

Mohd. Ayub Vs. District Inspector of Schools and ors.

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Court : Allahabad

Decided On : Jan-13-2005

Reported in : (2005)1UPLBEC763

Judge : V.K. Shukla, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16E(4), 16EE 16F, 16F(1), 16F(2), 16F(3), 16F(4), 16FF and 16FF(1); Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971; Uttar Pradesh Intermediate Education Regulation - Regulations 10 to 19; [Constitution of India](#) - Article 30

Appeal No. : Civil Misc. Writ Petition Nos. 5018 of 2000 and 26977 of 2003

Appellant : Mohd. Ayub

Respondent : District Inspector of Schools and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Irshad Ali, Adv.

Judgement :

V.K. Shukla, J.

1. In the district of Moradabad there is recognized institution known as Muslim Inter College, Thakurdwara, District Moradabad, which is governed under the provisions of U.P. Intermediate Education Act, 1921 and provisions of UP. Act No. 24 of 1971 are also applicable to the said institution. In the said institution one Buddha Ali attained age of superannuation and as such post of Assistant Teacher fell vacant. Committee of Management of the institution applied before District Inspector of Schools, Moradabad on 13.7.1998 for permission to appoint Urdu Teacher in the institution. Thereafter Managing Committee of the institution advertised the vacancy in question on 20.6.1999. Petitioner submits that pursuant to said advertisement selection proceedings took place on 30.6.1999 and petitioner claims to have been selected on merit. By means of appointment letter dated 7.7.1999 he was appointed on the post of Urdu Teacher. Thereafter papers were transmitted to District Inspector of Schools but no action was taken. As no action has been taken at that juncture petitioner approached this Court by filing Civil Misc. Writ Petition No. 5018 of 2000 for issuing a writ in the nature of mandamus directing District Inspector of Schools, Moradabad to grant approval to his appointment and for payment of salary from July, 1999 till date. This Court on 4.2.2000 passed interim order that in case petitioner is duly selected and is working, he shall be paid his salary. Thereafter one more Assistant Teacher attained the age of superannuation on 30.6.2003. District Inspector of Schools on 31.5.2003 passed an order asking that petitioner be adjusted against the post of Kranti Kumar Akyan. On the said letter sent by District Inspector of Schools, no heed was paid and to the contrary an advertisement has been issued on 19.6.2003, at this juncture second Writ Petition No. 26977 of 2003 has been filed.

2. As both writ petitions; namely Civil Misc. Writ Petition No 5018 of 2000 and Civil Misc. Writ Petition No. 26977 of 2003 are dependent on each other, as such, both of them are being taken up together.

3. Counter-affidavit has been filed in Civil Misc. Writ Petition No. 5018 of 2000 and therein much stress has been laid on the fact that appointment of petitioner, in fact has been made against no post as in financial survey which has taken place in the past therein only ten posts were sanctioned, as such appointment of petitioner being made against no post, as such no approval could be accorded and

appointment by no means could be termed to be valid.

4. Another counter-affidavit has been filed by Ravindra Singh and therein same set of fact has been reiterated. Further reference has also given of letter dated 6.2.2003 wherein it has been mentioned that various posts have been finished on the basis of financial survey which is not at all justifiable. District Inspector of Schools has also written a letter dated 22.1.2004 to Joint Director of Education in this respect, that abolition of post was totally inappropriate.

5. Rejoinder affidavit has been filed and therein statement of fact mentioned in the counter-affidavit has been disputed and that of writ petition has been reiterated.

6. After pleadings inter se parties have been exchanged, present writ petition has been taken up for disposal with the consent of the parties.

7. Sri Irshad Ali, learned Counsel for the petitioner contended with vehemence that appointment of the petitioner has been made against duly sanctioned post in consonance with the provisions as contained under Section 16-FF of U.P. Intermediate Education Act, 1921 and Regulations framed thereunder, and in this view of the fact and background as petitioner fulfills all pre-requisite terms and conditions, as such in all eventuality his appointment ought to have been approved and salary ought to have been ensured.

8. Learned Standing Counsel on the other hand contended that appointment has been made against non-sanctioned post as such no relief can be granted to the petitioner.

9. In order to appreciate respective arguments, Section 16-FF of U.P. Intermediate Education Act, 1921 and Regulations 10 to 19 of Chapter II of U.P. Intermediate Education Act, 1921 are being quoted below :

'Section 16-FF. Saving as to minority institutions.--(1) Notwithstanding anything in Sub-section (4) of Section 16-E and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a Teacher of an institution established and administered by a minority referred to in Clause (1) of Article 30 of the [Constitution of India](#) shall consist of five members (including its Chairman) nominated by the

Committee of Management :

Provided that one of the members of the Selection Committee shall--

(a) in the case of appointment of an Institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a Teacher, be the head of the institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in Sub-section (1) shall be such as may be prescribed.

