
(2002) 03 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 35756 of 1997

Vinod Kumar Srivastava

APPELLANT

Vs

District Inspector of Schools, Jalaun and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Intermediate Education Services Commission Regulation, 1982 — Section 18(2)

Citation : (2002) 3 AWC 2058 : (2002) 2 UPLBEC 1597

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Prakash Padia, R.G. Padia and R.S. Singh, for the Appellant; Rakesh Kumar, S.C., for the Respondent

Final Decision : Allowed

Judgement

R. B. Misra, J.—In this writ petition, prayer has been made to quash the impugned order dated 17.10.1997, passed by respondent No. 1 (Annexure-7) and further to command the respondents to pay salary to the petitioner as assistant teacher in L.T. grade in the institution in question month by month as and when it falls due.

Heard Sri Prakash Padia, learned counsel for the petitioner and learned standing counsel for the respondents.

2. By letter dated 17.10.1997, the District Inspector of Schools (D.I.O.S.) returned the papers to the management declining the financial approval of the petitioner purported to have been made on the temporary basis against the short-term vacancy created by the appointment of teacher of the institution as ad hoc principal in the institution. The main issue for adjudication is whether the "vacancy" created by promotion of teacher of the school in to ad hoc Principal shall be treated as "short-term vacancy" or "permanent vacancy". It appears that Sri Raj Pal Singh, Sengar retired on 30.6.1993 and thereafter the vacancy arose in the institution in question in respect of head master and since no regular

selection was made by the Commission, as such, one Sri Ghundi Lal Tewari, a seniormost teacher in L.T. grade, was promoted as officiating head master in the institution. The approval was granted by the D.I.O.S., Jalaun on 16.10.1996. The advertisement to the post of assistant teacher L.T. grade on the short term as temporary was given in two daily news papers, namely, one "Rastriya Sahara" dated 19.9.1997 and another in "Surya Jagran" of same date. A selection committee duly constituted for this purpose met on 5.10.1997 and found the petitioner fit for appointment to the post by letter dated 5.10.1997 (Annexure-4). The petitioner joined the post and started working. The papers were forwarded by the manager to the D.I.O.S. for giving approval, however, on 17.10.1997 the D.I.O.S. rejected the financial approval to the petitioner by saying that the appointment on ad hoc basis has to be made according to Section 18(2) of Intermediate Education Services Commission Regulation, 1982 and the management cannot make appointment against the "substantive vacancy".

3. Being aggrieved against this order, the petitioner filed the present writ petition, contending that the appointment of the petitioner was to be made on "short-term vacancy" which was made by the selection committee and the management has sought approval by the D.I.O.S. and such approval was not granted in the stipulated time of seven days. The letter for financial approval was received by D.I.O.S. on 8.10.1997 and the financial dis-approval was accorded dated 15.10.1997 by D.I.O.S. conveyed by letter dated 17.10.1997 to the manager, therefore, a dispute has arisen whether the District Inspector of Schools has passed order in seven days, however, since the manager has power to make appointment to the post, therefore, the D.I.O.S. was under obligation to give approval on the short-term vacancy to that extent the letter dated 17.10.1997 (Annexure-7) was not to come in the way and the approval dated 15.10.1997 conveyed by letter dated 17.10.1997 (Annexure-7) is to be set aside and a fresh order has to be passed by concerned D.I.O.S. The petitioner is entitled to continue to the post till the persons against whose post such short-term vacancy was created, comes back and joins the post.

4. For this purpose, the petitioner has placed reliance on Smt. Pratima Chauhan and another Vs. Regional Deputy Director of Education (Madhyamik), Agra and others, . The para 2 of Shri Niwas Singh (supra), it was observed :

"2. The version of the petitioner is that Shri Satyendradeo Singh was permanent Principal of the Institution. He retired on 30th June, 1991. On his retirement one Sri Daya Shankar Singh, the seniormost lecturer was promoted as ad hoc Principal by the Committee of Management. On account of promotion of Sri Daya Shankar Singh a vacancy arose in the Institution on the post of lecturer. Sri Digvijay Singh was promoted to the post of Lecturer from the post of L.T. grade teacher. On his promotion, the vacancy to the post of Assistant Teacher in L.T. grade fell vacant. As the promotion order has not been confirmed, there was short-term vacancy."

