
(2015) 10 AHC CK 0060
In the Allahabad High Court
Case No : Special Appeal No. 692 of 2015

Rita Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 9 ADJ 494 : (2016) 1 AWC 468

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Amit Saxena, for the Appellant

Final Decision : Disposed Off

Judgement

1. This special appeal is from a judgment and order of the learned Single Judge dated 31 August 2015, dismissing a writ petition filed by the appellant under Article 226 of the Constitution. The dispute in the present case relates to the filling up of a Class-IV post in a recognized Intermediate Institution called Sri Ram Ratan Gupta Balika Inter College, Kanpur Dehat. It has been stated in the writ petition that on 1 October 2014, a Class IV employee who was working on a sanctioned post died. Following this, a communication was addressed by the Principal of the Intermediate College to the District Inspector of Schools, Kanpur Dehat for permission to fill up the post. Apparently, no action was thereafter taken by the District Inspector of Schools. The Principal advertised the post. A selection committee was constituted and the papers of the selection proceedings were sent to the District Inspector of Schools. The District Inspector of Schools, by an order dated 18 April 2015, declined to grant his approval to the proposed appointment of the appellant which led to the filing of a writ petition. In the writ petition, the order of the District Inspector of Schools dated 18 April 2015 was sought to be challenged and an approval was sought to the selection of the appellant.

2. Basically, in the order dated 18 April 2015, three grounds were adduced by

the District Inspector of Schools for declining to grant approval, these being:

"(a) That vide Government Order dated 6.1.2011 a ban had been imposed on recruitment of Class IV employees in aided secondary institution;

(b) That vide Government Order dated 4.9.2013 Class IV employees could be engaged only by way of outsourcing; and

(c) That vide letter of Secretary to the Chief Minister dated 15.3.2012 appointments on all post had been banned."

3. In the writ petition, it was submitted on behalf of the appellant that each of these grounds were unsustainable. As regards the first ground, it was urged that the Government Order dated 6 January 2011 has been set aside in a judgment of a learned Single Judge passed in Writ Petition No. 11760 of 2011, Committee of Management, Lala Babu Baijal Memorial Inter College, Lodipur, Ghaziabad and Another Vs. State of U.P. and Others, . As regards the Government Order dated 4 September 2013, it was stated that it has been stayed by this Court in Writ Petition No. 62544 of 2013 (Committee of Management, Lata Babu Baizal Memorial Inter College v. Special Secretary, Government of Uttar Pradesh). As regards the third ground, it was observed that in several writ petitions, the direction contained in the letter of the Secretary to the Chief Minister had been stayed.

4. Dealing with the aforesaid grounds, the learned Single Judge observed as follows:

"It is not disputed between the parties that by various orders the grounds mentioned in the order impugned cannot be sustained...."

5. Hence, it was not disputed before the learned Single Judge that the grounds which weighed with the District Inspector of Schools could not be sustained. This being the agreed position, the proper course of action could have been for the learned Single Judge to set aside the order of the District Inspector of Schools and to remit the proceedings for consideration afresh. Instead, the learned Single Judge held that the expression "prior approval" in Regulation 101 of Chapter III of the Regulations framed under the Intermediate Education Act, 1921 would comprehend an approval prior to the commencement of the selection process and not merely a prior approval before the appointment letter was issued. A judgment to the contrary of a Division Bench of this Court in Jagdish Singh v. State of Uttar Pradesh, 2006 (4) ADJ 162 (DB), was relied upon by the learned counsel for the appellant before the learned Single Judge. The submission, however, was not accepted and the writ petition was dismissed.

6. In our view, the ground which weighed with the learned Single Judge in the dismissal of the writ petition was not a ground which was held against the appellant in the rejection, by the District Inspector of Schools on 18 April 2015, of the proposal submitted by the Principal of the Intermediate College. Once it was held that all the three grounds were unsustainable, it would have been

appropriate and proper to remit the matter back to the District Inspector of Schools for fresh consideration.

7. For these reasons, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 31 August 2015. Instead and in place of the direction which has been issued by the learned Single Judge and for the reasons, which we have noted earlier, the communication dated 18 April 2015 issued by the District Inspector of Schools is quashed and set aside and the proceedings are restored to him for fresh consideration. We clarify that all the rights and contentions of the respective parties are kept open to be urged before the District Inspector of Schools upon remand. The special appeal is, accordingly, disposed of. There shall be no order as to costs.