
(2008) 08 AHC CK 0011
In the Allahabad High Court

State of U.P.

APPELLANT

Vs

Krishnendra Gaur

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 119 FLR 861

Hon'ble Judges : Ashok Bhushan, J;Arun Tandan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Standing Counsel for appellants and Sri R.R. Singh, learned Counsel for respondents.

2. State of Uttar Pradesh has filed this intra court appeal against the judgement and order of the Hon'ble Single Judge dated 15th July, 2004, passed in Civil Misc. Writ Petition No. 19736 of 2001.

3. Brief facts of the case relevant to be noticed for deciding the present appeal are as follows:

4. Barauli Inter College, Barauli Rao, Aligarh is a recognised and aided intermediate college. The provisions of U.P. Intermediate Education Act, 1921 and those of U.P. Secondary Education Services Selection Board Act, 1982 are fully applicable to the teachers and staffs of the institution. One LT. Grade teacher working in the institution, namely, Govind Singh was promoted on ad-hoc basis as lecturer under order dated 9th July, 1997. As a consequence thereto resultant short term vacancy was caused in the institution in L.T. Grade. The vacancy is stated to have been advertised by the Committee of Management of the institution for the purposes of making ad-hoc appointment in one daily newspaper, namely, Amar Ujala on 12th August, 1997. From the record it is established that nearly 20 applications were received in response to the advertisement. Out of candidates, who actually appeared for interview, petitioner-

respondent No. 1 was found to be most suitable and therefore, he was issued an appointment letter by the Manager of the institution dated 22nd September, 1997. The petitioner joined in pursuance thereto. Since the petitioner was not being paid salary, despite his appointment as such by the District Inspector of Schools, he approached this Court by means of Writ Petition No. 4438 of 1999. The writ petition was disposed of by the Hon'ble Single Judge by means of the judgment and order dated 16th February, 1999 requiring the District Inspector of Schools to examine the legality of the appointment of the petitioner and to pass appropriate orders within the time specified in the order of the Court qua payment of salary as claimed. The District Inspector of Schools by means of order dated 29th April, 1999 refused to accord approval to the said ad-hoc appointment of the petitioner against short term vacancy on following three grounds:

- (a) Vacancy has been advertised in only one newspaper, when under law it should have been advertised in at least two newspapers,
- (b) The management of the institution had no jurisdiction to make ad-hoc appointment against short term vacancy on the relevant date, and
- (c) There was a ban imposed on ad-hoc appointment by the State Government.

5. Not being satisfied with the order of the District Inspector of Schools petitioner filed writ petition No. 19736 of 2001. The Hon'ble Single Judge after noticing the objections raised in the order of the District Inspector of Schools, has allowed the writ petition vide judgment and order dated 15th July, 2004 and has held that the petitioner-respondent No. 1 was entitled to salary from the date of appointment. It is against this judgment and order of the Hon'ble Single Judge that the State has filed the present intra court appeal.

6. Learned Standing Counsel on behalf of State-appellants contends that the Hon'ble Single Judge was not justified in recording a finding that publication of the vacancy in one newspaper alone was sufficient and the breach of the requirement of advertisement being made in two newspapers was only a technical lapse, for which the ad-hoc appointment of the petitioner could not have been disapproved. Learned Standing Counsel with reference to the Full Bench Judgement of this Court in the case of Radha Raizada and Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors. reported in (1994) 3 UPLBEC 1551, submits that the Full Bench has categorically laid down as a proposition of law that for ad-hoc appointment against short term vacancies, advertisement must be made in at least two newspapers having adequate circulations. He therefore, submits that such law which has been declared by the Full Bench of this Court in the case of Radha Raijada (Supra) could not have been diluted by the Hon'ble Single Judge by providing the publication in one newspaper was sufficient.

7. So far as other two grounds mentioned in the order of the District Inspector of Schools are concerned, learned Standing Counsel has fairly conceded that on the

relevant date the management was competent to make appointment on ad-hoc basis against short term vacancy and further that no ban was imposed on ad-hoc appointment against short term vacancy by the State Government.

8. Faced with the aforesaid contention, Sri R.R. Singh, learned Counsel for the respondents submits that although there cannot be any dispute with regard to the law as explained by the Full Bench of this Court in the case of Radha Raijada (Supra), but in the facts of the present case, since advertisement was made in a well known daily newspaper, namely, Amar Ujala, the Appellate Court may not interfere with the judgment and order of the Hon''ble Single Judge. More so when nearly 20 applications were received in response to the advertisement. He lastly submits that the petitioner has actually discharged duties in the institution, therefore, for the period he has actually worked, he is entitled to the salary.

