

(2010) 08 AHC CK 0493
In the Allahabad High Court
Case No : Special Appeal No. 538 of 2009

Sri Manna Singh	Vs	APPELLANT
The State of U.P. and Others		RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2011) 1 UPLBEC 153

Hon'ble Judges : Ferdino Inacio Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Judgement

Ferdino Inacio Rebello, C.J. and A.P. Sahi, J.—We have heard Mr. R.K. Ojha, learned Counsel for the Appellant and the learned Standing Counsel for Respondents 1, 2 and 4. Notices by Registered Post with A.D. have been served on the Principal-Respondent No. 3.

2. These two special appeals have been preferred by the Appellants, who are Class IV employees in Gandhi Inter College, Orai, against the judgment and order dated 3.3.2009 passed by the learned Single Judge dismissing their petitions against termination.

3. They were appointed on 21.7.1984 in the institution, which is governed by the provisions of the U.P. Intermediate Education Act, 1921 and approval was granted by the District Inspector of Schools on 30.7.1984. However, in view of the Government Order dated 20.11.1977, the services of the Appellants were sought to be dispensed with as according to the District Inspector of Schools, they were in excess of the norms as prescribed in the Government Order dated 20.11.1977. The Appellants-writ Petitioners came up before this Court challenging the said action of the District Inspector of Schools and were favoured with an interim order. The Appellants-writ Petitioners, accordingly, continued in service and received salary. The writ petitions were ultimately dismissed on 3.3.2009 holding that the Government Order dated 20.11.1977 does not permit the engagement of any employee in excess of the norms prescribed and accordingly, the learned Single Judge, while dismissing the writ petitions,

clarified that whatever salary had been paid to the Appellants-writ Petitioners, shall not be recovered. It was found that the norms permit a strength of 17 Class-IV employees and the Appellants-writ Petitioners were working over and above the said sanctioned strength.

4. Learned Counsel for the Appellants contends that the Government Order dated 22.11.1977 requires that a formal order for abolishing the post has to be made and prior to that, the approval of the Appellants granted by the District Inspector of Schools, cannot be rescinded. It is urged that the institution had 22 sanctioned posts and the appointment of the Appellants were made against the vacancy caused by the death of two employees who were occupying the posts on the basis of valid appointments within the sanctioned strength. Accordingly, the services of the Appellants are saved and do not suffer from any disqualification. He submits that even otherwise the Appellants could have been absorbed elsewhere and in view of the long standing service of the Appellants, they are entitled to continue in service and absorbed in the Institution.

5. Learned Standing Counsel, on the other hand, contends that such a course would not be permissible inasmuch as the Government Order dated 20.11.1977 places a bar with regard to any future engagement against the sanctioned norms as per the Government Order dated 20.11.1977. He submits that the engagement of the Appellants was over the prescribed norms and much after the promulgation of the said Government Order. It is, therefore, submitted that the Appellants were rightly discontinued and the learned Single Judge was justified in upholding the orders passed by the authorities.

6. We have considered the submissions raised by the parties. The Government Order dated 20.11.1977 clearly recites to the effect that in the event any employee is working in excess of the norms prescribed therein as on the date of promulgation of the Government Order, he can be accommodated in another Institution and if not possible then, he shall be permitted to continue in the same Institution. Further a rider has been placed that the post on which the employee concerned is working in excess of the prescribed norms, shall be abolished upon the retirement of the incumbent.

7. The G.O. dated 20.11.1977 restricts any employment beyond the strength prescribed. Applying the purposive rule of interpretation, the institution cannot have employees in excess thereof as this directly involves financial implications. The salary has to be paid from the State funds. The Government order does not abolish or terminate the continuation of the employees who were already employed against sanctioned posts and receiving salary on the date of its issuance. It prohibits any future liability being created on the State exchequer. The argument of the Counsel for the Appellants that without any formal order of abolishing the post, the institution is not prevented from engaging employees by virtue of the Government Order cannot be accepted inasmuch as the Government Order being self operative does not allow either the authorities or the institution any play in the joints. If the interpretation is accepted, the same

would be negating the very object of the Government Order which is not under challenge before us. There is no material so as to raise a challenge to the finding recorded by the learned Single Judge of any further requirement of class IV employees by the institution beyond the strength of seventeen.

8. The submission that the posts against which the Appellants were appointed in 1984 were created prior to the issuance of the Government Order dated 20.11.1977 cannot be deemed to have been abolished also deserves to be rejected. The Government Order was enforced in exercise of the executive power of the Government to regulate the strength of employees thereby imposing financial restrictions on payment through State exchequer. The power to create posts no doubt vests in the Director of Education u/s 9 of the U.P. Act No. 24 of 1971 but the ultimate authority to regulate is with the State Government. The Government Order dated 20.11.1977 will have to prevail even if there is no formal order of the Director subject to the conditions of the Government Order itself. The authorities and the learned Single Judge are, therefore, fully justified in their reasoning and conclusion, which has our approval.

9. In view of the aforesaid provisions, as contained in the Government Order dated 20.11.1977, we are of the opinion that the Management or the Principal, who is the Appointing Authority did not have any right to proceed to make any appointment in excess of the prescribed norms. The appointment of the Appellants, which was made in 1984, therefore, being in excess of the prescribed norms as per the Government Order dated 20.11.1977 cannot be sustained. However, in view of the fact that the Appellants had worked for a long period, the learned Single Judge, in our opinion, rightly held that whatever salary had been paid to the Appellants, shall not be recovered.

10. Learned Counsel for the Appellants, then contended that in view of the fact that the Appellants had continued in service for more than 25 years after their appointments and they will be ineligible for any future employment for Class IV post, if they will not be allowed to continue, and, therefore, looking to their long service rendered in the Institution, fresh direction be issued so that protection may be given to the Appellants for future engagements. He also submits that posts are available within the sanctioned norms in the institution.

11. Accordingly, we are of the opinion that since the Appellants have crossed their upper age limit for fresh engagement in the event the Institution proceeds to make fresh engagement, the Appellants shall be entitled to apply and the age bar limit to that extent shall stand relaxed insofar as the Appellants are concerned, as they were already in service. The Institution, shall take proper permission for making fresh engagement, if the posts are available, under the relevant provisions provided for. This exercise may be completed, as expeditiously as possible for filling up of two Class-IV posts within the sanctioned norms, preferably within a period of three months, but not later than six months. A copy of this order shall be made available to the District Inspector of Schools, for granting appropriate permission. In the event, the Appellants apply for fresh

engagement on the said posts, the Appointing Authority shall give them preference keeping in view their long service rendered in the Institution as well as their experience, for fresh engagement on the said posts.

12. This order is being passed in the peculiar facts and circumstances of the case including the interim order passed in the writ petition by virtue whereof the Appellants were continued in service and it shall not be treated as a precedent for any other case.

13. The application for interim relief in this appeal was rejected on 22.4.2009 and as such the Appellants continued to get salary till the disposal of the writ petitions. In view of the need of the institution and the larger interest of the students, it shall be open to the appointing authority to engage the Appellants on ad-hoc basis only for a period of six months or till fresh appointments are made, whichever is earlier.

14. The appeals are disposed of, accordingly.