

(2010) 11 AHC CK 0044
In the Allahabad High Court
Case No : Writ A No. 44484 of 2004

Surrender Narayan Singh and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 11-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2010) 11 AHC CK 0044

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Judgement

Devendra Pratap Singh, J.—Heard Sri G.K. Singh, learned Counsel for the Petitioner and the Learned Standing Counsel.

2. The Petitioners seek quashing of an order dated 12.4.1999 and further prays for a mandate directing the Respondents to pay salary to them and not to interfere in their functioning.

3. It is pleaded that both the Petitioners were appointed as Junior Clerk in the District Institute of Education and Training (here-in-after referred to as "DIET"), Emiliya, in District Mau vide orders dated 28.3.1998 and 29.7.1998 by its Principal and they were paid their salary till the month of February, 1999 but in view of an order dated 12.4.1999 passed by the Joint Director of Education, Azamgarh, the payment of salary to the Petitioners have been stopped and despite several representations, no worthwhile action is forthcoming. It is further pleaded that in an identical circumstances, this Court has passed an order dated 12.12.2002 in writ petition No. 50444 of 2000 by which the letter dated 12.4.1999 has been quashed and directions have been issued for payment of salary and therefore the Petitioners are also entitled for the same treatment.

4. In the counter affidavit, a specific stand has been taken that the Principal, DIET does not have any power to make any appointment and which power vests with the Joint Director of Education. It is also stated that the alleged

appointment of the Petitioners is dehors the rules, without following the proper procedure as prescribed and without any advertisement. It is also stated that there are nine sanctioned posts of clerk in the DIET, Mau and all are filled up and their incumbents are being paid salary from the State Exchequer. It is also stated that there was no order of 12.4.1999 and the order annexed is forged but in fact there was an order of 21.4.1999.

5. Admittedly, the Petitioners claim their appointment to a post where the salary has to be paid from the State Exchequer, but they failed to demonstrate that any proper procedure prescribed in the recruitment rules was followed. A Government Order dated 12.12.1995 has been annexed to show that all the powers vested with the Joint Director of Education. Further, it is apparent from a perusal of the judgment dated 12.12.2002 passed in writ petition No. 50444 of 2000 that the aforesaid Government Order was not considered by it. Further, the Petitioners have failed to demonstrate that they were appointed against a sanctioned post or that any vacancy exists in the teeth of the averment in the counter affidavit. Assuming that the Principal, DIET has the power to make any appointment of clerk, he was bound to follow the recruitment procedure provided for such post and having not followed the procedure, the engagement of the Petitioners is hit by Articles 14 and 16 of the Constitution of India.

6. For all these reasons, the Court is not inclined to exercise its extraordinary power under Article 226 of the Constitution of India.