
(2003) 09 AHC CK 0058

In the Allahabad High Court

Case No : C.M.W.P. No"s. 14570, 27709 and 30563 of 1999

Smt. Kusum Rani and Others

APPELLANT

Vs

D.I.O.S. and Others

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 2, 4, 5, 6

Citation : (2003) 6 AWC 5098

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Prakash Padia, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Misra, J.—All these writ petitions are taken up together.

2. By way of Writ Petition Nos. 27709 of 1999 and 30563 of 1999 order dated 31.12.1998, passed by District Inspector of Schools, Allahabad and subsequent order dated 15.5.1999 have been challenged. Further prayer has been made seeking writ of mandamus restraining the Respondents from interfering in the working of the Petitioners as assistant teachers and for payment of salary month by month along with arrears from the date of their initial appointment. Still further prayer has been made to grant approval by the District Inspector of Schools in favour of the Petitioners as a primary teacher in the institution. Km. Preeti Singh by way of Writ Petition No. 14570 of 1999 has prayed to quash the selection which took place on 17th December, 1998, in pursuance of the advertisement published in local newspapers "Rashtriya Sahara" on 16th October, 1998 and in "Amar Ujala" on 17th of October, 1998 to the post of assistant teachers in the primary section attached to Arya Kanya Inter College, Mutthiganj, Allahabad (in short called as "College" hereinafter) and further prayer has been made to restrain the Petitioners in the above two writ petitions from functioning as assistant teachers in the primary section of the college and further direction has been made for making fresh appointment by observing the

provisions of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, that is Act No. 4 of 1994 (in short called as "Reservation Act, 1994" hereinafter) which came into force on 11.12.1993.

3. The facts necessary for adjudication of the writ petitions are that Arya Kanya Inter College, Mutthiganj, Allahabad, is under grants-in-aid list of the State Government and the teachers of the said college are being paid salary through the State funds under the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. The said college runs classes from 1st to XII where primary section is also run within one campus under the same management and one Principal is heading the college including the primary section from 1st to v. and from VI to XII and the terms and conditions in respect of payment are governed by U.P. Intermediate Education Act, 1921 and the regulations framed thereunder.

4. According to the Petitioners for appointment of Assistant Teacher in the Primary Section in the said college a letter was written by management of the said college on 12.6.1998 to the Director of Schools seeking permission whereby the permission dated 29.9.1998 was granted by the District Inspector of Schools (D.I.O.S.) to the management of the said college. In pursuance thereto the vacancies were advertised in widely circulated newspapers namely "Rashtriya Sahara" on 16.10.1998 and in "Amar Ujala" on 17.10.1998. In reference thereto 108 persons applied, out of which 102 persons were called for interview and out of which 75 persons appeared and interviewed and the selection took place on 17th December, 1998, where the Petitioners of the two Writ Petition Nos. 27709 of 1999 and 30563 of 1999 were found eligible and were recommended as L.T.C. and B.T.C. grade. In reference to the recommendation of the Selection Committee, the Management Committee of the said college resolved and issued appointment letters from 28.12.1998 onwards in favour of the writ Petitioners where it was specifically mentioned that the appointment in question was only be effective from the date of approval by the District Inspector of Schools. However, in pursuance to the appointment letters issued in favour of the Petitioners when writ Petitioners met the Principal of the college, they were informed by the Principal and the Manager that some quarries have been made by the District Inspector of Schools by letter dated 31.12.1998, in respect of the following points:

(i) To indicate about the creation of posts of alleged teachers in primary section of the college.

(ii) Number of sections in primary section and the permission for their creation.

(iii) List and details of the joining dates and the date of retirement of lady teachers working in primary section from 1975 (Service Books as evidence are to be enclosed).

(iv) To disclose the names of assistant lady teachers receiving salary after the

grant No. 71 was made applicable to the college to give detail about those lady teachers working in primary section of the said college, their date of appointment who were given C.T. grade scale by the Regional Girls Inspector of School I Vth Division by her order dated 16th August, 1994.

5. The District Inspector of Schools by letter dated 31.12.1998 has also indicated to the Manager of the said college to furnish information on the above points and had restrained the appointment of any assistant teachers in the primary section of the said college.

6. It appears that in response to the above queries the manager of the college wrote letter dated 12.3.1999 to the D.I.O.S., however, without further waiting the decision of the D.I.O.S., the Petitioners were issued appointment letters on 20th March, 1999 and on 22nd March, 1999 and the relevant papers were sent by the management of the college to the D.I.O.S. to grant permission for appointment and for financial approval. Thereafter by letter dated 5.4.1999 and 15.4.1999 certain more queries were made by D.I.O.S. from the management of the college in respect of the said appointments in question and on 15th May, 1999 the D.I.O.S. by the impugned order has indicated that the permission earlier granted for making payment of assistant teacher in primary section of the said college is recalled in view of the analysis made on the material supplied by the management and keeping in view that when selection and appointment was restrained earlier and in the light of non-observance of the reservation policy in the said appointments. The orders dated 31.12.1998 and 15.5.1999 passed by the D.I.O.S. are the impugned orders in the two writ petitions.

