

(2006) 11 AHC CK 0216
In the Allahabad High Court

Ram Rama Pal

APPELLANT

Vs

District Inspector of Schools, Principal, Ishwar Saran Inter
College and Committee of Management, Ishwar Saran Inter
College

RESPONDENT

Date of Decision : 17-11-2006

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers
and Other Staff) Act, 1971 — Section 3

Citation : (2006) 7 AWC 7367

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri M.B. Saxena, learned Counsel for the petitioner and learned Standing Counsel for the respondent No. 2.

2. The petitioner was appointed as peon in Ishwar Sharan Intermediate College, Allahabad. The appointment letter was issued by the Principal (respondent No. 2) on 17.5.1989 (Annexure 1 to the writ petition). The petitioner joined his duties in pursuance of the said appointment letter on 18.5.1989. The said appointment of the petitioner is aid to be against a clear substantive vacancy. The DIOS vide letter dated 4.7.1989 raised certain objections against the aforesaid appointment of the petitioner. The objections so raised by the DIOS were duly replied by the Principal and proper clarification was given. However, the DIOS insisted that the post be offered to one Shiv Lochan the dependent of an employee of K.P. Inter College who had died-in-harness. Accordingly, the salary bills of the petitioner submitted by the college along with the other staff members were not cleared and no payment of salary was made to the petitioner.

3. In the above background the petitioner filed the present writ petition commanding the DIOS to pay salary to the petitioner from the date of his appointment i.e. 17.5.1989. The Hon''ble Court vide interim order dated

20.3.1991 directed the DIOS to pay the salary to the petitioner in accordance with law subject to the final decision of the writ petition. Accordingly the petitioner started receiving salary.

4. The petitioner in the writ petition has also contended that the objection on which his salary was withheld by the DIOS was not tenable and had ceased to exist when the petitioner was appointed. The dependent of Khandan Lal who died-in-harness while in service in K.P. Intermediate College i.e. Shive Lochan had already been appointed in K.P. Intermediate College itself on 12.2.1987 and his appointment had also been approved by the DIOS vide letter dated 7.2.1987. He had even joined his duties. The petitioner further contents that the time of his appointment the provisions of Regulation 101-107 of the Regulations were not in existence. It has also been contended there was no provision under the U.P. Intermediate Education Act or the regulations framed therein for seeking any formal approval of the DIOS to the appointment of class IV employees at the relevant time.

5. Learned Standing counsel has placed reliance upon Paragraphs 3, 6 and 9 of the counter affidavit filed on behalf of the DIOS by Sri H.S. Dubey, Assistant Supervisor in the office of DIOS, Allahabad. It has been stated therein that the petitioner was appointed by the resolution of the Committee of Management dated 12.5.1989 and since the appointing authority of the class IV employee is the principal of the college, the resolution of the Committee of Management is without jurisdiction and, therefore, the petitioner cannot be said to have been validly appointed. No other defence has been taken in the counter affidavit.

6. It is admitted on record that the appointment of the petitioner dated 17.5.1989 has been made by the principal of the college and not by the committee of Management. This appointment has not been disapproved by any specific order of the DIOS. The petitioner has been appointed by the Principal and, therefore, even if the Committee of Management has passed a resolution in support thereof it would not affect the appointment of the petitioner. Therefore, the defence taken by the DIOS in the counter affidavit has no substance and is not acceptable.

7. The only objection taken to the petitioner's appointment was in relation to the appointment of Sri Shiv Lochan on compassionate ground. The said Shiv Lochan had already been appointed in the K.P. Intermediate College itself where his father was an employee. This fact has not been disputed in the counter affidavit. Therefore, the said ground of objection had ceased to exist and as such the DIOS was not justified in withholding the salary of the petitioner on this ground.

8. It is not the case of the respondents that the appointment of the petitioner was not against any substantive sanctioned post or was in excess of the sanctioned posts. It is also not their case that the procedure prescribed for the appointment was not followed. Now the only question which remains to be seen

is as to whether any formal approval from the DIOS to the appointment of the petitioner, who was appointed as a class IV employee was necessary under the relevant provisions. Learned Standing counsel has placed reliance upon Regulation 101 under Chapter III of the Regulations framed under the Act. Regulations 101 to 107 which were inserted w.e.f. 28.8.1992 vide Government notification No. 400/15-7-2(1)/90 dated 30.7.1992 and Regulations 101 and 103 to 107 have been substituted vide notification No. 300/15-7-2(1)/90 dated 2.2.1995. Thus at the time when the petitioner was appointed in the year 1989 there was no Regulation such as Regulation 101 providing for obtaining prior approval of the DIOS to the appointments of class IV employees at the institution. This aspect of the matter was considered by the Division Bench of this Court in case of Om Prakash v. DIOS Budaun 1982 UPLBEC 232 and it was clearly held that the appointment of class IV employees i.e. of Chaukidar made by the Principal of the institution requires no approval of the DIOS as there is no provisions to this effect and, therefore, such appointees are entitled for salary. The aforesaid decision has duly been followed by the another decision of this Court in case of Mool Chandra Maurya v. DIOS Jaunpur, 1991 (1) UPLBEC 50 . Therefore, no approval by the DIOS was necessary to the petitioner's appointment.

9. Apart from the above the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other employees) Act, 1971, which has been enforced w.e.f. 1st August 1971 vide Section 3 of the said Act provides that the salary of a teacher or other employee of an institution after 31st day of March 1971 shall be paid to him on monthly basis by the office of DIOS on submission of bills by the management of recognized institution. In view of the above it is a primary responsibility of the DIOS to pay salary to the petitioner when his appointment is not in any way unlawful.

10. In view of the above, the writ petition is allowed and the District Inspector of School, Allahabad (respondent No. 1) is directed to make payment of salary to the petitioner w.e.f. the date of his appointment which happens to be 17.5.1989 with all consequential benefits. The salary received by the petitioner in pursuance of the interim order of the High Court shall duly adjusted.