

(1997) 10 AHC CK 0089

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3646 of 1996

Shri Niwas Singh

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:

Citation : (1997) AWC 687 : (1998) 1 UPLBEC 276

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The petitioner seeks writ of certiorari quashing the order dated 19th December, 1995, passed by the District Inspector of Schools, Ghazipur, respondent No. 1, refusing to accord financial sanction of the appointment of the petitioner to the post of Assistant Teacher in L.T. grade in Shri Gandhi Inter College, Dhotari, district Ghazipur (hereinafter referred to as the Institution).

2. The version of the petitioner is that Shri Satyendradeo Singh was permanent Principal of the Institution. He retired on 30th June, 1991. On his retirement one Sri Daya Shankar Singh, the seniormost lecturer was promoted as ad hoc Principal by the Committee of Management. On account of promotion of Sri Daya Shanker Singh a vacancy arose in the Institution on the post of Lecturer. Sri Digvijay Singh was promoted to the post of Lecturer from the post of L.T. grade teacher. On his promotion the vacancy to the post of Assistant Teacher in L.T. grade fell vacant. As the promotion order had not been confirmed, there was a short term vacancy.

3. It is alleged that the permission was obtained from the District Inspector of Schools for advertising the post for appointment to the post of L.T. grade teacher on short term vacancy and the District Inspector of Schools granted the permission, a copy of which has been annexed as Annexure-3 to the writ

petition. The Committee of Management advertised the post in daily newspaper on 15th June, 1993. On the basis of the advertisement only two candidates applied. The Committee of Management decided to re advertise the post, in its resolution dated 25th July, 1993 and the Manager by his letter dated 6th September, 1993 requested the Employment Exchange to send the names. The post was re-advertised in the newspaper on 7th September, 1993. The petitioner applied for the appointment. The Selection Committee interviewed the candidates on 3rd October, 1993. The petitioner was found most suitable for appointment on the basis of guilty point marks. The Committee of Management accepted the recommendation of the Selection Committee and sent the papers to the District Inspector of Schools for approval on 13th October, 1993. The District Inspector of Schools did not pass any order.

4. The petitioner was given the appointment letter on 15th November, 1993 and in pursuance of the said appointment letter the petitioner joined the institution.

5. As the District Inspector of Schools had not passed any order, the petitioner filed writ petition No. 18120 of 1995 which was disposed of by this Court on 7th July, 1995 with a direction to the District Inspector of Schools to dispose of the representation of the petitioner. The representation was alleged to have not been decided. The petitioner filed contempt petition on which the notices were issued. Respondent No. 1 has rejected the representation by the impugned order dated 18.12.1995.

6. I have heard Dr. R.G. Padia, learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

7. Respondent No. 1 has refused to accord financial sanction for three reasons. Firstly, the petitioner had not taken permission from the District Inspector of Schools prior to making of the appointment. It is not disputed that the petitioner was being appointed on a short term vacancy caused due to ad hoc promotion of Digvijay Singh on the post of Lecturer from L.T. grade Teacher. The procedure for making ad hoc appointment on short terms vacancy has been given in U.P. Secondary Education Services Commission (Removal of Difficulties Order) (Second), 1981. The power has been given to the Committee of Management to make short terms appointment on the basis of the procedure prescribed therein. It does not require that any permission of the District Inspector of Schools is to be obtained before any selection for appointment is to be made. Para 2 (3) only provides that the Management shall intimate the vacancy to the District Inspector of Schools and after making the selection in the manner prescribed therein, the names of the selected candidates shall be forwarded to the District Inspector of Schools and on such communication, the District Inspector of Schools shall communicate his decision in respect of approval of selection within seven days of the date of receipt of papers by him failing which the Inspector will be deemed to have given his approval.

8. Respondent No. 1 has further held that the Committee of Management had

not published the vacancy in two daily newspapers widely circulated in the state of Uttar Pradesh. Admittedly, the Managing Committee had published the vacancy twice in the daily newspapers which were widely circulated in the State of Uttar Pradesh. It is further averred that the names were also asked from, the Employment Exchange for Selection to the post of Assistant Teacher in L.T. grade.

9. In *Radha Raizada and Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors.* (1994) 3 U.P.L.B.E.C. 1551, the Full Bench has considered the procedure to be allowed for making ad hoc appointment of the teachers against short term vacancies. It was held that the procedure for notifying the short term vacancy should be the same as it is for the ad hoc appointment by District recruitment, under the First Removal of Difficulties Order, viz. to advertise the short term vacancy atleast in two newspapers having adequate circulation in Uttar Pradesh in addition to notifying the vacancy on the notice board of the Institution and also the applications be invited from the local Employment Exchange. This decision was rendered on July 12, 1994. The advertisement is alleged to have been made on 15th June, 1993 and 7.9.1993. There is no allegation that the daily newspapers had no wide circulation in the district of Ballia where the school is situated. The decision of the Full Bench is prospective in nature in respect of advertisement and does not invalidate, any selection which otherwise is valid under law. It is not the case that the selection was made only on the basis of a notice published in the notice board of the school.

10. The third ground for refusing to accord permission is that the candidate of the Backward Class could not get an opportunity to apply for the post. The copy of the advertisement dated 15th June, 1993 has been annexed in the writ petition as Annexure-4 and the second advertisement dated 7.9.1993 as Annexure-7 to the writ petition. The advertisement clearly, mentions that the Backward Class candidates can apply but in case no such candidates are available the candidates from the general category can be considered for appointment. It has not been shown that any Backward Class candidate had applied for appointment to the post or was preventee from applying for the post and, as such, the appointment of the petitioner was invalid.

11. In view of the discussions above, the reasons given by respondent No. 1 for refusing to accord financial sanction of the petitioner to the short term vacancy of Assistant Teacher L.T. grade is not legally justified.

12. The writ petition is allowed and the order dated 18.12.1995, Annexure-20 to the writ petition, is hereby quashed. Respondent No. 1 shall pay the salary to the petitioner in accordance with law within a month from the date of production of certified copy of this order.

13. It is, however, open to respondent No. 1 to ascertain as to whether the ad hoc promotions made by the Committee of Management have been confirmed by the Committee with the result, the short term vacancy ceased to exist. In case

the short term vacancy ceased, the petitioner is not entitled to continue in service.

14. In the circumstances of the case, the parties shall bear their own costs.