

(1994) 09 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1776 of 1986

Vishwanath Singh and another

APPELLANT

Vs

District Inspector of Schools, Gorakhpur and others

RESPONDENT

Date of Decision : 29-09-1994

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16 E

Citation : (1994) 09 AHC CK 0056

Hon'ble Judges : Sudhir Narain, J

Final Decision : Disposed Of

Judgement

1. The petitioner has challenged the order passed by District Inspector of Schools, respondent no. 1 dated 13th January 1986, whereby be rejected the claim, of the petitioners for the post of assistant, teacher in L. T. grade in Bhartiya Uchcharat Madhyamik Vidyalaya Raja Bari, Jaswal, District Gorakhpur (hereinafter referred to as the "Institution").

2. The institution was a Junior High School and was upgraded to High School in the year 1972. It came into grantinaid list of the State Government in the year 1978. After coming into the grantinaid list following ten employees of the institution were paid salary.

1. Sri Saraswati Prasad Mishra.

2. Sri Ram Prakash Upadhyaya

3. Jairam Tripathi

4. Saket Bihari Dube

5. Raghunath Prasad Chaudhari

6. Satya Narain

7. Lal Ji Lipik

8. Ram Briksh, Peon

9. Badri, Peon

10. Om Prakash, Peon.

The Deputy Director of Education, Gorakhpur Region, Gorakhpur by order dated 8th June 1979, created" one post of Principal, three posts of L. T. grade teachers, three posts of C. T. grade teachers, one clerk and two class IV employees total fifteen posts. The Committee of Management proceeded to fill up one post of L. T. grade teacher by promotion and two posts of L. T. grade teachers by direct recruitment. Twelve alleged teachers and employees of the institution filed writ petition no. 3480 of 1979, Ram Chandra Yadav and II others v. State of U. P. and others, praying for issue of mandamus directing the District Inspector of Schools, Gorakhpur to pay their salary up to date and continue to pay the same in future as well. The petitioners prayed for interim relief but the court passed the following order on 18/9/1979 :

"We are not inclined to issue any interim order. If any appointment is made in place of the petitioner it will be subject to the decision of writ petition."

3. After the aforesaid order was passed, the management of the institution proceeded to fill up the two posts of L. T. grade teachers by direct recruitment. The petitioners were selected by a Selection Committee. The Committee of Management passed resolution for their appointment on 5/12/1979. The petitioner started working in the institution with effect from 6/12/1979. They were confirmed as teachers of L. T. grade on 5/12/1989. They were also granted revised pay scale in the year 1982.

4. In the meantime, writ petition no. 3480 of 1979 was heard by a Division Bench of this Court and the writ petition was allowed on 28/10/83 with a direction to the respondents (in the said writ petition) to pay salary to Saket Behari Dubey (petitioner no 2), Ram Prakash Upadhyaya (Petitioner no. 3) and Raghunath Prasad Chaudhari (petitioner no. 6) and continue to pay their salary in future also. The District Inspector of Schools, Gorakhpur was directed to examine the matter relating to petitioners no. 1, 5, 7, 9, 10 and 11 and redetermine the strength of teachers and employees of the institution in the light of the judgment with a further direction that they shall be paid salary till their services were legally determined. The petitioners of this writ petition were not parties in that writ petition.

5. In writ petition no. 3480 of 1979 a counter affidavit was filed on behalf of the District Inspector of Schools and it was admitted that petitioners no. 2, 3, 4, 6, 8 and 12 were validly appointed but some of the petitioners except petitioners no. 4, 8 and 12 did not join their duties and were being paid their salaries regularly. The Court proceeded to consider the case of petitioners no. 2, 3 and 6. Their allegation was that they had not joined and abandoned their jobs. The Court held that there was no material to show that they had abandoned the services & they

were entitled to payment of their salaries and made the following observation :

"Any adhoc appointment made against the post held by them is void and does not affect in any manner the status of these petitioners as teachers of the institution."

