

(2002) 10 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 1518 of 1993

Sanjeev Chaturvedi

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 101, 102, 103, 104, 105

Citation : (2003) 3 AWC 1886

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the counsel for the parties and perused the record.

2. This case pertains to appointment on compassionate ground.

3. The father of the petitioner, Shri Sheo Narain Chaturvedi, was a permanent Principal in Sarvodaya Inter College. Etawah (hereinafter called as the Institution). It is a private institution and is governed by the provisions of the U. P. Intermediate Education Act, 1921 and the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971.

4. It is alleged by the petitioner that he has passed Intermediate examination and was dependent upon his father when he died in harness on 2.6.1992. The petitioner claimed appointment under Dying-in-Harness Rules in ministerial class III and class IV posts according to his qualifications. This Government order has been appended as Annexure-1 to the writ petition which is as under :

^^?1? eq>s ;g dgus dk funsz" k gqv k gS fd v"kkldh; lgk;rk izkIr ek;/fed fol ky;ksa ds "kSf{k d f" k{k.kks?kj deZpkfj;ksa dh Isokdky esa vlkef;d e`R;q dh n"kk esa muds ifjokj ds lnL;ksa dks lgk;rk ig?pkus ds n`f"Vdks.k ls ifjokj ds

fdlh ,d lnL;ksa ds Isok esa fu;ksftr fd;s tkus ds iz"u ij "kklu }kjk fopkj fd;k x;k vkSj ;g fu.kZ; fy;k x;k fd ,sls ekeys esa ftlesa fdlh ,sls "kSf{kd vFkok f"i{k.kks?kj deZpkjh dk fu/ku Isokjr n"kk esa vlkef;d :i ls gks x;k gks tks in esa LFkbbZ fu;fer fu;qfDr jgk gks mlds ifjokj ds fdlh ,d lnL; dh tks fo|ky; esa f"i{k.kks?kj inksa esa fu;qfDr gsrq fofgr vgZrk;sa j[krk gks ;Fkk"kh?kz Isok esa fu;ksftr dj fy;k tk;s A ;fn og fdlh fu;qfDr dk bPNqd gks ,sls ekeyksa esa ;Fks"V gksxk fd mDr inksa esa fu;qfDr gsrq fu/kkZfjr izf?;kvksa ij fo"ks"i ;ku u fn;k tk;s ijUrq ;g vo"; ns[k fy;k tk;s fd lacaf/kr O;fDr f"i{k.kks?kj in esa fu;qfDr gsrq os vgZrk;sa j[krk gks tks fu;eksa@vkns"kkksa ds vUrxZr iz;kstu gsrq fofgr dh x;h gksa A ;g Hkh vko";d gksxk fd fu;qfDr fd;s x;s vH;FkhZ fu;qfDr ds le; 18 o"kZ dh vk;q iwjh dj pqdk gks A fu;qfDr dk volj ;FkkIEHko mlh fo|ky; esa fn;k tk;sxk] tdk? fu/kuxr deZpkjh Isok esa jgk gks A ;fn ,sls fo|ky; esa f"i{k.kks?kj ds in ls fjfDr ds vHkko esa dfBukbZ;k? iM+ jgh gksa] rks nwljs fdlh ek;/fed fo|ky; esa tdk? bl izdkj dh fjfDr miyC/k gks] fu;qfDr dh tk ldrh gS A n`f"Vdks.k ;g gksxk fd e`r deZpkjh ds ifjokj esa ls fdlh ,d O;fDr dks tks in esa fu;qfDr gsrq fofgr vgZrk;sa j[krk gks vfofEc Isok;ksftr fd;k tk lds A

?2? Isok;ksftr fd;s tkus okys O;fDr e`r deZpkjh dh iRuh ;k mldk ifr mldk iq=vFkok ,slh iq=h tks vfookfgrk vFkok fo/kok gks] gks ldrk gS A

?3? ;g vkns"i fnuk?d 1 tuojh] 1981 ;k mlds mijUr e`r deZpkjh ds ekeys esa ykxw gksxk A

?4? eq>s vuqjks/k djuk gS fd ?i;k "kklu ds mi;qZDr fu.kZ; ls vki foHkx ds leLr v/khuLFk vf/kdkfj;ksa o ek;/fed fo|ky;ksa ds izcU/kkf/kdj.kksa@iz/kkukpk;ksZ vkfn dks rRdky voxr djkus rFkk fy;s x;s fu.kZ; ds vuqiky gsrq vko";d O;oLFkk djus dk d"V djsa A fu.kZ; dh i`BHkwfe esa fofu;eksa ds la"i{k/ku dh dk;Zokgh i`Fkd ls dh tk jgh gS A**

5. The petitioner was issued appointment letter, dated 22.6.1992, appointing him as Assistant Clerk in the institution, according to his qualifications, and joined the post on 26.6.1992 in pursuance of his appointment letter and all the papers pertaining to his compassionate appointment were forwarded by the management to the District Inspector of Schools for purpose of payment of salary under covering letter, dated 3.7.1992.