In para 7 of Shri Niwash Singh (supra), it was held :

"7. The procedure for making ad hoc appointment on short-terms vacancy has been given in U.P. Secondary Education Services Commission (Removal of Difficulties Order) (Second), 1981. The power has been given to the Committee of Management to make short-terms appointment on the basis of the procedure prescribed therein. It does not require that any permission of the District Inspector of Schools is to be obtained before any selection for appointment is to be made. Para 2 (3) only provides that the Management shall intimate the vacancy to the District Inspector of Schools and after making the selection in the manner prescribed therein, the names of the selected candidates shall be forwarded to the District Inspector of Schools and on such communication, the District Inspector of Schools shall communicate his decision in respect of approval of selection within seven days of the date of receipt of papers by him failing which the Inspector will be deemed to have given his approval."

5. In the order dated 13.12.2001 of this Court passed in writ petition Bhubnesh Kumar Tyagi v. District Inspector of Schools and Ors., it was observed as below :

"On account of retirement of one lecturer in the College, said vacancy was filled in by ad hoc promotion and thus short-terms vacancy arose in the college in L.T. grade. As the aforesaid vacancy in L.T. grade was filled up on short-term basis, the Manager requested the D.I.O.S. to fill up the same. As no action was taken by the D.I.O.S., the management appears to have advertised the post in question in two daily newspapers namely "Pioneer" and "Aaj". The extracts of the advertisement published in the newspapers are Annexures 1 and 2 to the writ petition. The petitioner claims to have been duly selected in respect to which an appointment letter was issued on 20.2.1999. In the light of the appointment letter so issued, the petitioner joined his duties on 22.2.1999. When the papers were sent by the management to the D.I.O.S. on 22.3.1999, and no orders were passed, reminders were also given on 24.3.1999 and 6.4.1999 for issuing necessary order according financial approval. Thereafter, by order impugned in this petition, i.e., 30.4.1999, it has been communicated that as no permission has been obtained for making appointment on the post in question, grant of approval/ financial sanction is not possible. It is this order of the D.I.O.S. which made the petitioner aggrieved to come this Court."

"As the petitioner was duly selected in pursuance of the advertisement for short-term vacancy and in view of the fact that even after seven days, no disapproval was communicated and as such he was entitled to continue on his post and to receive salary."

6. In reference to J. A. Inter College, Khurja v. State of U.P. and Ors. 1996 (3) ESC 151 (SC) and Radha Raizada v. Committee of Management Vidyawati Darbari Girls Inter College (1994) 3 UPLBEC 1551 (FB) and in reference to Chatur Singh v. Regional Deputy Director of Education, Agra Writ Petition No. 37497 of 1996 decided on 3.12.1996, Alld), it was held in Smt. Pratima Chauhan

and another Vs. Regional Deputy Director of Education (Madhyamik), Agra and others, as under :

"Service ad hoc appointment on post of teacher for filling short-term vacancy-made after advertising that post only in one newspaper. Will not invalidate appointment. It is only a technical irregularity. Such appointee can be allowed to continue till regularly selected candidate from commission is available for appointment. However, such ad hoc appointee will have no right to claim regularisation."

7. I have heard learned counsel for the parties and perused the records. I find in the facts and circumstances, the cases referred by the learned counsel for the petitioner are protecting the cause of the petitioner the vacancy created by the appointment of senior teacher of the institution as ad hoc principal shall be termed as short-term vacancy and advertisement to the appointment of assistant teacher in L.T. grade to be appointed on the short-term vacancy was duly published in two newspapers, the selection committee was duly constituted and petitioner was appointed to the post in question on 5.10.1997 and the relevant papers in respect of financial approval was sent to (D.I.O.S.) who had rejected financial approval on 15.10.1997 by letter dated 17.10.1997, i.e., after seven days and since the manager of the institution has power to make appointment in the institution on such vacancy/post, therefore, the D.I.O.S. was under obligation to give approval to the appointment made on the short-term vacancy and in the present facts and circumstances, the petitioner was entitled to continue on the post in question and is entitled to receive the salary, therefore, the order dated 17.10,1997 Annexure-7 is set aside in view of the above observation and the respondents are directed to pay salary as assistant teacher in II grade in month to month as and when its falls due.

8. The writ petition is allowed accordingly.