6. After the aforesaid judgment was passed, the District Inspector of Schools stopped the payment of salary of the present petitioners. These petitioners filed writ petition no. 3763 of 1984, Vishwa Nath Singh and another v. District Inspector of Schools, Gorakhpur & others for payment of their salary in L. T. grade since November 1983 onwards. This Court by its order dated 2771984 directed the District Inspector of Schools to pay the salary to the petitioners in L. T. grade since 1111983 and also to consider the strength of the teachers and employees of the institution in the light of the judgment dated 28101983 and then pass fresh order after giving opportunity to them. The Court while passing the order took note of the decision of the Division Bench judgment dated 28101983 in writ petition no. 3430 of 1979, In pursuance of the order passed by this Court the District Inspector of Schools considered the representation of the petitioners and by his order dated 1311986 has decided that the petitioners are not entitled to L. T. grade posts as they were appointed by direct recruitment on the sanctioned posts which were to be filled up by absorption of those teachers who were already working in the institution. This order has been challenged in this writ petition.

7. I have heard learned counsel for the parties.

8. The main question involved in this writ petition is as to whether after upgradation of a Junior High School, the teachers who were working in the Junior High School are automatically deemed to have been promoted from C. T. grade to L. T. grade on the newly created posts.

9. Learned counsel for the petitioner submitted that in the year 1978 only ten employees were working in the institution. The institution was raised to High School in the year 1972 but it came in grantinaid list in the year 1978. On 26th June, 1979 three posts of L.T. grade teachers were created in the institution by the Director of Education. Prior to this date there were only six C. T. grade teachers and there was no L. T. grade teacher. In the year 1979, five C. T. grade teacher were to continue and three L. T grade teachers" posts were to be filled. Taking into consideration that there were six C. T. grade teachers working on the date the institution was sanctioned grantinaid, one L. T. grade post was given to a teacher on promotion and the remaining two posts which were newly created, the Management sought to make appointment by direct recruitment. The teachers who were working in C. T. grade claimed that all the posts of L. T. grade teachers should be filled up by promotion.

10. The learned counsel for the petitioner submitted that promotion from C. T. grade to L. T. grade posts can be made only to the extent of 40 percent of the total number of sanctioned posts in the institution in accordance with Regulation

5 of Chapter II of the Act and the remaining posts have to be filled by direct recruitment. The contention of the learned counsel for the respondent is that upon upgradation of the institution from Junior High School to High School or Intermediate College, the teachers who are working in the institution are entitled for promotion under Regulation 4 of Chapter II of the Regulations, in case they are qualified without any reservation in terms of percentage of total number of sanctioned posts.

11. It is necessary to extract the relevant provisions of Regulations 4 and 5 of the Regulations before examining the rival contentions raised on behalf of the parties :

4. "Where any Junior High School is recognised as a High School under Section 7 a permanent or temporary teacher of such school, possessing the minimum qualifications under Regulation, shall be deemed to be permanent or temporary teacher as the case may be, of such High School, provided that the services of a temporary teacher who is not selected for appointment in accordance with the provisions of the Act and the regulations shall be dispensed with after giving him one month's notice in that behalf or one month's pay in lieu of such notice.

Explanation Nothing in this regulation shall be construed to mean that High School includes classes I to V.

5. (1) Every vacancy in the post of teacher in a recognised institution shall except as otherwise provided in clause (2) be filled by direct recruitment,

(2) (a). Forty per cent of the total number of the sanctioned posts in lecturer's grade or in the L. T. grade shall only be filled by promotion from amongst the teachers working in the institution in the L. T. and the C. T. grade respectively and promotions shall be made subject to availability of such teachers for promotion.

(b) If more than forty per cent of the total number of the sanctioned posts in the lecturer's grade or as the case may be, in the L.T. grade have already been filled by promotion, the persons already promoted shall not be reverted.