(3). No person selected under this section shall be appointed, unless--

(a) in the case of the head of an institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a Teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section, the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of Head of Institution, and to the Regional Deputy Director of Education in the case of a Teacher.

(6) Every order passed by the Director or the Regional Deputy Director of Education on a representation under Sub-section (5) shall be final.'

10. Regulations 10 to 19 of Chapter II are being quoted below :

'Regulation 10.--The procedure for filling up the vacancy of the head of institution and thereafter by direct recruitment in any recognised institution shall as follows;

(a) After determining the number of vacancies to be filled through direct recruitment, posts shall be advertised by the Manager of the institution at least in two such newspaper out of which one be local having large circulation in the State :

Provided that list of the newspapers shall be prepared by the Inspector after approval of the Regional Deputy Director of Education of his region and advertising by all Management Committee of the District in any two newspapers out of that would be compulsory. Details regarding type of vacancy (i.e. permanent or temporary) and number of vacancies, particulars of post (Principal or Headmaster, Lecturer or Teachers of L.T., C.T. or J.T.C./ B.T.C. grade and such subjects in which Lecturer or Teacher be required) pay scale and other allowances, required experience, minimum prescribed eligibility for the post and minimum age limit, if any, be given in the advertisement and such last date (which generally should not be less than two weeks of the date of the advertisement) shall be prescribed upto which applications duly filled in prescribed form by the candidates shall be received in the office of the following :

(i) District Inspector of Schools, or

(ii) Regional Inspectress of Girls' Schools, in case of institution for girls.

The advertisement shall also state that the prescribed application forms can be had from the office of any Inspector on payment of Rs. 9 per form by a crossed postal order or bank draft or through Treasury challan by depositing the amount in the State Bank of India under the head indicated by the Inspector. In no case the payment shall be accepted in cash in the office of the Inspector. A copy of each advertisement shall be simultaneously sent by the Manager to the District Inspector of Schools of the Regional Inspectress of Girls Schools concerned and in case the post of the Head of Institution is advertised a copy of the advertisement shall also be sent to the Regional Deputy Director of Education.

Notes.--(1) All vacancies in the post of Teachers and the head of the institution existing at the time of advertisement shall advertised.

(2) No new post shall be advertised unless sanctioned of the appropriate authority for the creation thereof has been received by the Management.

(b) The form of application shall be such as may be approved by the Director.

(c) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not withheld by his employer but shall be forwarded to the District Inspector of Schools or the Regional Inspectress of Girls' Schools concerned immediately and in case of a part in an institution referred to in Section 16-FF to the Manager thereof.

(d) Applications received shall be serially numbered and entered in a register in the form approved by the Director in the office of the Inspector and particulars of the candidates noted under appropriate columns alongwith quality-point marks obtained by each candidate. The quality point marks will be awarded to each candidate according to the criteria laid down in Appendix 'D' preferably by the local retired Gazetted Officers or retired Principals or Teachers of Degree College or University or retired heads of institutions engaged for the purpose by the Inspector and checked by the Inspector or an officer of the Department authorised by him in this behalf. These application forms will be collected by the Committee of Management through the Manager of the institution from the office of the Inspector within three days after the expiry of five days from the last date of receipt of applications notified in the advertisement failing which the Inspector shall cause the applications to be sent to the Manager of the institution concerned. The management shall maintain a register likewise. The candidates to be called for interview shall be selected in the order of quality-point marks obtained by them. The number called for interview shall be seven of each post (the number of applicants permitting) provided that this number may be increased to accommodate candidates who get equal number of quality-point marks in the first seven places. The Inspector shall send intimation of the date, time and place for holding selection as may be fixed by him to the Committee of Management through its Manager at least two weeks before such date. Immediately on receipt

of this information the Manager shall send intimation to the members of the Selection Committee other than the Experts and issue interview cards to all the candidates selected for interview by registered post specifying therein the date, time and place of holding selection, at least ten days before such selection. The Selection Committee will hold its sitting for marking the selection according. The Inspector shall intimate to the Experts nominated under Clause (iii) of Sub-sections (1) or (2) of Section 16-F, as the case may be, the date, time and place fixed for holding of selection alongwith the name of the institution, sufficiently in advance of such date. If on account of any unavoidable reason, any expert is unable to attend the selection on the date fixed, the Inspector shall at once arrange for the expert on the waiting list. In the absence of two experts, the meeting of the Selection Committee shall be postponed and another date shall be fixed for the same.

(dd) Where the post advertised under Clause (a) is that of Principal of an institution that two senior most Teachers of such institution in the Lecturer's grade, and where the post advertised is that Headmaster for an institution the senior most Teachers of such institution in the L.T. grade who possess the prescribed minimum qualification for such post and have to their credit a minimum of ten year's continuous service in the respective grade, including the period, if any, during which they have worked temporarily as Principal/ Headmaster shall also be entitled to be called for interview for that post even if they do not come within the first seven places under Clause (d).