9. We have considered the submissions made by the learned Counsel for the parties and have perused the records.

10. For the purposes of appreciating the controversy raised in the present appeal it would be worthwhile to reproduce relevant portion of the Full Bench Judgement of this Court in the case of Radha Raijada (Supra), which reads as follows:

43. ...I am, therefore, of the view that the procedure for notifying the short terms vacancy should be the same as it is for the ad hoc appointment by direct recruitment under the First Removal of Difficulties Order. The management after intimating such vacancy to the District Inspector of Schools advertise such short term vacancy at least in two News Papers having adequate circulation in Uttar Pradesh in addition to notifying the said vacancy on the notice board of the institution and further the application may also be invited from the local employment exchange....

11. From the aforesaid, it is apparently clear that the Full Bench of this Court has clarified that even a short term vacancy is required to be advertised in like manner as provided for the substantive vacancy, before making ad hoc appointment as per the First Removal of Difficulties Order. It has been further clarified that advertisement in respect of short term vacancy should be published in at least two newspapers having adequate circulation through out the State of Uttar Pradesh.

12. In the facts of the present case, it is admitted on record that advertisement has been published in only one newspaper. Therefore, we have no hesitation to record that there has been violation of law as declared by the Full Bench of this Court, in respect of ad-hoc appointment against short term vacancy as claimed by the petitioner. Further we are of the opinion that the District Inspector of Schools was justified in refusing to accord financial approval to the ad hoc appointment of the petitioner on said ground, inasmuch as, as stated above, is in strict conformity with the law laid down by the Full Bench of this Court.

13. The Hon''ble Single Judge was not justified in upsetting the said order passed

by the District Inspector of Schools by observing that non-publication of the vacancy for ad hoc appointment against short term vacancy in two newspapers was only technical in nature.

14. This Court may emphasize that the Hon''ble Supreme Court as well as the Division Benches of the Hon''ble High Court have repeatedly held that if law requires something to be done in a particular manner, it has to be done in the manner prescribed or not at all. Reference be had to the recent judgment in the case of Professor Ramesh Chandra v. State of Uttar Pradesh and Ors. Civil Misc. Writ Petition No. 51370 of 2005, decided on 11th June, 2007), wherein the Division Bench has held as follows:

When the Statute provides for a particular procedure, the authorities has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. [(1) State of Uttar Pradesh Vs. Singhara Singh and Others, (2) A.K. Roy and Another Vs. State of Punjab and Others, and (3) Chandra Kishore Jha v. Mahavir Prasad (1998) 8 SCC 266]

The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius,". meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evident from the cases referred to above. A similar view has been reiterated in Haresh Dayaram Thakur Vs. State of Maharashtra and Others, ; Delhi Administration Vs. Gurdip Singh Uban and Others, ; Dhananjaya Reddy v. State of Karnataka etc.etc. (2001) 4 SCC 9 ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Prabha Shankar Dubey v. State of Madhya Pradesh AIR 2004 SC 486 ; and Ram Phal Kundu Vs. Kamal Sharma,

15. In view of the aforesaid, the judgement and order of the Hon''ble Single Judge dated 15th July, 2004 upsetting the order of the District Inspector of Schools dated 29th April, 1999 cannot be legally sustained. We are of the considered opinion that the order of the District Inspector of Schools refusing to accord approval to the ad hoc appointment of the petitioner against short term vacancy was legal and valid and could not have been set aside in writ jurisdiction by this Court under Article 226 of the Constitution of India. The judgment and order of the Hon''ble Single Judge dated 15th July, 2004 is hereby set aside.

16. At this stage we may consider the grievance of the petitioner that subsequent to his ad hoc appointment by the Management, because of the interim order granted by this Court in writ petition as well as under final judgment of the Hon''ble Single Judge referred to above, he has actually worked in the institution, he is therefore, entitled for salary for the period of actually

working.

17. In the facts of this case we feel that it would be too harsh to deny the salary to the petitioner for the services actually rendered, we therefore, provide that the appellants shall ensure payment of salary to the petitioner for the period he has actually discharged his duties in the institution under interim order of this Court passed in writ petition as well as under final judgment and order of the Hon"ble Single Judge till date, if not already paid.

18. This special appeal is allowed subject to the observations made above.