
(2013) 01 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 2515 of 1993

Smt. Abha Sharma

APPELLANT

Vs

District Inspector of Schools, Agra and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 18

Citation : (2013) 2 AWC 1507 : (2013) 1 UPLBEC 479

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Pankaj Mittal and R.K. Ojha, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Kumar, J.—Order dated 17.4.2000 is recalled and the writ petition is restored to its original number. Heard Sri R.K. Ojha, learned counsel for the petitioner and the Ms. Suman Sirohi, learned standing counsel.

2. It is not in dispute that the petitioner has been appointed as an ad hoc lecturer by the Committee of Management against the substantive vacancy, By means of the present petition, the petitioner is challenging the recommendation dated 16.12.1992 made by the District Inspector of Schools, Agra to the Committee of Management of the College to appoint Sri Raj Kumar, as a Teacher, who has been selected by the Commission, u/s 18 of the U.P. Act No. 5 of 1982 and further seeking a direction to the respondents not to interfere with the petitioner's working as the Lecturer.

3. Learned standing counsel submitted that the petitioner has been appointed as an ad hoc teacher by the Committee of Management while the Committee of Management has no right to make appointment on ad hoc basis against the substantive vacancy. The selection and appointment of a teacher against the substantive vacancy can only be made by the District Inspector of Schools under

Paragraph-5 of the First Removal of Difficulties Order, 1981 as held by the Full Bench of this Court in the case of Kumari Radha Raizada Vs. Committee of Management, Vidyawati Darbari Girls Inter College and Others, , therefore, the petitioner's appointment was ab initio illegal and as such the petitioner has no right to seek his continuance on the post of Lecturer and further to challenge the letter of the District Inspector of Schools, Agra, recommending the appointment of Sri Raj Kumar, who has been selected by the Commission.

4. Sri R.K. Ojha, learned counsel for the petitioner, states that after the interim order of this Court dated 28th January, 1993, the petitioner received salary till 2012 and, therefore, his services may be considered for regularisation.

5. The Full Bench of this Court in the case of Radha Raizada v. V.D.G.I.C. (supra) has held that the ad hoc appointment of the Lecturer against the substantive vacancy can only be made in accordance with the First Removal of Difficulties Order, 1981 wherein under paragraph 5, only the District Inspector of Schools has been empowered to invite the application from the local Employment Exchange and by making advertisement in the news paper.

6. The Committee of Management has no power to make any ad hoc appointment against the substantive vacancy. In this view of the matter, the appointment of the petitioner made by the Committee of Management was ab initio void. Further the petitioner cannot challenge the recommendation of the District Inspector of Schools, Agra, dated 16.12.1992, recommending the appointment of Sri Raj Kumar, who has been selected by the Commission, inasmuch as his appointment itself was illegal. Therefore, the writ petition is liable to be dismissed. However, it is open to the petitioner to seek his regularisation under the provisions of the Act. In case if any such representation is made by the petitioner for regularisation of his services, the same may be considered by the authority concerned, strictly, in accordance to law.

7. Before parting with the case, it may be noticed that it is very surprising that even after dismissal of the case in the year 2000, how the petitioner has been allowed to continue and he has also been paid salary. Therefore, the Principal Secretary, Secondary Education, U.P., Lucknow is directed to look into the matter, make an enquiry that under which circumstances the petitioner has been allowed to continue and salary has been paid after the dismissal of writ petition in 2000 and take necessary action against the persons/officials responsible for permitting the petitioner to continue and in making payment of salary and also take necessary steps to recover the amount paid to the petitioner after dismissal of the writ petition from the persons/officials, concerned, responsible for such serious lapse.

8. It may be mentioned here that considering the alarming situation that despite dismissal of the writ petitions, the salaries have been paid to the employees, the learned single Judge of this Court in the case of Pankaj Babu v. Deputy Director of Education, Agra Region, Agra and others, 2009 (75) 22, has issued the

direction that no salary under interim order shall be paid, if the interim order is ten or more years old, unless every year in March evidence of pendency of the writ petition in which the stay order was passed is filed before the authority concerned.

9. Reiterating the same direction, I direct the Principal Secretary, Secondary Education, U.P. Government, Lucknow to issue directions to all the District Inspector of Schools not to pay salary under the interim orders, unless every year in the month of March, the evidence of pendency of the writ petition in which the stay order was passed is being filed.

10. With the aforesaid observations and directions, the writ petition falls and is dismissed.

11. The Office is directed to supply certified copy of this order to Ms. Suman Sirohi, learned standing counsel, for its onward transmission to the Principal Secretary, Secondary Education, U.P. Government, Lucknow for compliance and necessary action.

12. List on 5th March, 2013. On the next date fixed, learned standing counsel will inform about the compliance of the aforesaid directions.