
(2009) 12 AHC CK 0033
In the Allahabad High Court

Tulsi Ram and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 9(4)

Citation : (2010) 2 AWC 1156

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Shri P.D. Tripathi, learned Counsel for the petitioners and the learned standing counsel.

2. The contention raised is that the impugned order proceeds on erroneous assumptions of fact and law, inasmuch as, the petitioners were validly appointed against posts, which had fallen vacant on account of the retirement of the incumbents, who were earlier working as "approved employees. It is further submitted that the appointment of the petitioners were made by the then Principal who for all practical purposes was functioning as the Principal of the Institution. Sri Tripathi therefore submits that the two findings recorded on the aforesaid issues deserves to be set aside and the petitioners deserve to be granted the benefit of payment of salary.

3. I have perused the impugned order. The same recites that in view of the Government order dated 28.11.1977, the posts which are in excess of the norms, could not have been offered for fresh appointment by the Principal as it would violate the provisions of the Government order dated 20.11.1977. The second finding recorded is that the Principal of the institution Shri Mool Chand Pandey had already attained the age of superannuation, and therefore he was not entitled to make the appointments. Shri Tripathi has relied on the decisions in the case of Krishna Kumar v. District Inspector of Schools 1995 ALR 1996 :

1995 (1) AWC 183 and in the case of Mohd. Ayub Vs. District Inspector of Schools and Others, , respectively.

4. On the strength of the said decisions learned Counsel contends that so long as the appointments have been made against the posts for which salary has been disbursed earlier, there is no occasion to deny the said benefit to the petitioners. He further submits that the appointment once having been approved cannot be invalidated subsequently.

5. Having perused the aforesaid judgments, I do not find any consideration of the impact of the Government order dated 20.11.1977 in the said judgments. The Government order dated 20.11.1977 has the force of law, inasmuch as, the State Government has the power to Issue such orders in exercise of the powers vested in it u/s 9(4) of the U.P. Intermediate Education Act, 1921. The same provides for the norms that are fixed for the maximum number of employees to be engaged in the category available in the institution. According to the said norms it has been found that there are three Class-IV employees in excess of the maximum limit prescribed. Applying the aforesaid principle, it cannot be said that the District Inspector of Schools, Jaunpur has committed any illegality.

6. So far as, the question of the appointment of the petitioners by Shri Mool Chand Pandey is concerned, it would be appropriate to mention that there is no dispute that the said Principal had already attained the age of superannuation. Shri Tripathi, however, contends that he was continuing on extended employment and for all practical purposes he was the Principal of the institution. In view of this, his authority to proceed to make the appointments cannot be questioned.

7. The aforesaid argument cannot be accepted in view of the Division Bench judgment of this Court in the case of Hari Om Tatsat Brahma Shukla Vs. The State of U.P. and Others, , wherein, it has been held that a person appointed on ad hoc basis as the head of the institution, upon attaining the age of superannuation, shall continue on his substantive post till the end of the session, and not as a Principal.

8. In view of this, the then ad hoc Principal Shri Mool Chand Pandey could not have functioned as de jure Principal so as to empower him to exercise his discretion to make appointments against Class TV posts after the date on which he attained the age of superannuation. The second argument therefore also cannot stand the test of scrutiny. Accordingly, this Court cannot declare the findings recorded by the District Inspector of Schools to be incorrect.

9. It is, however to be noted that the question of approval or disapproval of such appointments is now under the jurisdiction and scrutiny of the Regional Level Committee under the Government order dated 19.12.2000. In case the petitioners are aggrieved it is open to them to approach the Regional Level Committee for the redressal of their grievances. In case such a representation is filed, it shall ,be open to the Regional Level Committee to arrive at its own finding without being influenced by this order but of course, only in accordance

with law.

10. The writ petition is dismissed with the aforesaid observation.