

(2011) 01 AHC CK 0312

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10464 of 1981

Ramesh Chandra Tiwari

APPELLANT

Vs

Director of Education, U.P. and Others

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(11), 16F, 16F(2), 16F(3)

Citation : (2011) 3 ADJ 4 : (2011) 3 AWC 3081

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned Counsel for the Petitioner Shri J.P. Pandey and the learned Standing Counsel.

2. Rejoinder affidavit filed today, may be taken on record.

3. Petitioner before this Court seeks quashing of the order of the Authorized Controller of Sanatan Dharma Inter College, Varanasi dated 2.7.1981 and 4.8.1981. Under the impugned orders the Petitioner has been informed that his services would come to an end on 2.9.1981. It has further been recorded that the District Inspector of Schools had approved the payment of salary to the Petitioner only for the period up to 30.6.1981. The other order dated 2.7.1981, Annexure-9 to the writ petition, informs the Petitioner that his selection and payment as Lecturer in the institution was on temporary basis, the period whereof would expire on 2.9.1981 and his services shall stand terminated on 30.6.1981.

4. On behalf of the Petitioner it is contended that a various posts of Lecturer were advertised by the Committee of Management of the institution in Hindi newspaper "Gandiv" published from Varanasi on 16.6.1980 which included amongst other the post of Lecturer (Commerce). The Petitioner applied in

response thereto. After selection through a Selection Committee in accordance with the provision of Section 16-E and 16-F of the Intermediate Education Act, 1921, he was appointed under a letter of the Authorized Controller of the institution dated 2.9.1980. A copy of the appointment letter has been enclosed as Annexure-3 to the writ petition. It records that the Petitioner is being appointed as Lecturer (Commerce) on probation of one year. It is, therefore, contended that the appointment of the Petitioner was a regular appointment against a substantive vacancy in terms of the Advertisement. Such appointment of the Petitioner could not subsequently be treated to be a temporary appointment. Consequently, the orders impugned are illegal.

5. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

6. u/s 16-E read with Section 16-F of the Intermediate Education Act, 1921 appointment on the post of teacher in a recognized Intermediate College can only be made after following the statutory procedure mentioned therein namely:

(a) Vacancy is advertised in two newspapers having circulation throughout the State. Applications are received by the District Inspector of Schools in terms of the Advertisement and a list of candidates alongwith their application and the quality point marks in accordance with the academic qualification allotted by the District Inspector of Schools is forwarded to the Committee of Management for holding selections through a Selection Committee to be constituted for the purpose.

(b) The Selection Committee is to comprise of three experts to be nominated by the District Inspector of Schools from the list maintained for the purpose. (Ref. Section 16-F (2) (3) of the Intermediate Education Act).

7. It has been provided under Proviso to Clause 16-F(3) that no recommendation made by the Selection Committee in respect of any candidate, shall be valid unless two experts referred to in sub Clause 3 of Sub-Section 1 or 2, as the case may be, agreed to it. Reference may also be had to Section 16-E(11) which provides that against a temporary vacancy Selection Committee, as provided in the earlier Rules will be necessary. The Proviso to said Sub-section (11) however provides that no such temporary appointment shall continue beyond the end of the educational session.

8. This Court may record that the Petitioner himself has made reference to a Corrigendum which was published in the same Hindi newspaper "Gandiv" on 16.6.1990 qua the post of Lecturer (Commerce). Under the Corrigendum it was clarified that the vacancy was temporary and the earlier advertisement stands corrected accordingly. What is further to be noted is that the order of the District Inspector of Schools approving the payment of salary to the Petitioner for the period up to 30.6.1981 is neither under challenge before this Court nor has been brought on record. It is in this factual and legal background that the Court has to examine as to whether the appointment claimed by the Petitioner was regular

appointment or was a temporary appointment which was to remain effective only till the end of the educational session as provided u/s 16-E(11) Proviso.

9. As already noticed above, the Advertisement earlier published was corrected by a Corrigendum published on 16.6.1981 in the same newspaper where the earlier advertisement was published. Therefore, what logically follows is that any candidate eligible for the post would have been given to understand that the vacancy was temporary only. Large number of eligible candidates would not have applied despite being aware of the vacancy as it was shown to be temporary in nature. In any view of the Corrigendum as published in the newspaper on 16.6.1981 it has been held that the vacancy was shown as temporary only. Even otherwise, from the record of the present writ petition, it is apparently clear that the vacancy was caused due to grant of leave as the incumbent working on the post was suffering from ailment. It is not the case of the Petitioner that the vacancy was substantive in nature on the date it was advertised. This Court may further record that material facts qua the constitution of the Selection Committee as required u/s 16-FF and two experts having approved the selection of the Petitioner have not been disclosed nor the recommendation of the said Selection Committee is on record, although general allegations have been made in paragraphs 4,5 and 6 of the writ petition for alleging that a Selection Committee was duly constituted and the Selection Committee recommended his name for appointment.

10. The contention raised on behalf of the Petitioner that the terms of appointment as recorded in the appointment letter could not be altered subsequently, does not appeal to the Court. Publication of Corrigendum disclosing that the vacancy was temporary (which fact is not disputed by the Petitioner), is in itself sufficient to dislodge the entire case pleaded by the Petitioner. It is settled law that the appointment cannot be offered on conditions which are contrary to the advertisement. In view of the fact that the Corrigendum was published on 16.6.1980 which was much prior to the last date of submissions of the application in terms of the earlier application, the appointment letter issued to the Petitioner has to be held to be illegal being contrary to the nature of the vacancy advertised.

11. In view of the aforesaid there is no illegality in the order so passed by the authorities. They are legally justified in recording that the Petitioner's appointment was temporary in nature. In terms of Section 16-E (11) Proviso, such temporary appointment can continue only till the end of Educational Session.

12. At this stage, counsel for the Petitioner submitted that the impugned order has the effect of reviewing the earlier order of appointment which is legally not permissible inasmuch as under the Intermediate Education Act, there is no power of review. The contention so raised is totally misplaced. It is always open to an authority to correct a mistake which has been committed. No question of review, in the facts of the present case, arises.

13. Writ petition lacks merit and is accordingly dismissed.

14. Interim order, if any, stands discharged.