

(2006) 08 AHC CK 0109
In the Allahabad High Court

Yatendra Kumar Kaushik

APPELLANT

Vs

District Inspector of Schools, Prabandh Sanchalak, Public
Inter College, Principal, Public Inter College and State of U.P.

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2006) 7 AWC 7606

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard counsel for the parties.

2. Impleadment application is allowed.

3. Counter affidavit filed on behalf of newly added respondent may be taken on record.

4. Petitioner Yatendra Kumar Kaushik was offered compassionate appointment under an order of the District Inspector of Schools, Bulandshahr dated 22.5.1993, which amongst other provided that the petitioner is being appointed against a superannuary post of Clerk subject to the condition that as soon as a vacancy of Class-III post becomes available in the institution, he shall be absorbed against the same. The condition so incorporated in the order dated 2.5.1993 is not under challenge. It is stated that a post of Clerk in the institution has fallen vacant with the retirement of one Sri Noor Mohammad on 31st October, 2004. The petitioner seeks absorption against the vacancy now caused.

5. The claim set up by the petitioner is being contested by the newly added respondent Manveer Pratap Singh (herein after referred to as M.P. Singh). M.P. Singh claims that he was offered compassionate appointment in the year, 1996 in the same institution on Class-III post. The appointment so offered to Sri M.P. Singh was contested by Noor Mohammad, then Class-IV employee of the institution, on the ground that the vacancy against which Sri M.P. Singh has been offered appointment is within the quota reserved for promotion. The matter was

agitated up to this Court under Writ Petition No. 27908 of 1996. This Court by means of judgment and order dated 2.9.1996 disposed of the writ petition with a direction upon the Deputy Director of Education to decide the dispute between M.P. Singh and Noor Mohammad.

6. The Deputy Director of Education by means of the order dated 17.1.1997 held that the vacancy in question was within the quota reserved for promotion and therefore the appointment offered to Sri M.P. Singh against the said vacancy was legally not justified. The said order of the Deputy Director of Education was challenged by Sri M.P. Singh by way of Writ Petition No. 7303 of 1997. The writ petition was disposed vide judgment and order dated 8.9.1997 with a direction upon the Deputy Director of Education to appoint Sri M.P. Singh against class-III post either by creating a superannuary post or by attaching him to some other institution.

7. Since the order of this Court was not being complied with, Sri M.P. Singh filed contempt petition No. 619 of 1999. The Deputy Director of Education (Secondary) First Region, Meerut passed an order dated 17th March, 2005 offering appointment to Sri M.P. Singh as Clerk against the vacancy, which became available in the institution with the retirement of Sri Noor Mohammad.

8. It is not in dispute that during this period Sri M.P. Singh had actually worked on Class-IV post. The issue up for consideration before this Court is as to whether the petitioner, who was appointed in the year, 1993 with the conditions as noticed above incorporated in his order of appointment, has a preferential right to be absorbed against the vacancy, which has become available after retirement of Sri Noor Mohammad, viz-a-viz Sri M.P. Singh or not.

9. From the facts, which are not in dispute, the petitioner having been appointed on superannuary post in the year, 1993, should have been absorbed against the first available vacancy in the institution in terms of Regulation 106 of Chapter-III of the Regulations framed under the Intermediate Education Act. Sri M.P. Singh was offered compassionate appointment in the year 1996 and between 1997 to 2005 he actually worked against the Class-IV post.

10. In such circumstances, if M.P. Singh is required to be adjusted under judgment of this Court against a Class-III post, it is always open to the authorities to direct such adjustment in any other institution or to create a superannuary post, as was directed under the judgment and order of this Court dated 8.9.1997, passed in Writ Petition No. 7303 of 1997, copy whereof has been enclosed as Annexure-3 to the counter affidavit, relevant operative portion whereof reads as follow:

Even assuming the contention of learned Counsel for the petitioner that Har Swarup was promoted from the post of clerk to Head Clerk, he was in the same cadre. He was working at Class-III post and being appointed as Head Clerk, he remained to be in Class-III post. The view of respondent No. 1, thus does not suffer from any illegality.

The petitioner has, however, been appointed under the Dying in Harness Rules. It is not disputed that his father was working as Lecturer in the institution and he died in harness. Respondent No. 1 shall see that the petitioner is appointed in the same Institution on Class-III post either by creating a superannuary post or attaching him in some other Institution within two months from the date of production of a certified copy of this order before him.

This Writ petition is accordingly disposed of with a direction upon the respondents that the claim of Sri M.P. Singh for appointment as Clerk either creating a superannuary post or against any other substantive vacancy, which may be available in any other institution. It is therefore provided that the petitioner Yatendra Kumar Kaushik shall be adjusted against the Class-III post vacancy whereof has been caused due to retirement of Noor Mohammad immediately. The order dated 17.3.2005 passed by Deputy Director of Education is declared inoperative and unenforceable in the eyes of law.

11. Since the petitioner had been illegally restrained from discharging his duties as Clerk since 17.3.2005, the respondents are under legal obligation to ensure payment of full salary to the petitioner for the said period. The loss, if any, caused to the State Government because of such payment to two persons against one post, the same may be recovered from the officer/employee responsible for the situation.

12. The adjustment in favour of Sri M. P. Singh in light of judgment dated 8.9.1997 be made at the earliest possible, preferably within two weeks from the date a certified copy of this order is filed before the authority concerned. If Sri M.P. Singh has not been paid salary in respect of period during which he has actually discharged his duties, the respondents shall ensure such payment in accordance with law.

13. With the aforesaid directions/observations, the present writ petition is disposed of finally.