6. As no orders were passed by the District Inspector of Schools for payment of salary to the petitioner, reminders were sent by the Principal and Manager of the Institution to the District Inspector of Schools on 30.7.1992 and 1.8.1992. The District Inspector of Schools thereafter passed an order, dated 31.10.1992, permitting appointment of the petitioner on Class IV post in the institution. It is submitted by the counsel for the petitioner that notification, dated 30.7.1992, which has been referred in the Impugned order, has no applicability whatsoever inasmuch as the petitioner had already been appointed on 22.6.1992 on class III post of Assistant Clerk.

7. Aggrieved by the impugned order, dated 31.10.1992, which had the effect of reverting the petitioner from class III to class IV post, he filed this petition. The

Court by order dated 6.1.1993 directed that the petitioner may be permitted to work as Assistant Clerk but he shall be paid salary of class IV employee till further orders.

8. Following reliefs have been claimed in the writ petition :

"(a) a writ, order or direction in the nature of certiorari quashing the order dated 31.10.1992 in so far as its sanctioned appointment and salary to the petitioner as a class IV employee (Annexure-6 to the writ petition) ;

(b) issue a writ, order or direction of suitable nature commanding the respondents not to interfere in the functioning of the petitioner as Assistant Clerk in Sarvodaya Inter College, Sanpher, Etawah and to pay the petitioner his regular monthly salary on the said post including the arrears from 25.6.1992 till date within a period to be specified by this Hon"ble Court ;

(c) Any other writ, order or direction as the petitioner be entitled in law ;

(d) Costs may be awarded in favour of the petitioner."

9. The counsel for the petitioner contends that Regulations 101 to 106 were inserted in the U. P. Intermediate Education Act, 1921, on 30.7.1992. Regulation 103 provides for appointment of ministerial staff but the power to consider the appointment has been given to a committee under the District Inspector of Schools. He contends that it was the Committee of Management, who was legally empowered to appoint the petitioner before 30.7.1992 on class III post and that the impugned order, dated 31.10.1992 has been passed on the pretext of the notification, dated 30.7.1992 which was not available to the D.I.O.S. in the case of the petitioner's appointment. There is no provision under law which provides for approval in case of class III or class IV employee under the U. P. Intermediate Education Act, 1921, as such the petitioner's appointment dated 22.6.1992 was perfectly legal and valid. The counsel for the petitioner has placed reliance on Sunil Kumar Vs. District Inspector of Schools, Ghazipur and Another,

10. Regulation 106 was inserted in the Act on 30.7.1992, i.e., before 31.10.1992.

11. In paragraph 10 of the judgment in the case of Sunil Kumar (supra), it has been held :

"Regulation 106 of Chapter III of the U. P. Intermediate Education Act was amended by the notification dated 2.2.1995. The amended Regulation 106 provides that if there are no vacancy in class IV post the appointment of the dependent of deceased employee can be made on supernumerary post. However, the provisions of appointment in class III employee on supernumerary post has been done away with vide amendment dated 2.2.1995. Regulation 106 prior to amendment dated 2.2.1995 required that for appointment of dependent of the deceased employee if in the institution concerned in non-teaching category there is no post then he can be appointed in any other institution of the district and if no post is vacant in any aided institution of the district then at the institution

where the deceased was working, appointment will be made against the supernumerary post and the said supernumerary post will be continued till in that institution or in any other institution of the district another post is made available."

Thus, before insertion of Regulation 106, the petitioner was admittedly appointed on class III post and the reason given by the District Inspector of Schools in his order, dated 31.10.1992 referring to the Government notification, dated 30.7.1992, cannot be sustained and is liable to be quashed.

12. The writ petition is therefore allowed. The impugned order dated 31.10.1992 is quashed in so far as it sanctions appointment and service of the petitioner on class IV post. This Court by order, dated 6.1.1993 had directed the petitioner to work as Assistant Clerk but further directed that he shall be paid salary of class IV till further orders. Since the impugned order has been quashed, it is directed that the petitioner shall be paid salary of class III post and the District Inspector of Schools is directed to pay difference of salary to the petitioner, i.e., difference in salary of class III and class IV post with all consequential benefits within a period of three months from the date of production of a certified copy of this judgment.

13. No order as to costs.