

(2009) 05 AHC CK 0593
In the Allahabad High Court

Sarvesh Kumar Tiwari

APPELLANT

Vs

Harikesh Narain

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0593

Hon'ble Judges : Pradeep Kant, J and Syed Nazim Husain Zaidi, J

Final Decision : Disposed Of

Judgement

S.N.H. Zaidi, J.

Heard the counsel for the appellant.

None appears for the respondent no. 1, though name of the counsel has been printed in the cause list.

These special appeals have been filed against the order dated 24.5.04 by means of which the interim order granted in Writ Petition No. 2846 (SS) of 2004 on 26.5.06 has been vacated saying that it was obtained by concealing material facts, with a further direction that the vacancy in question be filled in by direct recruit.

The record reveals that the present appellant was appointed on the post of Clerk by the Committee of Management on clear vacancy after the approval of the District Inspector of Schools as direct recruit but he was not paid salary and, therefore, he approached this Court by filing Writ Petition No. 2846 (SS) of 2004, in which an interim order was passed in his favour.

Later on, Writ Petition No. 3374 (SS) of 2006 was filed claiming that the post of clerk in question was to be filled in by promotion and, therefore, the appointment of the present appellant was not legal.

Both the matters were connected and the learned Single Judge vacated the interim order passed in favour of the appellant in the year 2004 on the ground

that the post was to be filled in by promotion.

Learned counsel for the appellant has submitted that the appointment on the post of Clerk was made by the Committee of Management in accordance with Rules, with the approval of the District Inspector of Schools and that the claim of Harikesh Narain that the post was to be filled in by promotion is not correct, besides, the fact that he was at no. 5 in the seniority list of Class IV employees, therefore, he cannot be given promotion even if the post was to be filled in by promotion.

Learned counsel for the appellant has greatly emphasized that as a matter of fact before the learned Single Judge, in the petition filed by Harikesh Narain, his right for being considered for promotion alongwith the plea that the post in question was to be filled in by promotion, was to be considered but without hearing the appellant, in his own appeal, the order has been vacated.

Be that as it may, the fact remains that the appellant was working on the post of Clerk after being appointed with the approval of the District Inspector of Schools and the respondent no. 1 claimed promotion on the post saying that the said vacancy was to be filled in by promotion, but, in fact, he has not been promoted till date. Further, it is the specific case of the appellant that he is still working but thereafter he has not been paid salary because of the aforesaid order.

In view of the fact that the respondent can only claim promotion and he has not yet been promoted and the appellant is working as such, we do not find any reason as to why he be not paid salary till he is working on the post in question, and his appointment is not set aside.

The orders under appeal, therefore, are set aside and the appellant shall be paid salary, he having been appointed on the post and is working. However, the question that the post in question was to be filled in by promotion or could have been filled by direct recruit, still remains to be decided by the learned Single Judge.

We, therefore, direct that the writ petitions be listed at an early date.

The orders passed by the learned Single Judge are set aside as aforesaid, and the direction that the vacancy be filled in by promotion is also put in abeyance till the decision of the writ petitions.

This order, however, shall abide the decision of the writ petitions, which may be decided expeditiously.

Both the special appeals are disposed of accordingly.