
(1994) 11 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7784 of 1986

Yogendra Nath Singh and Others

APPELLANT

Vs

D.I.O.S., Jaunpur and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Uttar Pradesh State Universities (Affiliated and Associated Colleges Non-Teaching Staff Qualifications and Service Conditions) First Statute, 1977 — Clause 4(4)
Uttar Pradesh State Universities Act, 1973 — Section 60D, 60E

Citation : (1994) 11 AHC CK 0063

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—The petitioners have challenged the order dated 881981 passed by the District Inspector of Schools, Jaunpur, respondent No. 1, whereby he directed not to pay salary to the petitioners for the post on which they were appointed.

2. The facts, in brief, are that Tilak Dhari PostGraduate College, Jaunpur is a Degree College and is affiliated to the Gorakhpur University, Petitioners Nos. 1 to 8, who were working as peons, were promoted as Laboratory Assistants and on their promotions petitioners Nos. 9 to 15 were appointed as peons in the College vide order dated 381975. The Principal of the College sent necessary papers to the Director of Education (Higher Education), Allahabad by his letter dated 5th January, 1976 for necessary approval of promotion of petitioners Nos. 1 to 8 as well as appointments of petitioners Nos. 9 to 15. The Director of Higher Education by his letter dated 29th January, 1976 in pursuance to the letter dated 5th January, 1976 granted approval of the promotion of petitioners Nos. 1 to 8 to the post of Lab. Assistants and also appointments of petitioners Nos. 9 to 15 on the post of peons fallen vacant on account of promotion of petitioners Nos. 1 to 8 on the post of Lab Assistants. He further directed that if any additional post is to be created or remains vacant no further appointment is to be made. A further direction was made that the appointees shall get salary in accordance with Rules

from the date of their appointment. The petitioners joined their duties on 4th August, 1975.

3. The version of the petitioners is that the College was involved in litigation as two rival Committees of Management were claiming their rights of management. Meanwhile the College was also under the supervision and control of Authorised Controller i.e. District Magistrate, Jaunpur. The ViceChancellor passed an order dated 23rd April, 1981 and recognised one Sri Markandey Singh as Manager of the College. The salary bills of the petitioners duly countersigned by the manager were sent for payment of salary of the petitioners. The Deputy Director of Education, Varanasi Region, Varanasi passed the bill and paid salary to the petitioners from March 1981. However, on 8th August, 1981 the District Inspector of Schools, respondent No. 1 passed an order that the payment of the petitioners be stopped and a copy of the said letter was sent to the State Bank of India, Jaunpur where the College is having its account. The petitioners have challenged this order.

4. This court passed an interim mandamus on 1st March, 1982 commanding the respondents to pay salary to the petitioners. The petitioners are getting salary in pursuance of the order of this Court. A counter affidavit has been filed on behalf of respondent No. 1. In the counter affidavit it has been asserted that the appointments of the Laboratory Assistants are required to be approved by the Regional Deputy Director of Education and appointments of Class IV employees are done by the Principal and its approval is required from the District Inspector of Schools.

5. Recruitment and condition of all nonteaching staff of associated and affiliated colleges of a University is governed by the provisions of U. P. State Universities (Affiliated and Associated Colleges NonTeaching Staff Qualifications and Service Conditions) First Statute, 1977. Subclause (4) of Clause 4 of the said Statute requires approval of Director of Higher Education. There is no provision which provides that in case of appointment of Class IV employee the approval of appointment is to be obtained from the District Inspector of Schools. Subclause (4) of Clause 4 reads as under :

"Appointment of employees shall be subject to the approval of the Director of Education (Higher Education), or an officer authorised by him in this behalf. If the approving authority does not within two months from receiving the proposal for approval intimate its disapproval to the appointing authority the approving authority shall be deemed to have approved the appointment."

6. Clause 25.06 of First Statute of Gorakhpur University also provides that appointment of employees shall be subject to approval of Director of Higher Education. It reads as under :

"Appointment of employees shall be subject to the approval of the Director of Education (Higher Education), or an officer authorised by him in this behalf. If the approving authority does not within two months from receiving the proposal

for approval intimate its disapproval or does not send any intimation in respect of such proposal to the appointing authority the approving authority shall be deemed to have approved the appointment;."

7. The payment of salary of the teachers and other employees are to be made in accordance with Section 60D of U. P. State Universities Act 1973 which provides that the salary account of the College shall be operated jointly by a representative of the management and by Deputy Director or such other officer as may be authorised by Deputy Director in that behalf. The liability in respect of payment of salary is on the State Government as provided under Section 60E of the Act.

8. From the reading of the aforesaid provisions it is clear that no approval of appointment of any employee of a Degree College is required to be obtained from the District Inspector of Schools.

9. During the pendency of the writ petition an application was filed on behalf of Sri Hriday Narain Singh claiming himself to be the Manager of newly elected Committee of Management. The said application was allowed. In the counter affidavit it has been stated that the petitioners were not duly appointed and the procedure for their appointment were not followed in accordance with law. Respondent No. 4 had not filed an application before the Director of Education (Higher Education) to recall the order of approval of appointment dated 29th January, 1976 on the ground that appointments of the petitioners were invalid. The petitioners have been working in the institution since the year 1976.

10. In Special Appeal No. 6 of 1992, Rajendra Prasad Srivastava v. District Inspector of Schools, Gorakhpur and others, a Division Bench of this Court, after taking into consideration various decisions of this Court and Supreme Court, took the view that where an employee had been working for about last 20 years uninterruptedly, the appointment should not be cancelled on some technical ground. The Special Appeal was allowed and the appellant was directed to be reinstated in service.

11. In view of the above, the writ petition is allowed. The order passed by District Inspector of Schools dated 881981 (Annexur5 to the writ petition) is quashed. The petitioners shall be paid their salary in accordance with law. Parties shall bear their own costs.

Petition allowed.