
(2007) 05 AHC CK 0298
In the Allahabad High Court

Udai Prakash Singh and Others

APPELLANT

Vs

The District Inspector of Schools

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Citation : (2007) 7 AWC 7756

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Vide order dated 7.3.2002 the petition in respect of petitioners No. and 3 had been dismissed on the application moved by these petitioners. The present petition survives only in respect of petitioners No. 2, 4 and 5.

2. Heard Sri Arvind Kumar, learned Counsel for petitioners No. 2, 4 and 5.

3. The petitioners have sought a writ of mandamus commanding the respondent not to interfere in their working and pay their salary regularly. They have also sought a writ of certiorari quashing the order dated 18.3.1991 passed by the respondent, District Inspector of Schools, Mainpuri (hereinafter referred to as the "DIOS").

4. Learned Counsel for the petitioners stated that there was a substantive vacancy of Lecturer (Geography) and four short term vacancies of trained graduates in Biology, Hindi & Sanskrit, Civics and English at Indrajeet Laxman Das Kohili Inter College, Jot, Mainpuri (hereinafter referred to the "College") for which committee of management got published an advertisement on 10.1.1991 in Dainik Jan Tantra. In pursuance of the said advertisement the petitioners applied. Thereafter, appointment letters were issued on 29.1.1991 appointing petitioners No. 2, 4 and 5 as Trained Graduates in the College as stop gap arrangement with clear stipulation that their services would continue till regularly selected candidates from the Commission are available or till the vacancies

become substantive. It is not disputed that the appointments on the post of Lecturer or Assistant Teacher could have been made in accordance with the procedure prescribed in U.P. Secondary Education Services (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as "Second Order"). The procedure for filling short-term vacancy has been laid down in Clause-2 of the aforesaid order, which reads as under:

2 Procedure for filling up short-term vacancies.-(1) If short-term vacancy in the post of a teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the Institution, by promotion of the permanent senior-most teacher of the institution, in the next lower grade. The management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted.

(2) Where any vacancy referred to in Clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3) (i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the Manager of the institution along with the particulars given in Appendix "B" to this Order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-1993/XV-7 (79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the manager.

Explanation - For the purpose of this paragraph -

(i) the expression "senior-most teacher" means the teacher having longest continuous service in the institution in the Lecturer's grade or the Trained

graduate (LT.) grade or Trained under graduate (C.T.) grade or J.T.C. or B.T.C. grade as the case may be;

(ii) in relation to institution imparting instructions to women, the expression "District Inspector of Schools" shall mean the Regional Inspectress of Girls' Schools;

(iii) short-term vacancy which is not substantive and is of a limited duration.

5. Clause-2(3)(iii) shows that the management after selection shall send entire record of selection and proposal with respect to the selected candidate to the District Inspector of Schools for his prior approval. In case the District Inspector of Schools fails to convey his decision within seven days from the date of receipt of the particulars, the approval of the District Inspector of Schools shall be deemed to have been granted and thereafter the Management shall have power to appoint the selected candidate and order of appointment shall be issued under the signature of the Manager. Therefore, the procedure for approval of District Inspector of Schools for short-term appointment precedes the order of appointment under the aforesaid provision.

6. In the present case, the management after advertising the vacancies on 10.1.1991 made selection on its own and issued appointment letters without sending the papers for approval of the District Inspector of Schools (hereinafter referred to as "the DIOS"). Thus, from the facts of the case it is evident that the procedure prescribed in Second Order was not followed. The Apex Court in the case of Prabhat Kumar Sharma and others Vs. State of U.P. and others, considering appointment made in violation of! the procedure prescribed under the Removal of Difficulties Order held as under:

Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointee.

7. The Apex Court upheld the Full Bench decision of this Court in Radha Raijada (supra). Similar view has been taken by this Court in a number of cases, some of which may be referred as under:

In Dr. R.K. Pandey v. Sukh Ram Pal Singh Sahravat 1995 (1) ESC 74, this Court held:

As the appointment of Dr. Raman Kumar Pandey was made before two months from the date of vacancy could expire, it was wholly illegal, having been made in contravention of Section 18 of the Act.

8. In Anilesh Pratap Singh v. State of U.P. 2003 (5) ALR 674, A Division Bench of this court held:

Applying the principles laid down in the aforementioned cases we are of the considered opinion that the provisions of Section 18 of the 1982 Act is mandatory and unless and until the period of two months expires from the date of notifying the vacancy to the Commission, the Committee of Management does

not get any power to fill up the vacancy on ad-hoc basis.

9. The aforesaid view has been followed recently in Special Appeal No. 32 of 2006 Lalta Prasad Goswami v. State of U.P. and Ors. Decided on 12th Januray 2006.

10. In Special Appeal No. 87(D) of 2003 Joint Director of Education, Azamgarh Region, Azamgarh and Anr. v. Udai Raj Vishwakarma and Anr. decided on 6.2.2007, it was held as under:

...The scheme is thus very clear. Since payment has to be made from the State Exchequer, the appointment can be made only when the entire selection procedure as well as particulars of the candidate selected are scrutinized and examined by the DIOS and he has an occasion to convey his approval to the selection prior to appointment. Under Clause 2(3) of the Second Order, "prior approval" is required after the selection but before appointment.

11. In this view of the matter, the petitioners having not been appointed against short term vacancy after following the procedure prescribed in accordance with law, no mandamus as prayed for can be issued.

12. The writ petition lacks merit and is accordingly dismissed.