

**(2005) 02 AHC CK 0152**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 7699 of 2003

Shri Ranjan Prasad Verma, Kamla Shankar Maurya and Smt. Asha Devi APPELLANT

Vs

The District Inspector of Schools, The Committee of Management, Ishwar Saran Intermediate College RESPONDENT

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**Date of Decision :** 16-02-2005

**Acts Referred:**

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 101

**Citation :** (2005) 6 AWC 5392 : (2005) 2 ESC 1023 : (2005) 106 FLR 1145

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Advocate :** M.B. Saxena, for the Appellant; Rajesh Srivastava and Om Veer Singh and S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

Tarun Agarwala, J.—The petitioners have filed the present writ petition praying for the quashing of the order dated 4/16.1.2003 whereby the District Inspector of Schools has refused to grant the approval of the appointment of the petitioners as a Class-IV employee in the educational institution known as Ishwar Saran Intermediate College, Allahabad.

2. The facts leading to the filing of the present writ petition is, that one Ayodhya Prasad Shukla, a peon in the educational institution retired on 30.9.1997 and information about his retirement and consequently the vacancy occurring on the said post of peon was intimated to the District Inspector of Schools by the Principal on 4.10.1997. On 20.2.1998, the District Inspector of Schools informed the institution that the said post would be filled up under the Dying in Harness Rules. On 18.3.1998, the Principal informed the District Inspector of Schools that since no person was available under the Dying-in-Harness Rules, the said post may not be reserved under these rules and some other person be appointed on the vacant post. By another letter dated 5.4.1999, the principal requested the

District Inspector of Schools to fill up the said post. By the same letter, the principal also informed the Inspector that another peon and a sweeppress would retire on 30.6.1999, and therefore, requested him to take steps to fill up these posts which would occur after 30.6.1999. A reminder was sent by the Principal on 17.5.1999. In spite of these requests and reminders, the District Inspector of Schools did not stir in the matter and sat over the requests of the principal. Consequently, since the institution was without the sweeppress and two peons and the day to day work was suffering, the principal appointed the petitioners on the post of peon and sweeppress on 29.10.1999 and by a letter dated 1.11.1999 informed the District Inspector of Schools of their appointments and requested him to approve their appointments so that salary could be paid to them under the Payment of Salaries Act.

3. Instead of approving or disapproving their names, the District Inspector of Schools by a letter dated 29.12.1999 forwarded the name of one Vineet Kumar for being appointed under the Dying-in-Harness Rules. By another order dated 17.1.2000, the District Inspector of Schools reprimanded the principal for appointing petitioner No. 2 and 3 without seeking previous permission from him. By another order dated 19.1.2000, the District Inspector of Schools forwarded the name of one Rajeev Kumar for an appointment on the post of a peon. The orders dated 29.12.1999, 17.1.2000 and 19.1.2000 were challenged by the petitioners in Writ petition No. 8043 of 2000, and also prayed for a writ of mandamus commanding the District Inspector of Schools to grant financial approval of their appointments. The aforesaid writ petition was allowed by this Hon'ble Court vide its judgment dated 22.5.2002 and the impugned orders were quashed. This Court held that since no candidate under the Dying-in-Harness Rules were available, the appointment of the petitioners were made after due advertisement and that the grounds for rejecting the financial approval by the District Inspector of Schools could not be approved by the Court. This Court further held that the appointing authority could not be expected to wait indefinitely, the decision of the District Inspector of Schools and therefore, in such a situation where no orders was being passed by the District Inspector of Schools, the action of the institution in making the appointments was justified as the working of the College was suffering. This Court consequently remanded the matter back to the District Inspector of Schools to pass appropriate orders on the approval of the appointment of the petitioners.

4. Instead of approving the appointment of the petitioners, the District Inspector of Schools, by the impugned order, has again refused to grant financial approval on the appointment of the petitioners. This time, the District Inspector of Schools had rejected the appointment of the petitioners on the ground that the appointments have been made without previous approval of the Inspector and that the advertisement was not published in a news paper and that the reservation policy was not adhered by the institution nor did the Selection Committee had any Member who was of the backward class. Consequently, the present writ petition was filed for the quashing of the order dated 4/16.1.2003

and for a writ of mandamus commanding the respondents to grant financial approval to the appointment of the petitioners and for the payment of their salaries including its arrears.

5. Heard Sri Mool Bihari Saxena, the learned counsel for the petitioner, learned Standing Counsel for the respondent No. 1 and Sri Rajesh Srivastava for respondent No. 3.

