

(2009) 03 AHC CK 0129
In the Allahabad High Court

Vijay Kumar and Another	Vs	APPELLANT
The State of Uttar Pradesh and Others		RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0129

Hon'ble Judges : B.K. Narayana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Narayana, J.—Heard Sri Anil Bhushan, learned Counsel for the petitioners, learned Standing Counsel for the respondents No. 1 to 3 and Sri J.J. Munir, learned Counsel for the respondent No. 4.

2. This writ petition is directed against the orders dated 26th November, 2005 passed by the District Inspector of Schools, District-Aligarh/ respondent No. 3 (Annexures No. 12 and 13 to the writ petition) by which the the petitioners' claim for grant of financial approval to their appointments as Assistant Teachers has been rejected.

3. Heera Lal Barahsaini Intermediate College, Aligarh is a duly recognized and aided Intermediate College, hereinafter referred to as "the Institution". One Sri Rukam Kesh Varshney, who was working as Lecturer (Art) in the Institution retired after attaining the age of superannuation, as a result of which a substantive vacancy on the post of Lecturer (Art) occurred. The Committee of Management decided to fill up the aforesaid post by ad-hoc promotion of one Sri Madan Mohan Varshney, who was senior most L.T. Grade Teacher and possessed the requisite qualifications and in this regard a resolution was passed on 15th September, 1996 promoting Sri Madan Mohan Varshney as Lecturer in Article Papers of his appointment was duly forwarded to the District Inspector of Schools for grant of financial approval which was accorded on 20th June, 1998 w.e.f. 1st January, 1997, thus, creating a short term vacancy in the L.T. Grade Assistant

Teacher. Thereafter, another short term vacancy came into existence on account of ad-hoc promotion of another L.T. Grade teacher, namely, Sri Vimal Kishore and thereafter the Committee of Management intimated the aforesaid short term vacancies to the District Inspector of Schools on 7th April, 1998, whereafter, the Committee of Management advertised the said two short term vacancies in two newspapers, namely, Pravada and Dainik Prakash on 3rd August, 1998. Pursuant to the aforesaid advertisement the petitioners applied for the post of L.T. Grade teachers and were called for interview on 9th August, 1998 before the Selection Committee constituted for the purpose of selection of L.T. Grade teachers along with other applicants. The Selection Committee selected the petitioners on the basis of quality point marking. Pursuant to the selection, appointment letters were issued to the petitioners on 10th August, 1998 and the petitioners joined their respective posts on 10th August, 1998. The entire papers relating to the petitioners' selection were submitted to the District Inspector of Schools for his financial approval alongwith the Management's letter dated 24th October, 1998. However, no orders were passed by the District Inspector of Schools as a result the petitioners filed two separate Civil Misc. Writ Petitions No. 15990 of 1999 (Vijay Kumar v. State of U.P. and Ors.) and Writ Petition No. 15994 of 1999 (Kailash Chandra Varshney v. State of U.P. and Ors.), which were finally disposed of by this Court by two different orders passed on 24th August, 2005 by which this Court directed the District Inspector of Schools to decide the matter regarding according approval to the petitioners' appointment after giving opportunity of hearing to the petitioners as well as the Committee of Management within a period of two months.

4. The District Inspector of Schools by the impugned order has refused grant of financial approval to the petitioners' appointment on four grounds and each ground would be dealt with in the subsequent paragraphs.

5. The first ground in the impugned order is that the appointment was made without advertising the short term vacancies in two newspapers having wide circulation.

6. Learned Counsel for the petitioners has submitted that the said ground is totally misconceived as the two newspapers, namely, Pravada and Dainik Prakash in which the vacancies in question were advertised have fairly wide circulation in District- Aligarh as well as the adjoining districts. A specific averment in this regard has been made in paragraph-21 of the writ petition, relevant portion whereof reads as under:

That so far as the second objection is concerned, it is to submit that the News Papers namely "Pravada" and "Dainik Prakash" have wide circulation in Agra Region; in this regard certificates have been issued by the Editors of both the News Papers.

