
(2012) 10 AHC CK 0030
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37579 of 1991

Santosh Kumar Tripathi

APPELLANT

Vs

District Inspector of Schools, Kanpur

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Citation : (2013) 2 ALJ 96 : (2013) 3 AWC 2722

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : G.K. Pandey, Manish Kumar Nigam, J. Sahai, Adarsh Bhushan and Anil Bhushan, for the Appellant;

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Adarsh Bhushan, learned counsel for the petitioner and Sri Pankaj Rai, learned Additional Chief Standing Counsel, appearing on behalf of the respondents. By means of the present petition, the petitioner is seeking the direction to the respondent to continue the petitioner in service till the regularly selected candidates joins the post.

2. In the writ petition, it is stated that six posts have already fallen vacant in L.T. Grade in Mahesh Chandra Ghandhari Bharatiya Vidyalaya Inter College, Acharya Nagar, Kanpur City, a recognised institution under the U.P. Intermediate Education Act, 1921. One Sri Prakash Chandra Dixit was promoted in Lecturer's grade. The petitioner was appointed on the ad hoc basis as an assistant teacher in L.T. Grade in place of Sri Prakash Chandra Dixit, who was the teacher in L.T. Grade and promoted on the post of Lecturer. On the basis of the interview, a resolution was passed on 26.12.1990 appointing the petitioner on the said post. A copy of the resolution dated 26.12.1990 is annexed as Annexure-1 to the writ petition. The Committee of Management has informed to the District Inspector of Schools vide its letter dated 21.1.1991 regarding the appointment of the petitioner. In the rejoinder affidavit, it is admitted that the petitioner joined on 23.1.1991.

3. It appears that the approval to the appointment of the petitioner has not been granted by the District inspector of Schools and when the salary has not been paid, the petitioner filed the present writ petition. An interim order has been passed on 20.2.1992 directing the respondents to pay the salary.

4. Learned counsel for the petitioner submitted that the petitioner's appointment was made on ad hoc basis against the short term vacancy, which has fallen vacant on account of promotion of Sri Prakash Chandra Dixit in Lecturer grade and, therefore, the Committee of Management had the power to appoint the petitioner under the Second Removal of Difficulties Order and the petitioner's appointment was in accordance to law. He submitted that for the regularisation of the petitioner's appointment, the recommendation has been made by the Principal of the College, which is pending consideration.

5. Sri Pankaj Rai, learned Additional Chief Standing Counsel, submitted that as per the own pleading, the short term vacancy arose on 1.1.1991 on account of promotion of Sri Prakash Chandra Dixit and the resolution could not be passed on 26.12.1990 for filling up the vacancy, then the said resolution has no relevance to the appointment of the petitioner. He referred paragraphs 5, 6 and 7 of the counter-affidavit wherein it is stated that the petitioner was working as a Clerk and paid salary as a Clerk upto January, 1992. His name has not been shown in the list of Teachers. It is further stated that in the resolution dated 26.12.1990, the name of the petitioner was not mentioned. He submitted that when the post was fallen vacant on 1.1.1991, there was no question of sending any list of C.T. Grade on 26.7.1986., it is further stated that the petitioner is working as a Clerk and is receiving the salary of the Clerk. He cannot work as an Assistant Teacher.

6. Learned counsel for the petitioner submitted that the papers have been sent by the Committee of Management vide letter dated 21.1.1991 and, therefore, as per Paragraph 2(3)(iii) of Second Removal of Difficulties Order, 1981 in case if the approval is not granted within seven days, it may be deemed to have been granted. Therefore, since no communication has been received by the Committee of Management, the approval would be deemed to have been granted and accordingly the petitioner has been allowed to join on 23.1.1991 to which learned Additional Chief Standing Counsel submitted that if the contention of the petitioner is accepted then also the appointment of the petitioner was ab initio illegal inasmuch as when the papers were sent on 21.1.1991, how the appointment letter could be issued on 23.1.1991, that is, before expiry of seven days and as such the petitioner could not have been allowed to join on 23.1.1991.

7. I have considered rival submissions and perused the record.

8. Admittedly, the short term vacancy arose on account of promotion of Sri Prakash Chandra Dixit on 1.1.1991, therefore, there was no question of passing any resolution on 26.12.1990 to fill up the vacancy which has arisen on 1.1.1991. Copy of any resolution passed after 1.1.1991 for filling up the vacancy arisen on account of promotion of Prakash Chandra Dixit is not available on

record. The petitioner has only filed a letter dated 21.1.1991 by which the Committee of Management has sent the papers to the District Inspector of Schools for approval of the appointment of the petitioner as a L.T. Grade teacher on ad hoc basis. In the said letter, there is no reference of any resolution, the date of formation of the Selection Committee and the decision of the Selection Committee giving details of candidates appeared and marks obtained. When the resolution itself has been sent on 21.1.1991, the appointment letter issued on 23.1.1991, without the approval of the District Inspector of Schools was ab initio illegal. The appointment of the petitioner has been made without following the proper procedure.

9. So far as the submission of learned counsel for the petitioner that the papers for regularisation of services of the petitioner have already been sent for approval to the District Inspector of Schools is concerned, the Division Bench of this Court, in the case of Smt. Vijai Rani v. Regional Inspectress of Girls Schools, reported in 2007 (2) ALJ 694: 2007 Lab IC (NOC) 274 (All)) has held that if the appointment itself is found to be illegal, the question of regularisation of such appointment does not arise. Following the said decision, no direction can be issued for consideration of regularisation of the petitioner's appointment u/s 33-B of Act No. 5 of 1982. In view of the above, the writ petition has no substance and it is, accordingly, dismissed.