(e) Every candidate called for interview will have to pay the interview fee at rates given below ;

(i) For the post of head of institution :

Rs. General candidates 20 Scheduled Caste/Tribes candidate 5 (ii) For the post of Teacher : General candidates 13 Scheduled Caste/Tribes candidate 3 The interview fee shall be payable by crossed postal order or bank draft or through treasury challan by depositing the amount in the State Bank of India under the head indicated by the Inspector. In no case the interview fee shall be accepted in cash. All postal orders, bank drafts and treasury chalan shall be sent by the Manager to

Inspector immediately after the selection.

(f) A statement (six copies) showing the names, qualifications and other particulars in respect of every candidate called for the interview shall be got prepared by the Committee of Management in the form given in Appendix 'C' and the same shall be placed before each member of the Selection Committee at the time of the interview. All the applications including those of candidates not called for the interviews, the register maintained by the institution referred to in Clause (d), office copies of all letters sent to the members of the Selection Committees and of all interview cards including the post office receipts of sending the same by registered post and acknowledgments, if any, shall also be placed before the Selection Committee by Management through the Manager of the institution.

(g) Selection shall be made by Selection Committee on the basis of the total quality point marks awarded in the interview. The total of marks for this purpose shall be arrived at by addition of the quality point-marks as obtained by a candidate under Clause (d) and the average of the marks awarded by the members of the Selection Committee out of 50, as for example, a candidate who obtains 90 quality point-marks under Clause (d) is awarded the following marks in the interview :

Member No. 1 ... 35 Member No. 2 ... 30 Member No. 3 ... 40 Member No. 4 ... 45 Member No. 5 ... 25 Total 175

Then the total marks will be $90 + 175/5 = 125$. In addition, each Expert shall also note down in the statement referred to in Clause (f) whether he agrees to the selection of the candidate or not. On case of disagreement he will state reasons in brief thereof. After all the candidates for any post are interviewed the Chairman of the Selection Committee shall either himself or by any member thereof get a note prepared in duplicate on the proceedings of the selection held indicating therein the name of the selected candidate alongwith two other candidates on the waiting list drawn up in order of merit determined as per example aforesaid and also the names of at least two Experts who have agreed to the selection of such candidates. The note so prepared shall be signed by the Chairman and other members of the Selection Committee giving their full names, designations and addresses and date. One copy of this note alongwith

one copy of the statement referred to in Clause (f) shall be immediately forwarded by the Chairman to the Management through the Manager and the other copy shall be forwarded to the Inspector concerned.

[Explanation.--Any reference to the Committee of Management or President or member thereof in this regulation shall, in cases referred to in Sub-section (3) of Section 16-F, be construed as a reference to the Authorised Controller who shall, for purpose of awarding marks in the interview, under Clause (d) be deemed to be a single member of the Selection Committee].

(h) Notwithstanding any thing contained in Clause (g) if the total marks awarded to or more candidates are equal then the senior most in age shall be preferred.

Regulation 11.--(1) It shall be the duty of the experts attending selection of a head of institution or Teacher to scrutinize all papers concerning selection and in particular to examine that the candidates called for interview have been rightly so-called as per provisions of the Act and the regulations and that no candidate has been deprived of the opportunity of interview which rightly should have gone to him. They should furnish a certificate to this effect in the proceedings of the selection as proposed in the statement in Appendix 'C'. In case they feel that a candidate has been deprived of the legitimate opportunity of interview as a result of any error or omission they shall inform the Inspector with full details of the case. If the Inspector is satisfied that the proceedings of the interview have been vitiated thereby he shall declare the proceedings of the interview null and void and shall pass orders for holding of selection again in such cases. The orders of the Inspector in this regard shall be final and binding on all concerned.

(2) All applications, papers and registers relating to selection shall be preserved by the Management till such period as may be prescribed by the Director and shall be furnished to the Inspector, Regional Deputy Director of Education or the Director as and when the same may be summoned.

Regulation 12.--The Manager of the institution shall ensure that all necessary action to be taken under the Act and the regulations prior to the holding of selection including nomination of the Chairman or the members of the Selection Committee by the Committee of Management shall be taken well in time and that

all arrangement have been made for the meeting of the Selection Committee and seating of candidates called for interview on the date fixed for the interview.

Regulation 13.--The Inspector may fix one or more selections of one or more institutions at such place, time and date as may be found convenient.