7. The certificates issued by the Editors of the newspapers in which the vacancies were advertised show that both the newspapers have wide circulation in the

area. In the counter affidavit filed on behalf of the respondents, the contents of paragraph-21 of the writ petition have been replied in paragraph-9 in a vague manner and though assertion has been made in the said paragraph that the posts in question were not advertised in a widely circulated newspapers, there is nothing on record to substantiate the said assertion. The authenticity of the certificate issued by the Editors of the two newspapers, copies whereof have been filed collectively as Annexure No. 14 to the writ petition has also not been doubted by the respondents.

8. In view of the above, In my opinion, before coming to the conclusion that the two newspapers in which the vacancies have been advertised did not have wide circulation, it was incumbent upon the District Inspector of Schools, Aligarh to have ascertained whether the assertion of the petitioners that the two newspapers in question have wide circulation was correct or not. Thus, the first ground given in the impugned order cannot be sustained.

9. The second ground on which the claim of the petitioners has been rejected is that the Manager/ the Principal as well as the petitioners in their representations filed before the District Inspector of Schools, Aligarh have stated that the short term vacancies in question have been notified although there is no pre-requirement to notify the short term vacancies against the ad-hoc appointments are sought to be made.

10. The second ground on which the accord of financial approval has been refused appears to be wholly irrelevant and could not be made a basis for refusing to accord financial approval.

11. The third ground given in the impugned order is that no prior permission was obtained from the District Inspector of Schools before appointing the petitioners and further although the advertisement was published on 03.08.1998, the date of interview was fixed on 09.08.1998, as such, sufficient time was not provided in the advertisement to enable the eligible candidates to apply, there being a gap of only six days between the date of publishing the advertisement and the date of interview.

12. There is no provision in the Second Removal of Difficulties Order under which the petitioners have been appointed requiring prior permission of the District Inspector of Schools before filling up short term vacancies. The record shows that 19 persons had applied in response to the advertisement and as such, it cannot be said that any prejudice has been caused to anyone on account of there being only six days" notice of the date of the interview as admittedly no one has come forward to challenge the appointment of the petitioners on the aforesaid ground. Thus, the third ground on which the financial approval was refused is also totally unsustainable.

13. The fourth and the last ground on which the impugned order has been passed is that the sheet containing the quality point marks does not bear the signatures of the Members of the Selection Committee which gives rise to an

apprehension that the petitioners have not been selected to be appointed by the Selection Committee constituted for the purpose.

14. Learned Counsel for the petitioners submitted that there is no legal requirement that each and every page of the proceedings of the meeting of the Selection Committee should be signed by the Members of the Selection Committee.

15. It is not in dispute that all other papers relating to the selection and appointment of the petitioners bear the signatures of the Members of the Selection Committee and in my opinion, unless there is any such legal requirement the absence of the signatures of the Members of the Selection Committee on the sheet containing the quality point marks awarded to the candidates is a mere irregularity and not an illegality warranting disapproval of the selection process.

16. Learned Standing Counsel appearing for the respondents No. 1, 2 and 3 made a feeble attempt to defend the impugned orders but failed to justify any of the grounds on which the District Inspector of Schools, Aligarh has refused to accord financial approval to the petitioners' appointment.

17. Sri J.J. Munir, learned Counsel appearing the respondent No. 4 has supported the claim of the petitioners.

18. For the reasons given above, this writ petition succeeds and is allowed. The impugned orders dated 26th November, 2005 passed by the District Inspector of Schools, District- Aligarh/ respondent No. 3 (Annexure Nos. 12 and 13 to the writ petition) are hereby quashed. The matter is remitted back to the District Inspector of Schools, District- Aligarh/ respondent No. 3 with a direction to him to consider the petitioners' claim for grant of financial approval to their appointments after determining whether the two newspapers in which the vacancies in question were advertised have wide circulation or not by a speaking and reasoned order within a period of two months from the date of production of certified copy of this order.