
(1999) 12 AHC CK 0028
In the Allahabad High Court
Case No : Special Appeal No. 824 of 1995

Suresh Chandra Mishra

APPELLANT

Vs

District Inspector of Schools, Jhansi and others

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Citation : (2000) 2 AWC 1148 : (2000) 85 FLR 224 : (2000) 1 UPLBEC 699

Hon'ble Judges : Ravi S. Dhavan, J;A. Chakrabarti, J

Bench : Division Bench

Advocate : K.R. Singh, for the Appellant; S.C. and R.N. Rai, for the Respondent

Judgement

R. S. Dhavan and A. Chakrabarti, JJ.—This special appeal has been filed against the order dated 18th September. 1995, In Writ Petition No. 29083 of 1991, Krishna Dutt Mishra v. District Inspector of Schools and four others. The contesting respondent in the writ petition, respondent No. 4, Is Suresh Chandra Mishra, appellant before this Court. The memorandum of writ petition described him as an "Illegally appointed Lecturer in Civics in Sri Laxman Das Inter College. Jhansi."

2. In so far as the issue on facts Is concerned, it is clear. On the post of Lecturer in Civics, there was a vacancy on June 30. 1990. The Incumbent had superannuated. This was one Dwarika Prasad Sarawagl. The process of intimating the vacancy to the Commission had been made by the Committee of Management, but no communication had been received within the stipulated period. Thus, the Committee of Management set about to fill the post on an ad hoc basis until a candidate duly selected was returned by the Commission. On whoever may be appointed until a candidate from the Commission arrives, his status would be ad hoc. On this aspect, also, there is no issue.

3. Between the appellant, who was the contesting respondent in the writ petition, Suresh Chandra Mishra. and the petitioner, Krishna Dutt Mishra (respondent in this appeal), there is an Issue. The contention on behalf of the appellant as

raised by Mr. Ashok Khare Advocate. is that the process of filling a vacancy in the circumstances, as In the present case, permits the Committee of Management to fill the post by promotion or from the outside. This contention is disputed by counsel for the petitioner-respondent. Dr. R. G. Padia, whose contention is that the post can be filled only by promotion. The order of the learned Judge and the direction issued is also: to the effect, as has been contended by the petitioner-respondent. The Court considers it appropriate that the order of the learned Judge be reproduced :

"This writ petition has been filed against the Impugned order dated 24.1.1991 (Annexure-10 to the writ petition).

I have heard Dr. R. O. Padia, learned counsel for the petitioner and Sri A. D. Tiwari. learned counsel for the respondent No. 4. The short controversy in this case is regarding appointment of lecturer in Sri Laxman Das Damelay Inter College, Mauranipur, district Jhansi. The college has appointed respondent No. 4 by direct recruitment on the said post. The contention of the petitioner is that this post has to be filled up by promotion. The Full Bench of this Court in Radha Raizada v. Committee of Management. 1994 (3) UPLBEC 1551, has held that so far as ad hoc appointment is concerned. It should be by filling up by promotion from the lower post not by direct recruitment. Since petitioner was admittedly in the L. T. grade teacher and was eligible and he should have been considered for promotion as lecturer in Civics in the college and the respondent No. 4 could not have been validly appointed by direct recruitment.

In the circumstances, this writ petition is allowed and the Impugned order dated 24.1.1991 of the D.I.O.S. approving the appointment of respondent No. 4 is quashed. The Committee of Management should now consider the petitioner as well as other eligible candidates for promotion in the institution for the post of Lecturer in Civics and forward the papers to the D.I.O.S. for grant of approval within six weeks from the date of production a certified copy of this order before him after hearing the parties concerned.

Petition Is allowed. No order as to costs."

4. On both sides, whether the appellant or the respondent in this appeal, reliance is placed on the same case. While the appellant contends that, a candidate from the Commission has yet to arrive, recruitment can be made both ways, internally and externally. On behalf of the respondent, it is emphatically argued that an outsider has no place and the vacancy can be filled by promotion only.

