

(1978) 03 AHC CK 0044

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6594 of 1972

Ravindra Pratap Saxena

APPELLANT

Vs

Manager, H.R.Inter.College, Khalilabad, Basti and another

RESPONDENT

Date of Decision : 20-03-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Intermediate Education Act, 1921 — Section 16G(3)

Citation : (1978) 03 AHC CK 0044

Hon'ble Judges : K.N.Singh, J and S.D.Agarwala, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

The petitioner was appointed as Lecturer in H.R. Inter College, Khalilabad, District Basti on August 17, 1970 on probation of one year. The District Inspector of Schools granted; the approval on November 11, 1970. The Committee of Management extended the petitioner's period of probation for a period of one year in July, 1971. It appears that the Management was not satisfied with the petitioner's work as it terminated the petitioner's services by a notice dated June 30, 1972. The petitioner made a representation before the District Inspector of Schools but no orders were passed by him. Thereupon the petitioner filed this petition under Article 226 of the Constitution challenging the validity of the order of termination.

Learned counsel for the petitioner urged that the petitioner's services were terminated in contravention of Section 16G(3) of the U.P. Intermediate Education Act, inasmuch as, no prior approval rather any approval was obtained from the District Inspector of Schools for the termination of the petitioner's services. The respondents have not asserted that any approval was obtained from the District Inspector of Schools. Instead, they contended that since the petitioner had been appointed without prior approval of the District Inspector of Schools, he was not entitled to protection of Section 16G(3) of the Act. Reliance is placed on the case

of *Arya Kanya Pathshala v. Smt. Manorama Agnihotri* (1) in which it has been held that the approval of the District Inspector of Schools must be accorded before the appointment is made and that any appointment made without the prior approval of the District Inspector of Schools, would be in contravention of the provisions of the Act. It is pertinent to note that in *Arya Kanya Pathshala v. Smt. Manorama Agnihotri* (1971 A.L.J. 983) no approval had been granted to the appointment of the teacher concerned at any stage and it was in the particular facts, and circumstances of that case, that the Division Bench held that if an appointment is made without prior approval of the District Inspector of Schools, the teacher concerned is not entitled to the protection of Section 16G(3) of the Act. In the instant case, however, the Management had taken care to forward the papers to the District Inspector of Schools who accorded the approval for the petitioner's appointment on November 11, 1970. After the approval of the District Inspector of Schools for the petitioner's appointment, the status of the petitioner became that of a teacher as contemplated by the Act and the Regulations framed thereunder and he became entitled to the protection available to a teacher under the Act and the Regulation. Similar view was taken by a Division Bench of this Court in *Prabhu Narain Singh v. Dy. Dir. of Education* (1977(3) A.L.R. 391). We are in agreement with the view taken by the Division Bench on this question. We, therefore, hold that since the petitioner's appointment had been approved by the District Inspector of Schools, he was entitled to the protection of Section 16G (3) of the Act.

There is no dispute that no prior approval as contemplated by Section 16G (3) of the Act was obtained by the Management from the District Inspector of Schools for the termination of the petitioner's Services. In *Municipal Board, Bareilly v. B. K. Mehrotra* (3), a Division Bench of this Court held that Section 16G (3) (a) was mandatory and the services of a probationer could not be discharged without prior approval of the District Inspector of Schools. In the absence of prior approval, the impugned order of termination is rendered illegal.

Learned counsel for the respondents urged that the petitioner is employed in a Nationalised bank and that he has been serving there since 1973 and, therefore, this court should not grant any relief to him. As discussed earlier, we have held that the petitioner's services were terminated in contravention of the mandatory provisions of Section 16G (3) of the Act so far as the question of payment of salary or reinstatement as concerned, we do not consider it necessary to express any opinion. It is for the authorities to consider this question and the petitioner's employment in the Nationalised Bank would be a relevant consideration at that stage.

In the result, we allow the writ petition and quashed the impugned order of termination dated April 20, 1972. The petitioner is entitled to his costs.