6. In my view, the impugned order has been passed in violation of the directions given by this Court in its judgment dated 22.5.2002. This Court had held that a vacancy could not be kept vacant indefinitely merely because a person was not available under the Dying-in-Harness Rules. This Court held that since no candidate was available for an employment under the Dying-in-Harness Rules, in that case, a person from the public could have been appointed. This Court in its earlier judgment dated 22.5.2002 gave a categorical finding that the appointment of the petitioners were made after due advertisement in the news paper and therefore, remitted the matter back to the District Inspector of Schools to pass "appropriate order" on the appointment of the petitioners. This Court, in effect, directed the District Inspector of Schools to pass consequential orders with regard to approving the appointment of the petitioners. This Court did not direct the District Inspector of Schools to reconsider the matter afresh, therefore, in my view, the impugned order has been passed with applying the directions given by this Court in its earlier judgment.

7. Even otherwise on merit, the District Inspector of Schools has held that the advertisement was not published in the newspaper. This Court in its earlier judgment held that the appointment of the petitioners were made after due advertisement. It is, therefore, no longer open to the District Inspector of Schools to again allege that the vacancy was not advertised. The earlier judgment of this Court is binding upon him and it was imperative for him to follow the said judgment instead of willfully disobeying it. The impugned order again states that the appointments were made without previous approval of the Inspector. This question was also dealt earlier by this Court in its earlier judgment wherein this Court held that a vacancy cannot be left vacant for an unlimited period. This Court held that since no candidate was available for being given an appointment on compassionate ground, the appointing authority could not be expected to wait indefinitely and since the working and functioning of the College was suffering, the appointing authority had no option but to proceed with the selection process. The action of the appointing authority was justified by this Court. Consequently, it does not lie in the mouth of the District Inspector of Schools to again state that previous approval was not sought by the Committee of Management before appointing the petitioners.

8. In this regard Regulation 101 in Chapter III of the Regulation framed under the U.P. Intermediate Education Act, 1921 requires consideration which reads as under:-

"101. Appointing Authority except with prior approval of Inspector shall not fill up any vacancy of non-teaching post of any recognized aided institution.

Provided that filling of the vacancy on the post of Jamadar may be granted by the Inspector."

9. The aforesaid Rule provides that the appointing authority can not fill in any vacancy of non-teaching staff in a recognized and aided institution except with the prior approval of the District Inspector of Schools. Therefore, prior approval is necessary for filling the vacancies.

10. The question which arises for consideration is whether in a given situation, if intimation of pending appointment is sent to the District Inspector of Schools and if no communication is received from the Inspector within a reasonable time, in such a situation, can the appointing authority go ahead and make the appointment on the ground that the appointment has been deemed to have been approved by the Inspector? In the present case, the Committee of Management had been requesting the District Inspector of Schools since 4.10.1997 to fill up the post of peon and thereafter informed the Inspector on 5.4.1999 that vacancy on two more posts would occur after 30.6.1999. Sufficient time was given to the District Inspector of Schools to make an appointment on the said post and eventually when the District Inspector of Schools did not stir in the matter, the Committee of Management appointed the petitioners on 29.10.1999 and intimated the District Inspector of Schools, vide letter dated 1.11.1999. The District Inspector of Schools did nothing in the matter and waited till 29.12.1999 issuing an order forwarding the name of Vineet Kumar for being appointed under the Dying-in-Harness Rules.

11. Even though prior approval is required for appointing a non-teaching staff under Regulation 101, in my view, in the facts and circumstances of the present case, the appointments made by the Committee of Management was deemed to have been approved by the District Inspector of Schools after the expiry of two weeks from the date of the receipt of the information. This view of mine finds support from the following decisions.

12. In *Rajendra Yadav v. Deputy Director of Education, Gorakhpur and Ors.* 1999 (3) A.W.C. 2125, this Hon''ble Court had an occasion to consider as to whether there could be a situation where deemed approval to an appointment could be granted under Regulation 101, framed under the Intermediate Education Act. After considering the various provisions of the Act and the Regulations and applying the test of reasonableness, the Court held that a period of two weeks from the date of the receipt of the letter seeking approval would be a reasonable period within which the District Inspector of Schools must pass appropriate orders failing which the District Inspector of Schools would be deemed to have accorded approval of the appointment.

13. In the present case, the appointment of the petitioners were communicated on 1.11.1999. Since the District Inspector of Schools did not pass any order, the

petitioners" appointment was deemed to have been approved by the District Inspector of Schools after the expiry of two weeks. In my opinion, the petitioners were, therefore, entitled for their salary w.e.f. 1.12.1999.

14. The contention of the petitioners that the reservation policy was not adhered to and, the Selection Committee did not have any member of the backward class, is misconceived. The petitioners have filed documents to show that the Selection Committee was duly constituted and that a member of backward class was duly represented in the Selection Committee.

15. In view of the aforesaid, the impugned order cannot be sustained and the same is quashed. The writ petition is allowed and a mandamus is issued to the District Inspector of Schools to accord approval of the appointment of the petitioners on the post in which they are working within six weeks from the date of production of a certified copy of this order before him and pay their salary including arrears within the same period.