
(2012) 04 AHC CK 0236
In the Allahabad High Court
Case No : C.M.W.P. No. 30104 of 1993

Saurabh Kumar

APPELLANT

Vs

D.I.O.S., Ballia and Others

RESPONDENT

Date of Decision : 25-04-2012

Acts Referred:

Citation : (2012) 5 AWC 5229 : (2012) 134 FLR 154

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : D.S.M. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned counsel for the petitioner, standing counsel for the State-respondents. Petitioner before this Court seeks quashing of the orders dated 13th May, 1993 and dated 30th July, 1993. By means of the first order dated 13th May, 1993, earlier order passed by the District Inspector of Schools dated 31st March, 1993. has been revoked and further the petitioner has been appointed on compassionate ground as Class IV employee in Jangali Baba Intermediate College, Garwar, Ballia. By means of the second order under challenge dated 30th July. 1993, the Manager of the institution has asked the petitioner to join on Class IV post in terms of the order dated 13th May, 1993.

2. Facts in short leading of the present writ petition are as follows:

Father of the petitioner, who was working as Lecturer (Civics) in an aided and recognized intermediate college i.e., Jangali Baba Intermediate College, Ballia expired during harness on 26/27th May, 1987. Petitioner made an application for compassionate appointment in terms of the Government order of 1981 which was applicable on the relevant date. The Government order of 1981 provided for appointment in the same institution where the earlier employee was working against the available vacancy. The District Inspector of Schools in excess of the powers vested in him forwarded a letter to the Management of Merchant

Intermediate College, Chitbada Gaon. Ballia dated 18th February, 1993 asking it to offer compassionate appointment to the petitioner against the vacant post of clerk in that institution. The Manager of the Merchant Intermediate College refused to offer such appointment as it was not so provided under the Government order of 1981. The District Inspector of Schools who appears to be hand in gloves with the petitioner passed a peculiar order dated 12th March, 1993. Under the said order, he directed that since the Manager of the Merchant Intermediate College has not offered compassionate appointment to the petitioner as clerk, the post of clerk of the said institution is transferred to Jangali Baba Intermediate College and that the post of clerk in the Institution i.e., Merchant Intermediate College shall stand reduced by one.

3. Under which statutory power the District Inspector of Schools could do so has not been disclosed to this Court by the learned counsel for the petitioner. The District Inspector of Schools realising his mistake vide order dated 13th May, 1993 revoked his earlier order dated 12th March, 1993 and directed that the petitioner shall be appointed on Class IV post, which was vacant on the relevant date in Jangali Baba Intermediate College. Ballia. In pursuance to the said order, the Manager of the Jangali Baba Intermediate College has issued appointment letter to the petitioner dated 30th July, 1993.

4. In order to keep the record straight, it may be recorded that an interim order was passed in this writ petition dated 7th September, 1993, whereby the operation of the order dated 13th May, 1993 was stayed. It has been provided that the petitioner shall continue on the post of clerk.

5. Having considered the submissions made by the learned counsel for the parties and having examined the records of the present writ petition, I am of the considered opinion that in terms of the Government order of 1981, compassionate appointment was to be offered on Class III/Class IV post, as may be available in the institution, where the deceased employee was working and had expired during harness. The District Inspector of Schools had no power to direct the appointment of a dependent in any other institution or to transfer the post of clerk from one college to another only for appointment of compassionate applicant like the petitioner. This Court, therefore, holds that order dated 18th February, 1993 directing the appointment of the petitioner as clerk in Merchant Intermediate College, order dated 12th March, 1993 of the District Inspector of Schools transferring the post of clerk from Merchant Intermediate College to Jangali Baba Intermediate College were wholly without jurisdiction and therefore, nullity in the eyes of law.

This Court further holds that the order dated 13th May, 1993 passed by the District Inspector of Schools has done substantial justice, the illegality committed earlier has been undone. This Court will not interfere with such order of the District Inspector of Schools, as well as the consequential action of the Management. The present writ petition lacks merit and is accordingly dismissed.

Interim order, if any, stands discharged.