued to work as such, Darshan Lal Mishra. Lecturer (Civics) in the college retired on June 30, 1992. According to Ram Naresh Tripathi Committee of Management resolved to promote the petitioner on the aforesaid post lecturer Civic on ad hoc basis vide Management's resolution dated January 9, 1994 as contemplated under Removal of Difficulties Order issued under Secondary Education Commission Act since there was no regular selectee recommended by the Commission. It is further alleged that concerned District Inspector of Schools vide order dated June 15, 1995 approved ad hoc appointment of said Ram Naresh Tripathi and on its basis appointment letter dated June 16, 1995 was issued, Consequently, Ram Naresh Tripathi joined duties on the post of Lecturer (Civics) in the college and started discharging duties by taking intermediate classes.

2. On the other hand Surendra Nath Tripathi was appointed as Assistant Teacher

(L.T. Grade) in another recognised Intermediate College Jain Inter College, Karhal, District Mainpuri (Called the College at Mainpuri) on 15th July, 1972. He sought his transfer to the College at Etawah. He was allowed to be relieved from the College at Mainpuri and join at the College at Etawah on the basis of the order dated August 30, 1984 passed by District Inspector of Schools, Mainpuri. On 1-9-1984 Surender Singh Tripathi joined the college at Etawah as Assistant Teacher (L.T. Grade).

3. When Ram Naresh Tripathi, as indicated, above was given ad hoc promotion as Lecturer, the said Surender Nath Tripathi being aggrieved pressed for his claim of promotion as lecturer and in that connection it is alleged by him in writ petition No. 2521 of 1993 that he had approached various authorities including various representation being filed. In the aforesaid writ petition Surender Nath Tripathi alleged that his representations were not being considered. He prayed for a writ of mandamus directing the respondents (concerned educational authorities) to make ad hoc promotion on the post of lecturer lying vacant on the retirement of one Dharshan Lal Mishra, Dharama Narayan Pathak and further a writ of mandamus directing he concerned respondents to sent requisite papers for regular promotion. In this petition ad interim mandamus vide order dated 29-1-1993 was issued by the learned Single Judge directing the respondents to consider the case of the petitioner on ad hoc promotion provided a certified was served on the concerned respondents.

4. Sri Devendra Kumar, Advocate, representing Surender Nath Tripathi (petitioner in writ petition No. 2521 of 1993) stated that in spite of ad interim mandamus issued by this Court his representations were not decided.

5. Apparently, it is not disputed at the bar that Ram Naresh Tripathi (petitioner in writ petition No. 26994 of 2000) was given ad hoc promotion on the same post of lecturer, which was claimed by aforesaid Surendra Nath Tripathi.

6. From the facts stated in writ petition No. 26994 of 2000 that vide order dated 15-5-2000 (Annexure 8 to this petition), District Inspector of Schools, Etawah enter into the question regarding seniority vis-a-vis Ram Naresh Tripathi and Surendra Nath Tripathi (Two) petitioners in the aforesaid two writ petitions) and further sought to recall his order of approval dated 15-6-1995 in favour of Ram Naresh Tripathi whereby said Ram Naresh Tripathi was accorded appointment was Lecturer on ad hoc basis.

7. Feeling aggrieved petitioner preferred a writ petition No. 26694 of 2000 praying a writ of certiorari to quash aforesaid order dated 15-5-2000, Annexure 8 and subsequent consequential order dated 24-5-2000, Annexure 10 to the writ petition as, inter alia, amongst various other grounds that aforesaid impugned order dated 15-5-2000 was passed without giving opportunity of hearing to the petitioner. Averment in this respect has been made in para 22 of the writ petition.

8. It may be noted that Sri Surendra Nath Tripathi. Respondent No. 2 has filed Application No. 72013 of 2000 in the writ petition filed by Ram Naresh Tripathi

along with his affidavit but he has nowhere denied the fact that impugned order against the Ram Naresh Tripathi was passed without affording opportunity of hearing and without complying with the principal of natural justice. In the said application No. 72013 of 2000 Surendra Nath Tripathi had prayed that writ petition No. 26694 of 2000 (Ram Naresh Tripathi v. District Inspector of Schools) may be quashed, writ petition be allowed on the direction to the District Inspector of Schools Respondent No. 1 to decide the case afresh after affording opportunity of hearing to the concerned parties.

9. Heard Sri Krishna Ji Khare on the behalf of Ram Naresh Tripathi and Sri Devendra Kumar Advocate on behalf of Surendra Nath Tripathi as well as learned Standing Counsel on behalf of respondents Education Authorities.

10. From the facts stated above it is clear that writ petition No. 2125 of 1993 filed by Surendra Nath Tripathi has become infructuous since it is admitted on both sides that his representations have been decided by District Inspector of Schools impliedly by passing impugned order dated 15-5-2000. In view of the above writ petition No. 2125 of 1993 has been rendered infructuous and it is, accordingly, dismissed as having been rendered infructuous.

11. As far as writ petition No. 26694 of 2000, Ram Naresh Tripathi v. District Inspector of Schools, is concerned, in view of the admitted pleadings of the parties that impugned order dated 15-5-2000 (Annexure 8 to the petition) has been passed by District Inspector of Schools without giving notice or opportunity of hearing to Ram Naresh Tripathi, and the prayer made by Surendra Nath Tripathi in his application No. 72013 of 2000 to quash the said impugned order dated 15-5-2000 and to allow the writ petition with direction to decide the matter afresh, it is not necessary for this Court to go into the merits of respective contention raised by the parties at this stage. This writ petition could be decided on the question impugned order has been passed in violation of principal of natural justice.

12. In view of the admitted circumstances and as indicated above the impugned order dated 15-5-2000 and 24-5-2000 (Annexures 8 and 10 to the petition) are set aside with direction to the Deputy Director of Education to decide the question of seniority vis-a-vis Ram Naresh Tripathi and Surendra Nath Tripathi taking the provisions of U.P. Intermediate Education Act and relevant contention framed thereunder as amended up to date after affording opportunity of hearing in accordance with law. The Deputy Director of Education is further directed to decide the question regarding claim of ad hoc promotion by the aforesaid two contending parties as well.

13. Accordingly, I direct Ram Naresh Tripathi and Surendra Nath Tripathi to approach the concerned Deputy Director of Education by filing their exhaustive claim before the said authority along with certified copy of this order within six weeks from today and in case said representation is filed within the time stipulated above said Deputy Director of Education shall decide the same in

accordance with law as indicated above by passing reasoned order preferably within four months on receipt of the representation.

14. It is made clearly that none of the observations made in this judgment shall prejudice the claim by the either of the parties and concerned Deputy Director of Education shall decide the same exercising its unfettered discretion without being influenced in any manner.

15. Writ petition No. 26694 stands allowed. No order as to costs.