
(2002) 03 AHC CK 0021
In the Allahabad High Court
Case No : Writ Petition No. 7619 of 2001

Smt. Vibha Shukla and Another

APPELLANT

Vs

Director of Education (Basic), Allahabad and Others

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Citation : (2002) 2 AWC 1221 : (2002) 93 FLR 687 : (2002) 3 UPLBEC 2530

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : K.C. Shukla, for the Appellant; Pramod Kumar Sharma, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioners have prayed for quashing the order dated 1.1.2001, passed by the Basic Shiksha Adhikari, Kanpur Nagar and consequential order dated 10.1.2001, passed by the Manager of the College (Annexures-5A and 5B to the writ petition) to the effect that now the petitioners are not to continue in service.

2. The petitioners claim to be appointed as Assistant Teacher in P.A.V. Balika Junior High School, Nirala Nagar, Kanpur Nagar (hereinafter referred to as the College) in pursuance of the selection which took place on 7.11.1996. It has been claimed that after the approval having been accorded by the Basic Shiksha Adhikari by letter dated 14.11.1996, appointment letters were issued to the petitioners, pursuant to which they joined on their posts. The petitioners started getting their regular salary but thereafter, by order of Basic Shiksha Adhikari dated 1.1.2001, payment of salary to the petitioners has been stopped on account of which order dated 10.1.2001 came to be passed by the respondent No. 6. It is these two orders of the respondent Nos. 4 and 6 which are under challenge in this writ petition before this Court.

3. Learned counsel for the petitioners submits that the petitioners' appointment

on the posts in question was perfectly valid and they were duly appointed on the post so created by the Basic Shiksha Adhikari vide letter dated 20.7.1985. Learned counsel for the petitioners submits that as the petitioners' selection was duly approved, and they started receiving their salary, passing of the impugned order by the respondents without affording any opportunity to the petitioners is clearly illegal and therefore, it has been argued that the impugned orders deserve to be quashed. Learned counsel who appeared on behalf of the respondents on the fact so stated in the counter-affidavit has submitted that in fact, posts were never created by the Basic Shiksha Adhikari by its order dated 20.7.1985 and in fact, the said order was never issued from the office of the Basic Shiksha Adhikari. It has also been pointed out that otherwise also, the Basic Shiksha Adhikari at no point of time was competent to issue order for creation of posts and the management in collusion with educational authorities, appears to have proceeded in the matter and therefore, as there was no post available on which the petitioners can claim their selections, the respondents have rightly passed the impugned orders by which the petitioners' salary was stopped. In view of the aforesaid submissions, the pleadings as has been set forth in the writ petition, the materials which are available on record have been examined.

4. Counter-affidavit has been filed by Kamlakar Pandey who is Basic Shiksha Adhikari. In the counter-affidavit, it has been specifically stated that there happened to be only five posts in the institution and as such, the appointment of additional five teachers in pursuance of the alleged interview was clearly without authority. It has also been stated that in fact, the respondents have played fraud and in collusion, have been able to manipulate things and also received huge amount towards salary, for which necessary action is liable to be taken in this regard but in no case, further latitude be given to the aforesaid illegal appointments. It has also been pointed out that no letter showing creation of five additional posts by letter dated 20.7.1985 was ever issued from the office of the Basic Shiksha Adhikari and it appears to be fabricated document by the management. It has also been pointed out that in fact, the Director of Education is the concerned authority to pass appropriate orders in respect to creation of post.

5. In view of the aforesaid, it appears that an enquiry was carried out upon which, a report has come on 12.12.2000, copy of which is Annexure-1 to the counter-affidavit. On the facts as has been stated before this Court by a responsible official and in absence of any cogent materials, in order to demonstrate the creation of the post by order of competent authority and thus availability of posts on which the petitioners can claim their valid appointment, it cannot be said that the petitioners have any legitimate right to claim their continuance. So far as the submission of learned counsel for the petitioner in regard to lack of opportunity is concerned, it has been repeatedly said by this Court as well as by the Apex Court see Shiv Sagar Tiwari Vs. Union of India and others, , that it is not as matter of right that opportunity is to be afforded before

passing the order cancelling appointment/selection but it is to depend on facts of each case. It has been held in para 49 of the report as under :

"Natural justice is after all "no unruly horse, no lurking land mine" as characteristically stated by Krishna Iyer. J., in Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee. Its unnatural expansion without reference to these realities can be "exasperating" as observed by the learned Judge. It is also worthwhile to remember, as stated in para 24 of S. L. Kapoor v. Jagmohan that where on admitted or indisputable facts only one conclusion is possible, the Court may not compel the observance of natural justice, as it would be futile to do so."

6. On " these facts, this Court feels that even if the opportunity would have been afforded to the petitioners as the claim of the petitioners is dependent on available documents which form part of the record of the respondents and as it has been stated on behalf of the respondents that there is no order of creation of the posts, and all the proceedings in respect of advertisement, approval, etc. are collusive affair by which the Government exchequer has already been made to suffer, I feel that in the present case, grant of opportunity to the petitioners as claimed may be only futile. In view of the documents as has come on record, it appears that the petitioners have no legitimate claim and the respondents have rightly passed the impugned orders in which there appears to be no error.

7. Accordingly, this petition fails and is dismissed.