7. It appears that when the Petitioners filed the writ petitions this Court on 12.7.1999, had been pleased to stay the operation of the order dated 15.5.1999 and subsequently by order dated 8.12.2000, have extended the operation of the order dated 12.7.1999.

8. Counter-affidavit has been filed. The specific stand taken by the District Inspector of Schools is that the earlier permission granted on 29.9.1998 for making appointment on the post of assistant teacher in the primary section of the said college was with an indication and observance that the management is authorised to make appointment of teachers in the primary section and the management was permitted to make appointment obviously in observance of the reservation policy. The basic advertisement was defective as it did not observe the reservation policy and the information before the said appointments were under scrutiny and keeping in view of the deficiencies in the information, further information on 31.12.1998 were demanded by the D.I.O.S. in those circumstances, the impugned order dated 15.5.1999 was passed. It has further been pointed out on behalf of the Respondents that 14 posts in the college were filled up and there was no vacancy for making appointments to the post of assistant teachers and eight vacancies were shown to have been fallen vacant whereby by virtue of retirement of 8 teachers from the said college from 30th June, 1992 to 30th June, 1998 and by virtue of non-creation and sanction of the

post by the appointing authority, no college availing the benefit of grants-in-aid of the State Government could make appointment to the post of assistant teacher and if appointment were made in absence of the vacancies and posts the same was illegal. According to the Respondents the two advertisements neither indicate the number of vacancies to be filled up nor has mentioned anything about the observance of reservation policy, i.e., "Act 1994" which is applicable in the educational institution owned by the State Government or those institutions receiving grants-in-aid and Section 2(c)(iv) applies to all the educational institutions owned and controlled by the State Government or which received grants-in-aid by the State Government including the universities and Section 4 of the "Act 1994" indicates the responsibilities, accountabilities and powers for complying the provisions of "Act 1994" by entrusting the responsibility over the appointing authority or any of the officer of the State or the institution concerned to be responsible for ensuring the compliance of provisions of the Act and Section 5 deals with the penalty for defiance of the provisions of the said "Act 1994" and by virtue of Section 6, the power has been given to call for records and take such action as it may be necessary. As contended on behalf of the D.I.O.S. all the 14 posts in the said college were filled up and the said advertisements were illegal for want of vacancies and sanction of posts and the management being fully aware of these facts still proceeded with the advertisements and despite the restrained order passed by the D.I.O.S. the said appointments were made as per the conditions indicated in the order dated 28.12.1998 and onwards the said alleged appointments were not effective without the permission and approval of the D.I.O.S. as such the said appointments in question are not valid, in these circumstances, the question of giving actual appointment did not arise.

9. It has been submitted on behalf of the Petitioners that the Petitioners were duly appointed by the management after adopting full procedure and in terms of the appointments letters the Petitioners have joined duties and were working, as such without notice or opportunity of hearing or in derogation to the principles of natural justice, their appointments cannot be cancelled. In support of the stand the reliance has been placed on behalf of the Petitioners on following cases:

- (i) Basudeo Tiwary Vs. Sido Kanhu University and Others, ;
- (ii) Shrawan Kumar Jha and others Vs. State of Bihar and others, ;
- (iii) Pancham Ram and Others Vs. Chief Engineer, U.P. Jal Nigam and Others, ;
- (iv) Dinesh v. D.I.O.S., Mau 1990 (2) AWC 914: 1990 (3) UPLBEC 1691

10. When these cases are analysed, I find that in these cases the appointments were already given against the existing vacancies and posts and at subsequent stage specifically before cancellation of the appointments of the writ Petitioners the question of consideration for giving opportunity of hearing before cancellation of such appointments arose for consideration. Here the vacancy was not available and the management was supposed to observe the reservation policy and

despite the management been restrained by the D.I.O.S. even if appointments were made then joining and working by Petitioner has no value in the eyes of law. When the conditions for the appointments itself indicate that it could only be effective after the approval of the D.I.O.S., therefore, in the present facts and circumstances of the case, the question of appointments and joining has no relevance and effect. From this point of view the cases referred is not applicable in the present cases. According to the Petitioners new grounds cannot be taken by the Respondents in the counter-affidavit which are not stated in the appointment orders in view of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The contention of the Petitioner is also incorrect as the legal ground could be raised even at the hearing stage, more so here the basic issue of non-observance of the reservation policy has been ignored and the permission of the D.I.O.S. to proceed for the selection does not mean that the management was to make recruitment's even in absence of vacancies and posts, to follow the procedure at his sweet and free will without observing the provisions of reservation and the law applicable for the recruitment.

