
(2003) 09 AHC CK 0289
In the Allahabad High Court
Case No : C.M.W.P. No. 53198 of 1999

Umesh Chandra Trivedi

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 6

Citation : (2003) 6 AWC 5722

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Irshad Ali, for the Appellant; R.B. Pradhan, S.C and S.C, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Ambika Prasad Inter College is an institution governed by the provisions of the U.P. Intermediate Education Act, 1921 and is managed by a society registered under the Societies Registration Act, 1860. The provisions of the U.P. High School and Intermediate Education (Payment of Salaries) (Teachers and other Employees) Act, 1971 and the U.P. Secondary Education Service Selection Board Act, 1982 are also applicable to the institution for payment of salaries, etc.

2. The brief facts of the case are that the Petitioner was initially appointed as an assistant teacher in C.T. grade in Shyam Lal Madhyamik Vidyalaya, Katghar, District Moradabad and in pursuance of appointment letter he joined the institution on 10.7.1973. Subsequently the Petitioner was promoted in L.T. grade vide order dated 18.10.1978 which was approved by the District Inspector of Schools, Moradabad, by its order dated 7.10.1979. Later on the Petitioner was transferred from the aforesaid Shyam Lal Madhyamik Vidyalaya to the present institution, i.e., Ambika Prasad Inter College vide order dated 8.7.1996, passed by the Deputy Director of Education (Secondary), Moradabad. The Petitioner joined the institution on 17.7.1996 on the post of Assistant Teacher in L.T. grade.

3. A substantive vacancy on the post of Principal fell vacant due to the retirement of Sri Sita Ram Sharma and the seniormost Lecturer Sri Khajan Giri was promoted to the post of Principal on ad hoc basis resulting into a short-term vacancy on the post of Lecturer in Geography on which Sri Khajan Giri was working prior to his promotion to the post of Principal.

4. The counsel for the Petitioner contends that the Petitioner was the seniormost eligible candidate for promotion on the post of Lecturer in Geography. By means of resolution dated 7.9.1997 he was granted ad hoc promotion on the post of Lecturer in Geography according to the provisions of Chapter II Regulation 6 of the Regulations framed under the U.P. Intermediate Education Act, 1921. After promotion of the Petitioner to the post of Lecturer in Geography on ad hoc basis, the papers with regard to his promotion were submitted to the District Inspector of Schools, Moradabad for granting financial sanction and approval for payment of salary to him. It is alleged that the papers were duly received in the office of the District Inspector of Schools on 8.9.1997. An appointment letter dated 8.9.1997 was issued to the Petitioner appointing him on the post of Lecturer in Geography against short-term vacancy caused due to grant of promotion to Sri Khajan Giri on the post of Principal. The Petitioner joined the post of Lecturer in Geography on 10.9.1997. It is also submitted that the Petitioner is working on the said post of Lecturer in Geography continuously since then but no approval has been granted.

5. It is submitted by the counsel for the Petitioner that the Petitioner approached the District Inspector of Schools by means of several representations for grant of approval to his appointment on the post of lecturer in Geography and for payment of his salary but without result. The Petitioner also approached this Court by filing Writ Petition No. 7858 of 1999, Sri Umesh Chandra Trivedi v. Joint Director of Education, XI Ith Region, Moradabad and others, which was finally disposed of vide order dated 26.2.1999, directing the Respondents to consider his representation and pass appropriate orders within a period of six weeks from the date of production of a certified copy of that order together with a representation. Consequently the Petitioner filed a representation before the District Inspector of Schools annexing therewith a copy of the order dated 26.2.1999 under covering letter dated 16.7.1999. The District Inspector of Schools thereafter passed an order dated 10.12.1999 rejecting the representation of the Petitioner on the sole ground that there was ban on the short-term appointments. The said order passed by the District Inspector of Schools is as under:

other language

6. Aggrieved with the order of the District Inspector of Schools the Petitioner filed this writ petition inter alia, on the ground that the impugned order has been passed on the non-existent ground, as there was no ban on the short-term appointments. The counsel for the Petitioner has relied upon the decision of this Court rendered in Meena Singh Vs. State of U.P. and Others, , wherein this Court

relying upon the decision in *Sri Niwas Singh v. State of U.P.* 1998 (1) UPLBEC 276, and the Full Bench decision in *Radha Raizada v. Committee of Management* 1994 (1) UPLBEC 155, held that the committee of management has a right to select and appoint a person on short-term vacancy if the person is eligible. He also relied upon the decision rendered in *Sudhir Kumar Rai and Another Vs. District Inspector of Schools and Others*, by which the similar question as is involved in the present writ petition was decided. In that case an appointment was made by the committee of management on the post of assistant teacher in L.T. Grade in short-term vacancy and financial approval was not granted by the District Inspector of Schools on the ground that there was a ban imposed by the Government on short-term appointments. The Petitioner in that writ petition was permitted to continue on the basis of an interim order in the writ petition.

7. In this writ petition also the Petitioner has been working on the post of Lecturer in Geography in pursuance of an interim order. The standing counsel has drawn my attention to the averments made in paragraph 6 of the counter-affidavit in which it has been averred that since the Petitioner has been promoted by the committee of management by giving him undue advantage, his appointment/promotion was not approved being not made in accordance with law. There is no reason given in the counter-affidavit as to why the vacancy/appointment was not in accordance with law. The counsel for the Petitioner rebuts this assertion made by the State in the counter-affidavit that the Petitioner has been given promotion to give him undue advantage. The counter-affidavit by the State Government is, therefore, of no help as they are bald assertions and denied on affidavits without any supporting material on record. There is no material on record to show any ban on short-term appointments. Even otherwise also the Petitioner was appointed on the post of Lecturer on 10.7.1973 in Geography and has been teaching Geography upto the level of intermediate classes since the date of his appointment for more than 30 years. The impugned order passed by the District Inspector of Schools cannot be sustained and is liable to be quashed.

8. For the reasons stated above, this petition succeeds and is allowed. The impugned order dated 10.12.1999, is quashed. No order as to costs.