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12. When a Junior High School is upgraded as a High School or a High School is upgraded to Intermediate, the teachers who are working in the Junior High School do not cease to be the teachers of Junior High School. The teachers who were appointed to teach the students of Junior High School, they shall continue to teach such students e. g., if a teacher is teaching students of classes 6, 8 and 9 will continue to teach students of those classes but on upgradation of Junior High School to High School they will be known as teachers of High School, in case the institution is upgraded to High School and they will be governed by the provisions of U. P. Intermediate Education Act instead of other provisions which might have been applicable earlier to the teachers of Junior High School. In case the institution is getting grant in aid, they will be entitled to claim their salary

under the provisions of U. P. High School and Intermediate Colleges (payment of Salaries of Teachers and other Employees) Act, 1971. In Committee of Management, Smt. Sukh Devi Uchchatar Madhyamik Vidyalaya v. Director of Education, U. P. and others, 1993 ALR 156, a Division Bench of this Court held that primary section attached to a High School or Intermediate College is part of such school or college and the services of teachers of Primary section cannot be terminated without prior approval of the District Inspector of Schools as required under section 16G (3) (a) of the Act.

13. Regulation 4 of the Regulations does not contemplate any promotion of a teacher of a Junior High School to High School section of the institution. It is only clause (2) of Regulation 5 which contemplates the promotion. Regulation 4 only provides that where any Junior High School is recognised as High School under Section 7, a permanent or temporary teacher of such school possessing the minimum qualification under Regulation 1, shall be deemed to be the permanent or temporary teacher, as the case may be, of such High School. Regulation 1 refers to qualification as given in Appendix "A". Appendix "A" was amended by G. O. dated 9th December, 1976 and the qualification for the teachers of Junior High School as well as the teachers of primary school were given. If such teachers are qualified, they will be entitled to continue as teachers when the institution is recognised as a High School.

14. Even if an interpretation is accepted that the teachers who were teaching in the Junior High School section shall be deemed to have been promoted under Regulation 4 if they possess the minimum prescribed qualification for promotion to a higher grade, such regulation must be harmoniously interpreted taking into consideration Regulation 5. In Regulation 5 the promotion is to be made only to the extent of 40 per cent and the remaining 60 per cent is to be filled by direct recruitment. When an institution is upgraded those teachers who are working in junior section are entitled to continue in service and on upgradation, certain more teachers are always required and in such a situation additional posts are created for teaching the students of class IX and X or in the case of Intermediate class XI and XIIth. On such newly created post the promotion has to be only upto the extent of 40 percent. The balance 60 percent posts are to be filled by direct recruitment. If this interpretation is not given then Regulation 5 will be redundant in a case an institution is upgraded and all the newly created posts are given to those who are working in junior section. In case of promotion of the teachers of junior section to a higher section, there will be vacancy in the junior section. Regulation 5 has to be given effect to in the case of promotion from junior section to higher section of the upgraded institution.

15. There is another aspect of the question involved. Regulation 4 is applicable when an institution is upgraded. The teachers working in the institution on the date of upgradation can take its benefit, but if the posts are created long after the date of upgradation, they cannot claim any right of promotion on the basis of Regulation 4.

16. In the present case, the Junior High School was recognised as a High School in the year 1972 and till 1978, ten employees including the teachers and Principal were functioning and for such employees grantinaid was sanctioned in the year 1978. It is only on 8th June 1979 that three posts of L. T. grade teachers were sanctioned. There does not seem any reason that all those newly created posts should be filled by the promotion of teachers who were working in the High School. The promotion has to be made keeping in view Regulations of the Regulations framed under the Act.

17. In *Smt. Samantika Chaterji v. Regional Inspectress of Girls Schools, Allahabad and others*, 1990(1) UPLBEC 239, the Court took the view that in view of D. O. dated 25th January, 1974 by the State Government to the Director of Education purporting to exercise the power under section 9(4) of U. P. Intermediate Education Act, the teachers employed in a recognised High School or Intermediate College in the J.T C. or B.T.C. pay scale, would be automatically promoted to the C. T. grade provided such teachers had passed the Intermediate or equivalent examination and had undergone either the course of J. T. C. or B. T. C. and had completed five years of service and they were found fit by specially constituted selection committee which was to be constituted. This decision was based upon the interpretation of subclause (2) of Regulation 7 which reads as under :

"7. (1) Every vacancy in the post of teachers in the C. T. grade or in the J. T. C./ B. T. C. grade shall except as provided in clause (2) be filled by direct recruitment.