11. It has been contended on behalf of the Petitioners that there is no requirement under U.P. Intermediate Education Act, 1921, for taking approval for appointment of teachers in primary section in an Intermediate College unless there is disagreement between the selection committee and the committee of management u/s 16E (8) but in the present case committee of management duly accepted the recommendation of the selection committee. Thus, condition contained in various appointment orders, (Annexures-5 to 8 to the writ petition) that the approval of the D.I.O.S. should be taken is totally irrelevant and redundant and there does not exist any provisions in law seeking his approval. In this respect the Petitioners have placed reliance on the judgment in Amresh Chandra Dwivedi v. D.I.O.S., Varanasi 1984 UPLBEC 46.

12. It has further been contended on behalf of the Petitioners that in the present case, appointments were cancelled by the D.I.O.S. who has no jurisdiction and that too without giving any notice or opportunity. Thus, the impugned order is liable to be set aside being violative of principles of natural justice and being nullity i.e., totally without jurisdiction.

13. It has further been contended on behalf of the Petitioners that appointments made by the Committee of Management can only be cancelled by the Director as provided u/s 16E (10) of the U.P. Intermediate Education Act, 1921. He can cancel the appointments only after giving due notice and opportunity to the Petitioners.

14. Section 16E (8) of the U.P. Intermediate Education Act, 1921, provides as below:

Section 16E (8)-Applicability and scope of.-Sub-section (8) of Section 16E provides for referring the matter to the District Inspector of Schools in a case where the Committee of Management does not agree with the recommen-dations

of the selection committee. Thus, it is clear that if the Committee of Management agrees with the selection of the selection committee it need not refer the matter to the District Inspector of Schools. There is no provision either under the Act or under the regulations requiring the Committee of Management to refer the question of appointment to the District Inspector of Schools for obtaining his approval, where the Committee of Management agrees with the recommendations of the selection committee.

15. Here in respect of Section 16E (8) there was no question of disagreeing by the Committee of Management with the recommendation of selection committee and as both have erred to proceed in the said selection by making appointment to the posts of Assistant Teachers in the said college in absence of vacancies and by deliberately disobeying the provisions of the reservation policy and the issue of any dispute or cancellation of the alleged said appointments to be dealt by the Director of Education could only arise in the case of appointments having been made regarding teachers in an institution as provided u/s 16E (10) of the "Act 1921". In the present cases, the said teachers without the permission of the D.I.O.S. have been issued appointment orders, in absence of vacancies, and posts in derogation to the reservation policy, thus, the appointments could not be said to be legally made, as such Section 16E (10) is not attracted and the decision of this Court D.B. delivered in Amresh Chandra Dwivedi (supra) shall be not applicable as at the relevant time U.P. Act No. 4 of 1994 was not mandatory and was not applicable and the reservation policy was not to be observed to, such a great extent.

16. According to the Petitioner, Km. Preeti Singh she holds only Diploma in C. P. Ed. which is not like the L.T. or B. Ed. and she was not eligible, however, this issue of the claim of Km. Preeti Singh only could be considered by the Director of Education in reference to Section 16E (10) of the Act of 1921. According to the Respondents the Petitioner Km. Preeti Singh appeared before the selection committee which did not find her eligible, suitable and qualified to the post as she was not selected, now after rejection she cannot challenge the process of selection in view of Swaran Lata Vs. Union of India and Others,

17. In the facts and circumstances of the present cases whether Km. Preeti Singh could be considered even if the selection committee did not observe the reservation policy. The answer is no but if in the said selection the Committee of Management was to support the selection and was to be held responsible for non-observance of provision of Act No. 4 of 1994 and selections are declared non est and then, Petitioners appointments and their joining to the said college are of no relevance. The Petitioners appointments per se was illegal, therefore, principle of natural justice cannot be said to be given and the Petitioners cannot unnecessary be afforded opportunity of hearing before passing the said impugned orders. The said appointments in question are in contravention to the norms and are not made by the approval of D.I.O.S. or the irregularities for defiance of reservation policy goes to the very root for instance no vacancies/posts were available and if

vacancies/posts were existing then the authorities overlooked to observe norms of reservation policy, in these circumstances, the selections lack legal foundation and no legal rights accrued to the Petitioners in view of State of Punjab Vs. Jagdip Singh and Others,

18. I have heard learned Counsel for the parties. I find that in absence of the vacancies and posts, the Petitioners appointment were made despite the restrictions imposed by the D.I.O.S. and the appointments and said selection were made without observing the provisions of the reservation policy as indicated above and the issuance of the appointment orders and allowing the Petitioners to join the post without any valid appointments and approval of competent authorities are redundant, as such, the Petitioners are not entitled to any relief, therefore, I do not find any impropriety and illegality in the said impugned order dated 31.12.1998 and 15.5.1994 of the D.I.O.S., therefore, these writ petitions are dismissed.