

(1988) 04 AHC CK 0093
In the Allahabad High Court
Case No : Writ Petition No. 303 of 1978

Ram Prasad Singh Shishodia

APPELLANT

Vs

The District Inspector of Schools and Another

RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 10, 100, 11, 12, 22

Citation : (1988) 2 AWC 1295

Hon'ble Judges : R.M. Sahai, J;D.S. Sinha, J

Bench : Division Bench

Advocate : A.K. Yog, for the Appellant; A.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The short question that arises for consideration in this petition filed by Petitioner who was appointed as Librarian in Section D. Intermediate College, Meerut is whether the Librarian appointed on probation of one year under regulations of U.P. Intermediate Education Act becomes automatically confirmed after expiry of the probation period.

2. Before advertng to the question of law it appears necessary to narrate facts in brief. Although there is divergent stand taken by the parties on various factual aspects but what emerges from the affidavit filed is that the Petitioner was appointed as Librarian in pursuance of an advertisement issued on 13th June, 1974 for a period of one year temporarily on 6th July, 1974. His services were terminated in May, 1975. Petitioner made representations against temporary appointment and also against the order of termination and claimed that since he was appointed against permanent vacancy he should be deemed to be in service. Whether it was on the intervention of the District Inspector of Schools or not but this stands admitted that either because of an order of the President of the

Committee or on his instructions the Committee of Management passed the resolution in October 1975 and appointed Petitioner on probation for a period of one year. This resolution was implemented and an order was issued on 12th November, 1975 appointing Petitioner on probation and Petitioner joined as Librarian and he continued as such for more than one year. Thereafter some dispute appears to have been arisen because a principal of the college wrote a letter to the District Inspector of Schools that the appointment of Petitioner was not regular. Before the dispute arose even District Inspector of Schools had passed an order approving the appointment of Petitioner as Librarian. Although under the Statute there was no such requirement at the relevant time that the approval of the District Inspector of Schools should be obtained in respect of clerk and Librarian yet on the intimation sent by college presumably because powers of salary disbursement are with the District Inspector of Schools a note was made in the record that Petitioner was appointed as Librarian. However after report was received from the Principal the DIOS passed the impugned order withdrawing the earlier order passed by him noting it in the record that the Petitioner had been appointed on probation.

3. Whether this was proper or not is another matter but the reasons given by the District Inspector of Schools in the impugned order appear to be wholly irrelevant. For instance, it has been mentioned that the resolution appointing Petitioner was passed on 12th November, 1975 although he was appointed from 1st July, 1975. It was further observed by him that the Petitioner did not attend the institution from 1st July, 1975 to 11th November, 1975 and the most important circumstance on which reliance has been placed by the learned Counsel for opposite party, even, that the appointment was made without issuing any advertisement. Each of all these reasons mentioned in order is also to be found in the letter written by the Principal to the Inspector of Schools, They may be taken by one. How the Petitioner was paid salary from 1st July, 1975 to 12th November, 1975 is not clear. May be because there was some misapprehension and he was treated to have continued in service. But that could not vitiate his appointment in November, 1975. Payment of salary under misapprehension could utmost make out a claim for irregular payment but not for termination of appointment. Further it being admitted that his services were terminated in June, 1975 and he was appointed on 12th November, 1975 it is apparent that he could not have been appointed on 1st July, 1975 therefore, no adverse inference could be drawn against him because he did not work from 1st July, 1975 to 12th November, 1975. As regards issuance of advertisement the learned Counsel for Committee of Management failed to point out any provision either in the Statute or in the Government order which requires advertisement to be issued for appointment or clerks or librarian. It is no doubt mandatory in respect of appointment of a teacher. And it appears the District Inspector of Schools labouring under this misapprehension took note of the recommendation made by the Principal and made it a ground for withdrawing his earlier order. It has been argued by learned Counsel for opposite party that since the finding recorded by

District Inspector of Schools was not challenged by Petitioner in writ petition the opposite parties could not bring on record any material to show if there was any government order or circular issued by the Director of Education laying down Procedure for appointment of a Librarian or clerk. The argument cannot be accepted. In absence of any material the order of District Inspector of Schools cannot be sustained only because there might be some circular or direction from the Director of Education. The order, therefore, passed by the District Inspector of Schools is manifestly erroneous.

4. The claim of Petitioner is that by virtue of expiry of probation period he became automatically confirmed. For this it is necessary to refer to regulations framed under Intermediate Education Act. Chapter III of Regulations deals with conditions of service. Regulation 7 of this Chapter provided that a person selected for substantive appointment against a clear vacancy shall be placed on probation from the date of joining duty. And the period of probation was one year under regulation 8. Although these regulations related to teachers but by virtue of regulation 22 they were applied to Ministerial and interior servants. In April, 1975 regulation 22 was deleted and regulation 100 was substituted. It applied regulations 10 and 11 to clerks and Librarian as well as appointment on probation is usually made against a permanent and substantive vacancy. Although a feeble attempt was made to urge that the vacancy was not permanent but since the vacancy was advertised in 1974 it is not open to opposite party to take this stand. And it was against this vacancy that Petitioner was in fact appointed in November, 1975. Therefore, the vacancy was permanent and substantive. Since automatic confirmation of Petitioner depends on these regulations they are extracted below:

10. A person placed on probation shall be confirmed, if he fulfills the requirements of Regulation 9 above, has worked with diligence, has otherwise proved himself fit for the post for which he was recruited and his integrity is certified.

11. Unless before the expiry of the period of probation, the service of a Head Master, Principal or teacher is terminated or action is taken to dismiss, discharge or remove him or reduce him in rank or in the case of Head Master or Principal the period of probation is extended under Regulation 12 following he shall be confirmed on the post and in the grade at the end of his probation.

A bare perusal of these regulations indicates that after expiry of period of probation a person appointed under the regulations become automatically confirmed unless during this period his services are terminated or removed from service. The regulations confer a right on a probationer to be confirmed after expiry of probation period of one year, when no action is taken against him as contemplated in regulation 11. Subsequently the letter sent by the Principal or action taken by District Inspector of Schools had, therefore, become ineffective and could not result either in discontinuing service of Petitioner or terminating his service.

5. Learned Counsel for opposite party urged that appointment made against statutory provisions was invalid, and therefore, the Petitioner cannot claim confirmation on basis of these regulations. Merit of the argument cannot be disputed but it appears to be hypothetical in nature because it is not based on any fact. Learned Counsel urged that if it was a substantive: vacancy the order of the District Inspector of Schools was on order of termination, therefore, the remedy of the Petitioner lay under the provisions of Section 16-G. As stated earlier since the appointing authority of Petitioner was Committee of Management and the Petitioner stood confirmed automatically after expiry of one year, any order passed against him which effected his right was invalid and, therefore, non filing of appeal cannot disentitle him from approaching this Court under Article 226. It was also urged that since the appointing authority of Petitioner, was Committee of Management no writ could lie against it. The controversy stands concluded against opposite party by a Full Bench of this Court in Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, .

6. Learned Counsel for the opposite party further stated that during pendency of the writ petition the District Inspector of Schools has passed an order transferring the Petitioner to another Institution. It is unnecessary to enter into this controversy at present.

7. In the result this petition succeeds and is allowed. A direction is issued to opposite parties to treat Petitioner as Librarian who was confirmed after the expiry of one year probation in November, 1975. The Petitioner shall be entitled to all benefits which were available to him from the date of confirmation till today.

8. In case the Petitioner's salary has not been paid it shall be paid forthwith.