

(2001) 05 AHC CK 0194

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29874 of 1991

Ravindra Nath Yadav

APPELLANT

Vs

District Inspector of Schools and Another

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33B(1)

Citation : (2001) 90 FLR 846 : (2001) 2 UPLBEC 1757

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

Bench : Single Bench

Advocate : A.N. Singh, for the Appellant; S.C. and Ravi Pratap, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog, J.—This application has been filed by Ravindra Nath Yadav, applicant-petitioner with the prayer to dismiss the petition as infructuous in view of the fact that his services as Assistant Teacher, L.T. Grade have been regularised by the concerned Joint Director of Education, VII Region, Gorakhpur vide order dated 9th February, 2001.

2. Affidavit has been filed in support of the said application by Petitioner Ravindra Nath Yadav himself. Photocopy of regularisation order dated 9th February, 2001 has been annexed at Annexure-1 to the said affidavit. A perusal of the said order dated 9th February, 2001 shows that Petitioner was found eligible and suitable for being regularised u/s 33-B(I) of U.P. Secondary Education Services Selection Boards Act (as amended upto date) contemplating regularisation of ad hoc appointees on the basis of the record received from the office of the District Inspector of Schools along with his letter dated 20th June, 1998.

3. Petitioner was, admittedly, appointed against short term leave vacancy of one Akhilesh Tiwari, who, according to the Petitioner, as per averments contained in

Para 7 of the affidavit, referred to above, filed in support of this application left the Institution on being appointed by the Commission and the post had fallen substantively vacant. Date of the post of having substantively fallen vacant has not been mentioned. There is no mention that any of the Respondents, i.e. District Inspector of Schools, Deoria or the Committee of Management of the Institution ever intimated the vacancy to the Secondary Education Services Commission for making regular selection and appointment.

4. The Petitioner had an interim order from this Court dated 10th October, 1991 and apparently he continued to work on the basis of the said interim order. It also transpires, as the record stands today, that Petitioner succeeded in obtaining his regularisation under order of the Joint Director of Education dated 9th February, 2001, referred to above. Under normal circumstances Petitioner cannot be permitted to take advantage of anything being done under interim order of the Court and, thus, his regularisation on the basis of his working under interim order of the Court cannot be approved by this Court unless Petitioner succeeds in the petition after adjudication of the issues on merits. Any advantage obtained by persons under interim order of the Court has to shed in case he fails finally.

5. In the instant case, I find that neither the District Inspector of Schools nor the Committee of Management has cared to file counter-affidavit. It can be under either of the two circumstances, namely, both of them have colluded with the Petitioner or that they are satisfied with the claim of the petitioner and do not want to contest the petition on merits. The conduct of the District Inspector of Schools in not filing counter-affidavit cannot be approved as it is the liability of the State Government to pay salary under Payment of Salaries Act, 1971.

6. I have no doubt that persons like the petitioner have used this Court by filing petitions and obtaining interim order by pursuing their continuance in Institution and thereafter not obtaining regularisation without permitting their authority in law. Be that as it may, this Court cannot be a party to monopolies and ingenuity of the litigant in using pressure on court in its vested personal interest and I would not have allowed the petition to be withdrawn or infructuous without passing any order and the Joint Director of Education to reconsider the matter of regularisation after deciding the petition on merits. If the Petitioner volunteered to have dismissed the petition or otherwise, I would have dismissed the petition as not pressed making it clear that the Petitioner will not be entitled to any advantage by virtue of his working in the Institution under interim order of the Court. This Court, is, however, deviating from above course taking into account the pragmatic aspect of the matter, i.e. the institution has no complaint about the suitability or desirability of the petitioner to function as teacher in its Institution as otherwise it ought to have filed counter-affidavit or brought requisite facts about mal-functioning or sub-standard competency of the petitioner. Therefore, it is presumed that petitioner has proved its worth, as far as his employer, i.e. management of the Institution. Secondly, the Joint Director of Education was passing order of regularisation as the petitioner has been found

eligible and suitable to function and to be regularised as per order transmitted by the District Inspector of Schools.

7. Considering the above facts, and that petitioner had already worked for several years, may be under interim order, and received salary, I do not find any good reason for not allowing the prayer and creating a situation requiring fresh selection and appointment and relegating the Respondents and other authorities responsible for making selection by inviting application under U.P. Secondary Education Services Selection Boards Act. There is no good ground for not allowing the petitioner in an Institution when the authorities have themselves failed to discharge their statutory obligation.

8. In view of the above, this application is allowed and the writ petition is allowed to be withdrawn on the ground that petitioner has no substantive cause of action in view of the order of regularisation dated 9th February, 2001, referred to above. Dismissal of the petition as infructuous will not affect his working in the Institution or his regularisation.

9. Petition is dismissed as infructuous subject to the observations made above.

10. There shall be no order as to costs.

11. Office is directed to send a copy of this order to the Director of Education (Secondary), U.P., Allahabad as well as Chief Secretary to Government of U.P., Lucknow within two months for information.