(2) Where in an institution any teacher working in the J. C. T./B. T. C. grade has passed Intermediate or an equivalent examination or is a trained graduate and has completed five years service in that grade be shall he promoted in the C. T. grade by the Committee of Management (and information of such promotion shall be immediately conveyed to the Inspector)

(3) If the Inspector has reason to believe that any promotion under clause (2) has been made in contravention of the Act and the regulation then without prejudice to any other action that may be taken in this behalf, he may refer the case to the Director whose decision in the matter shall be final.

18. The dispute in the said case was only as to whether the teacher who was in B. T. C. grade was entitled to be promoted in C. T. grade in view of the specific provision under the said Regulation and the D. O. issued by the State Government on 25th January, 1974, this court held that the teacher in B. T. C. grade was entitled to be given the C. T. grade.

19. Learned counsel for the respondent submitted that this Court in writ petition no. 3480 of 1979 held that if any appointment has been made in place of the petitioners that will be void and will not affect the status of the petitioner as a teacher of the institution. Firstly, the petitioners were not parties in this writ petition. Secondly, the petitioners of those writ petitions were entitled to

continue as teachers of the institution if appointed prior to the year 1978, but the question as to whether they were entitled to promotion from C. T. grade to L. T. grade was not considered.

20. It was lastly urged that this Court passed following operative portion order on 2771984 in writ petition no. 3763 of 1984:

"We, accordingly allow the petition and direct the District Inspector of Schools to pay salary to the petitioners in L. T. grade since 1111983. It is, however, open to the District Inspector of Schools to reconsider the strength of teachers and employees of institution in the light of the judgment dated 281083 and then pass fresh orders after giving opportunity to them.?"

21. The District Inspector of Schools in his order dated 1311986 he held that the appointment of petitioner is in excess of the sanctioned posts. He has taken into consideration the posts which were in existence in the year 1978 and subsequently created by the Director of Education on 8th June, 1979 He has further referred to the G.O. dated 29th December, 1981 which provides that new scales of pay shall be paid from the date the option is given. He did not consider the total number of students and the teachers required for teaching in the institution at the time of pasting of his order. A counter affidavit has been filed by Sri Ram Prakash Upadhyaya and he has filed copy of the letter dated 2nd December, 1983 but he has not referred to the number of students and the teachers required for the institution. The District Inspector of Schools has not relied upon his letter dated 1311986. The post was sanctioned by the Director of Education & it can be created under Section 9 of U. P. High School and Intermediate Colleges (Payment of Salary of Teachers and Other Employees) Act, 1979 which provides that no institution shall create a new post of teacher or other employee except with previous approval of the Director or such other officer as may be empowered by the Director. The District Inspector of Schools if finds that considering the number of students additional teachers are required, he may recommend the Director of Education who may pass appropriate order in the matter.

22. In view of the above, the writ petition is allowed and the order dated 1311986 passed by the District Inspector of Schools, respondent no. 1 is hereby quashed.

23. The District Inspector of Schools is directed to decide the matter afresh keeping in view the observations made above and in accordance with law. He will decide as to who was entitled to be promoted to one post out of three sanctioned posts of L. T. grade in the year 1979. As regards two other posts in L. T. grade the Management had right to make appointment by direct recruitment.

24 He will further consider the strength of teachers and employees of the institution as directed by the Court in its judgment in writ petition no. 3763 of 1984, referred to above, and if finds necessary may refer the matter to Director of Education for creation of additional post of L. T. grade and if such post is

created the persons already promoted may be absorbed.

25. Considering the facts and circumstances of the case the parties shall bear their own costs.