
(2006) 01 AHC CK 0139

In the Allahabad High Court

Case No : Writ Petition No.5817 (S/S) of 1994 (with W.P. No.7420 (S/S) of 2005)

Sandeep Kumar Maurya

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0139

Hon'ble Judges : S.S.Chauhan, J

Final Decision : Disposed Of

Judgement

S.S. Chauhan, J.—Heard the learned counsel for the petitioner in both the writ petitions; namely, Sri Sharad Kumar Srivastava and Sri B.K. Singh. Both the petitions are connected with each other and hence are being disposed of by a common order.

2. By means of the order dated 21.12.1994 (passed in writ Petition No.5817 (S/S) of 1994) the opposite parties have been directed to consider the case of the petitioner for appointment according to his qualification. The petitioner contends that at the time of appointment, he was intermediate and he was qualified for being appointed on Class III post but despite this he was not given appointment commensurate to his qualification. He joined under protest in the said College on 16.4.1994 and thereafter he raised his grievance before the authorities concerned for being given Class III post. In pursuance to the directions of this Court dated 21.12.1994, the District Inspector of Schools, Lucknow (hereinafter referred to as "DIOS") has decided the case of the petitioner on 30.11.1996 and by means of the said order a specific finding has been recorded by the DIOS indicating that at the time of consideration no Class III post was available in the said institution or in any other institution of the district. The said condition prevailed up till 31.1.2004 when Hari Bux Singh, Head Clerk and Smt. Nirmla Saxena, Assistant Clerk of the institution retired. Thereafter, the vacancy became available and it was incumbent upon the DIOS to have complied with the interim order dated 21.12.1994 in its letter and spirit and should have given

appointment to the petitioner on Class III post.

3. In another case of Sri Jai Shanker Mishra of the same institution in Writ Petition No.5329 (S/S) of 1999 it was taken note of by this Court that subject to the condition that if he joins on Class IV post he may be considered on Class III post, this Court passed another order on 4.4.2003 wherein again the earlier view was reiterated and it was said that Shri Jai Shanker Mishra may be accommodated and given appointment on Class III post against any vacancy arising in the present or in future. The opposite party i.e. DIOS considering the two interim orders, gave appointment to Jai Shanker Mishra on Class III post. The DIOS should have been vigilant enough to give effect to the interim order passed by this Court on 21.12.1994. The petitioner could not have been deprived of his right for appointment on Class III post when he immediately protested his appointment on Class IV post and thereafter immediately has approached this Court by way of the present Writ Petition No.5817 (S/S) of 1994.

4. The controversy raised in both the petitions is to the effect that Ashish Chandra Mishra (petitioner of W.P. No.7420 (S/S) of 2005) has been appointed on Class III post under Dying in Harness Rules by creating a supernumerary post in the year 1992 and since then he is continuing on the supernumerary post. The claim of Ashish Chandra Mishra for appointment on Class III post continues to subsist but so far as the claim of Sandeep Kumar Maurya is concerned, it stands defeated in view of the order of the DIOS dated 30.11.1996. the order of the DIOS, rejecting the claim of the petitioner Sandeep Kumar Maurya dated 30.11.1996, is also per se bad in law on account of the fact that on 30.11.1996 when the representation of Sandeep Kumar Maurya was disposed of, the DIOS could have appointed Shri Sandeep Kumar Maurya on a supernumerary post by creating a supernumerary post instead of recording a finding in the impugned order that no vacancy is available on Class III post in the said institution or in any other College of the District as has been done in the case of Sri Jai Shanker Misra. The action of the DIOS in refusing the appointment to the petitioner seems to be arbitrary and smacks malice on his part.

5. Accordingly, the order dated 30.11.1996 is quashed and a writ in the nature of mandamus is issued to the DIOS to consider the claim of the petitioner, Sandeep Kumar Maurya on Class III post in accordance with the interim order dated 21.12.1994 and also keeping in view the fact that the posts have fallen vacant on 31.1.2004 and 31.12.2004. Since two posts have fallen vacant as indicated above, both the petitioners may be adjusted against these vacancies in Class III post and if it is not possible to adjust both the petitioners, then either of them may be continued in the supernumerary capacity till the post falls vacant. Sri Ashish Chandra Mishra is working on ClassIII post, therefore, the claim of Sandeep Kumar Maurya will be considered by the DIOS within a period of two months from the date a certified copy of this order is produced and he will be given appointment on Class III post in a regular vacancy or by creating supernumerary post. The absorption of both the petitioners will remain on the

availability of vacancy according to the seniority.

6. In view of the above, both the writ petitions are disposed of accordingly.