

(2011) 07 UK CK 0199
In the Uttarakhand High Court
Case No : Special Appeal No. 56 of 2007

State of Uttarakhand and Another	Vs	APPELLANT
Shekhar Chandra Pandey and Another		RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 07 UK CK 0199

Hon'ble Judges : Barin Ghosh, C.J;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—Inter College, Vijaypur, Kanda, District Bageshwar, an aided institution, had a post of Clerk, lying vacant. On 14th August, 1997, District Inspector of Schools, Almora accorded permission to the said College to fill up the said post and for that purpose to take appropriate steps. In the letter, it was mentioned that for the purpose of filling up the post, an advertisement is required to be published. It was also stated that in the matter of supplying the said vacancy, reservation policy of the State is to be followed. It was also stated that after selection is over, appropriate papers, in connection therewith, be sent to the office of District Inspector of Schools, Almora for approval. It appears to be the contention of the Respondent Shri Shekhar Chandra Pandey that an advertisement was published in a weekly newspaper "Swadheen Praja". It is his contention that he, alongwith, five others, responded to the said advertisement. Though, the advertisement has not been produced, but a typed copy thereof had been annexed to the writ petition filed by Shekhar Chandra Pandey. In that, it was indicated that the minimum educational qualification for the post in question is Intermediate, Hindi Shorthand and Typewriting plus preference in I.T.I. It is not the contention of Shekhar Chandra Pandey that he had any qualification of I.T.I. Be that as it may, it was his contention that on 20th September, 1997 interview of all those six respondees was taken, when Shekhar Chandra Pandey was adjudged the best, amongst them, and a list to that effect, under the

signatures of the Manager of the College, was made available to him. It is his contention that subsequently, he was given an appointment on 27th September, 1997, which appointment was subject to approval thereof by the District Inspector of Schools, Almora and, simultaneously, the College approached the District Inspector of Schools, Almora for grant of approval to the said appointment. It was the contention of Shekhar Chandra Pandey that District Inspector of Schools, Almora neither accepted nor rejected the request made by the College for the grant of approval to the appointment, thus given to him. The fact, however, remains that Shekhar Chandra Pandey was not remunerated. For that purpose, he approached this Court in 2003 by filing a writ petition, registered as Writ Petition No. 1342 of 2003. The said writ petition was disposed of on 12th November, 2003, when the District Inspector of Schools was directed to consider the claim of Shekhar Chandra Pandey. Accordingly, the District Inspector of Schools looked at the claim of Shekhar Chandra Pandey and specifically held out that on 5th November, 1997 permission granted to the College, to fill up the said vacancy by the order dated 14th August, 1997, was withdrawn and, accordingly, question of giving approval to the appointment of Shekhar Chandra Pandey did not arise. In his order dated 3rd January, 2004, the District Inspector of Schools further recorded that in course of inspection carried out by him, he did not find that Shekhar Chandra Pandey is rendering any service in the College. In the circumstances, Shekhar Chandra Pandey re-approached this Court by filing Writ Petition No. 35 of 2004. On the writ petition, an interim order was passed on 25th June, 2004 whereby and under, the Committee of Management of the College was directed to pay salary to Shekhar Chandra Pandey and for that matter, to obtain approval, if required, from District Inspector of Schools. The writ petition has been finally decided in favour of Shekhar Chandra Pandey by the judgment and order under appeal. While rendering the judgment and order under appeal, the learned Judge principally relied on the fact that Shekhar Chandra Pandey rendered service in the College since 30th September, 1997 without any pay, and for that purpose, the learned Judge relied upon the attendance register of the College. Since, the attendance register was not kept with the record of the writ petition, we called for the same. The same has been produced before us. From that, we have noticed that the attendance register maintained by the College since March, 2004 contains the signatures of Shekhar Chandra Pandey. The attendance registers of the College, prior thereto, do not contain any signature of Shekhar Chandra Pandey. It is contended by the counsel for the College that Shekhar Chandra Pandey signed on a separate sheet of paper until then. The College has utterly failed to bring to our notice any incident which happened in March, 2004, that it became obligatory on the part of the College to permit to Shekhar Chandra Pandey to sign in the attendance register of the College, although for almost six years he did not do so and was purportedly signing in a separate sheet of paper. In the circumstances, the fact recorded by the District Inspector of Schools in his order dated 3rd January, 2004, which had also been impugned in the writ petition, to the effect that the District Inspector of Schools did not see Shekhar Chandra

Pandey, serving the College in course of inspection carried out by him, cannot be called in question.

2. The order dated 14th August, 1997 made it absolutely clear that the selection to be made, must be placed before the District Inspector of Schools for obtaining approval thereon. Therefore, in terms of the said permission dated 14th August, 1997, the College was not entitle to issue an appointment letter, until selection of the candidate, by the College, is approved by the District Inspector of Schools. In the circumstances, issuance of an appointment letter in favour of Shekhar Chandra Pandey by the College, was beyond the scope of permission, as was granted. This permission was withdrawn on 5th November, 1997, may be without according any reason in support thereof. The fact, however, remains that since 5th November, 1997 neither Shekhar Chandra Pandey, nor the College raise any voice in respect thereof, at any point of time. Despite the order dated 5th September, 1997, having been categorically mentioned in the order of the District Inspector of Schools dated 3rd January, 2004, impugned in the writ petition, the fact remains that in the writ petition, no challenge was thrown to the said order dated 5th November, 1997. When by the order dated 5th November, 1997, the original permission dated 14th August, 1997 was withdrawn, anything done pursuant to the permission dated 14th August, 1997 shall be deemed to have been disapproved or permitted to lapse. Accordingly, selection, if any, of Shekhar Chandra Pandey pursuant to the said permission dated 14th August, 1997 stood lapsed on 5th November, 1997. Despite knowledge of the said order dated 5th November, 1997, as aforesaid, neither the College nor Shekhar Chandra Pandey took any step to question the said order dated 5th November, 1997. In the circumstances, we are not in a position to accept the views expressed in the judgment and order under appeal, that the District Inspector of Schools was not justified in denying grant of financial sanction for making payment of salary to Shekhar Chandra Pandey. The judgment and order under appeal did not record anywhere any reason to interfere with the order of District Inspector of Schools dated 3rd January, 2004.

3. We, accordingly, allow the appeal, set-aside the judgment and order under appeal and dismiss the writ petition.