

(1994) 12 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 5650 of 1994

Syed Athar Ali

APPELLANT

Vs

D.I.O.S.Bareilly and Another

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 2 Regulation 101, Chapter 2 Regulation 102, Chapter 2 Regulation 103, Chapter 2 Regulation 104, Chapter 2 Regulation 105

Citation : (1994) 12 AHC CK 0018

Hon'ble Judges : Aloke Chakrabarti, J

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—The present writ petition was filed challenging the order dated 2411994 (Annexure22 to the writ petition) pasted by the District Inspector of Schools Bareilly whereby the appointment of the petitioner was refused to be approved.

2. The case of the petitioner is that he having B.A. Degree and being enrolled in the Employment Exchange, Bareilly was appointed on 1231991 as clerk in the leave vacancy of one Asraf Ali, a Class III employee of a School on his appointment as L.T. Grade teacher on ad hoc basis. In terms of the said appointment letter the petitioner joined his duties on 1531991. The Manager of the school by hit letter, dated 2031991 forwarded the necessary papers to the District Inspector of Schools, Bareilly for according financial approval to the appointment of the petitioner. The said Asraf Ali obtained extension of his leave till 31121992 and thereafter again for a further period till 31121993. On each such occasion the petitioner was appointed during each such leave vacancy of the said Asraf Ali who was a permanent employee of the School having been made permanent on 2961989. Each such appointment of the petitioner was accorded financial approval by the District Inspector of Schools, Bareilly by separate letters being letters, dated 1331991, 1331992 and 641993 respectively.

3. Ultimately, the said permanent Class III employee Asraf Ali tendered his resignation on 22121993. On such permanent vacancy created on resignation of Asraf Ali, the Committee of Management by resolution dated 29121993 appointed the petitioner on the post of Class III employee on permanent basis. The appointment letter was issued by the Manager of the school on 31121993 and the petitioner joined his duties on 111994. The Manager of the school by his letter dated 311994 forwarded the necessary papers to the District Inspector of Schools, Bareilly but the District Inspector of Schools Bareilly by his order dated 2411994 refused to accord financial approval to the petitioner's appointment on the ground that on a Class III post only a person claiming appointment under "Dying in Harness Rules" would be offered appointment. Such order was passed referring to the letter dated 1371992 of the Director of Education. It was further stated in the said letter dated 2411994 that after the said resignation the leave vacancy has automatically come to an end. Accordingly, the petitioner was compelled to move the present writ petition challenging the said order.

4. The respondents contested the proceeding by filing a counteraffidavit wherein they supported the stand taken in the impugned order dated 2411994. It has been stated in Para 13 of the said counteraffidavit as follows ;

"13. That the contents of paragraph No. 28 of the writ petition are partly admitted. It is submitted that the vacancy in the institution arose due to resignation given by Shri Asraf Ali clerk on 111994 from the substantive post held by him and as such a post on substantive vacancy came into existence and according to notification No. 4001 dated 3071992 on the post of nonteaching staff appointment of a candidate who is dependent of an employee, dying in harness can be made and on the said post the Manager has no right to make an appointment which is vacant on substantive basis. Since the appointment of the petitioner has been made by the Manager contrary to the provisions of the said notification, as such the petitioner is not entitled to get any salary. A true copy of the order dated 2411994 cancelling the appointment of Syed Athar Ali made on the post vacant on substantive basis was filed as AnnexureCA2 to this affidavit."

5. It is admitted at the time of hearing by the parties to the proceedings that the matter can be disposed of at the admission stage. The respondent No. 1 has contested the proceeding as the petitioner has not pressed the relief against the respondent No. 2 and has obtained an order for dismissal of the writ petition against the respondent No. 2.

6. It is contended on behalf of the petitioner that the said provisions introduced on 3071992 although provides a scheme for appointment of the dependant of an employee dying in harness, the same does not exclude appointment of other candidates in the vacancy not filled on compassionate ground. It has been contended on behalf of the petitioner that bare perusal of the said provisions of Regulations 101 to 107 shows, that provisions were made for appointment on compassionate ground but it did not exclude the scope of appointment of ordinary candidates by direct recruitment. In the present case, it is admitted that

the petitioner was appointed against a permanent vacancy and the respondent did not contend that such appointment was irregular in any respect. The sole ground of refusing financial approval is the provision incorporated by circular dated 3071992, It is apparent that the said provision has been misread by t he District Inspector of Schools, Bareilly while passing the impugned order to the extent that he presumed total exclusion of a candidate if he is not a claimant for employment on compassionate ground. In the present casa it has also not been stated by the District Inspector of Schools concerned that the said vacancy was already recommended to be filled up by a candidate on compassionate ground before the appointment of the petitioner.

7. In the circumstances, I am of the opinion that refusal of approval of the appointment of the petitioner on such ground and in the facts of the case, cannot be upheld.

8. In the result, the writ petition succeeds and is allowed. The impugned order dated 2411994 (Annexure22 to the writ petition) is set aside. The respondent No. 1 District Inspector of Schools Bareilly is directed to consider and decide the question of approval of the petitioner in accordance with law by a reasoned order within a period of six weeks from the date of production of a certified copy of this order before him. There will be no order as to costs.