5. The only aspect which is to be resolved is whether the learned Judge, on the case which had been cited, had left the field open or had taken the view that this vacancy is closed for recruitment by promotion only.

6. In the Judgment which has been impugned, it is the later aspect.

7. The case which is relied upon by learned counsel for the parties is the Full Bench decision in re. Radha Raizada and others v. Committee of Management,

Vidyaaurati Darbari Girls Inter College and others. (1994) 3 UPLBEC 1551. Reliance is placed on behalf of the petitioner-respondent on paragraph 39. Reliance is also placed by counsel for the appellant on the same paragraph with the contention that the entire perspective may be seen in objectivity.

8. In the circumstances, this Court is reproducing paragraph 39 :

"39. Paragraph 5 of the First Removal of Difficulties Order provides that where any vacancy cannot be filled by promotion under paragraph 4 of the order, same may be filled by direct recruitment. Thus, it is mandatory on the part of the Management to first fill up the vacancy by promotion on the basis of seniority alone. This method has to be resorted to as the teachers are available in the institute and any other method of recruitment may cause disturbance in teaching of the" institution which may affect the careers of students. Another reason why the vacancy has to be filled by ad hoc appointment by promotion is that it is a short term appointment in the sense that shortly a duly selected teacher would be available for appointment against the said vacancy. So long the posts can be filled under paragraph 4 of the order by promotion, it is not to the management to take resort to the power to appoint ad hoc teacher by direct recruitment under paragraph 5 of the First Removal of Difficulties Order. In Charu Chandra Tiwari v. District inspector of Schools 1990 UPLBEC 160, it was held that the management, has to fill the vacancy by ad hoc promotion of a seniormost teacher of the same institution qualified for such appointment and ad hoc appointment through direct recruitment is permissible only in case no such teacher in the institution is available. This, according to me, lays down the correct view of law. I am, therefore, of the view that the existing substantive vacancy which has been notified to the Commission and the condition provided u/s 18 of the Act is present, the vacancy has to be filled up firstly by promotion from amongst seniormost teacher in next lower grade."

9. The Full Bench was itself relying on an earlier decision of the Court in Charu Chandra Tiwari u. District Inspector of Schools. What is relevant is on what the Full Bench has noticed towards the end of the paragraph. The Full Bench has laid down that a vacancy, in the circumstances as the present one. has to be filled up first by promotion from amongst the seniormost teachers in the next lower grade. The emphasis is on an exercise of filling a vacancy initially from amongst the candidates available at the institution itself by promotion. The Full Bench adopts the reasoning (in the case referred to) that an ad hoc appointment by direct recruitment is permissible only if an eligible teacher at the institution is not available. In that case, recourse can be resorted to by making an appointment through direct recruitment. Suffice it to say either way the appointments, as may be made, given the exigencies of the situation, would have the status of being ad hoc. Consequently, there is no rigidity that a vacancy, in context, will be filled with promotion of an in-house candidate. This position has been clarified by the Full Bench by laying down that first the Committee of Management will assess on the eligible candidates being available within the institution so as to maintain

standards of leaching, thus, the reference to eligible candidates. If eligible candidates are available, then, an appointment will be made on an ad hoc capacity from within the institution until a duly selected candidate is returned from the Commission.

10. But if there be no eligible candidate within the institution and this will need to be placed on record, then, nothing stands in the way of the Committee of Management to take recourse to make a direct recruitment as an alternate, on an ad hoc basis.

11. To that extent, there is an error in the judgment of the learned Judge.

12. In the present case. It would be appropriate that the record be remitted to the Committee of Management for its decision to come to a conclusion whether an eligible candidate within the institution was available or not available, at the relevant time. If the Committee of Management comes to the conclusion that there were no eligible candidates available for promotion within the institution, then, the appointment so made shall be retained.

13. This Court is not going into the rival merits of the candidates, whether they should be in-house or by direct recruitment as this matter has yet to be examined by the Committee of Management.

14. The appeal is allowed. The order of the learned Judge, dated 18th September, 1995 on the writ petition is set aside.

15. No order on costs.