Regulation 14.--The panel of Experts referred to in Sub-section (4) of Section 16-F shall be drawn by the Director for each region separately for the selection of Teachers from amongst the categories of persons given below after they have given their consent in writing to act as Experts ;

(a) Person who may be appointed as experts for the selection of heads of institution-

(i) Principals of Degree Colleges, Training College and Polytechnics including Central Schools;

(ii) Gazetted Officers of the Education Department not below the P.E.S. level, whether serving or retired;

(iii) Professors and Readers of Universities and Degree Colleges;

(iv) Lecturers of University and Degree Colleges provided they have worked as such for at least ten years;

(v) Any other person considered suitable by the Director;

(b) Person who may be appointed as experts for the selection of Teachers--

(i) Principal or Headmaster of any Intermediate Collage, High School or Government Normal School, whether serving or retired;

(ii) Gazetted Officer of the Educational Department not below the rank of a Deputy Inspector of School, whether serving or retired;

(iii) Lecturers of Degree Colleges, Training Colleges or Polytechnics and Gazetted Officer or Education Department of at least five years standing;

(v) Any other person considered suitable by the Director.

The number of experts on each regional panel shall be such as may be considered necessary by the Director, provided that experts appointed for the selection of Teachers of Intermediate Classes shall be experts in that subject (i.e. they should possess the minimum qualifications prescribed by the Board for a Teacher of Intermediate classes in the subject concerned). The regional panel shall remain valid for the three years but the Directors may add to or remove any person from the panel even during the above period. Name of one person may be included in more than one panels where necessary.

Regulation 15.--As soon as a copy of the advertisement is received by the Regional Deputy Director of Education in respect of any post advertised for the head of institution he shall send a list of three experts nominated by him for the institution concerned alongwith one more name on the waiting list to the Inspector for being invited to participate in the selection. The Inspector shall likewise nominate three experts and one more on the waiting list for the institutions for which selection of Teachers is to be held as soon as he receives the copy of the advertisement and invite them to participate in the selection.

Regulation 16.--Every expert attending a meeting of the Selection Committee and every person engaged for awarding quality point-marks shall be entitled to be paid remuneration at such rates as may be sanctioned by the State Government from time to time. In addition, the experts shall be paid travelling allowance at such rates as may be sanctioned by the State Government.

Regulation 17.--The procedure for filling up the vacancy of the head of the institution and Teachers by direct recruitment in any recognised institution referred to in Section 16-FF shall be as follows :

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the Manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e. whether temporary/permanent) and number of vacancies, descriptions of post (i.e. Principle

or Headmaster, Lecture or L.T., C.T. or J.T.C./B.T.C. grade Teacher including the subject or subjects in which the Lecturer or Teacher is required), scale of pay and other allowances, experience required, minimum qualification and age prescribed, if any, for the post and prescribing a date which should ordinarily be less than two weeks from the date of advertisement by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes.--(1) All vacancies in the posts of Teachers and the head of institution existing at the time of advertisement shall be advertised.

(2) No new post shall be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management :

(a) All application shall be made in the form prescribed by the management and shall contain all necessary particulars about qualifications, teaching experience and other activities and be accompanied by certified copies of all the necessary certificates and testimonials. The management may charge cost of the application form not exceeding the amount referred to in Clause (2) of the Regulation 10.

(b) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not be withheld by his employer but shall be forwarded to the authority concerned immediately,

(c) All applications received from the candidates shall be serially numbered and entered in a register and particulars of the candidates noted under appropriate columns. The Candidates to be called for interview shall be sever for each post (with the prior permission of the head of the institution). The Manager shall intimate by registered post all the members of the Selection Committee as well as such candidates as are called for interview, the date, time and place of selection at least ten days before it is held. The Selection Committee will hold the selection accordingly. If on account of any unavoidable reason the expert selected by the Committee of Management under Clause (a) of the proviso to Sub-section (1) of Section 16-FF is unable to attend the selection on the date fixed, the meeting of the Selection Committee shall be postponed.

(d) The provisions of Clauses (e) and (f) of Regulation 10 and these of Regulations 11, 12 and 16 shall mutatis mutandis apply to selections made under this regulation.

(e) A panel of experts consisting of fifteen or more persons selected from category (a) referred to in Regulation 14 shall be drawn by the Director for each region and be sent to the Regional Deputy Director of Education concerned. The Regional Deputy Director of Education shall out of the said panel communicate the names of three experts in sealed cover to the Management through its Manager as soon as he receives any request for supply of names of experts from him. The regional panel of experts shall, however remain valid until it is replaced by a new one.

(f) Chairman of the Selection Committee after conducting interview of all the candidates for any post will get a note prepared in two copies on the proceedings of the selection which will mention the names of the selected candidates and names of two more candidates of waiting list. Chairman and other members of Selection Committee will sign on notes, so , prepared, and mention their full name, designation and address. Chairman would immediately forward a copy of this note and a copy of statement referred to in Clause (f) of Regulation 10 to the Regional Deputy Director of the Inspector, as the case may be, for approval as required under Selection 16-FF. Regional Deputy Director or Inspector, as the case may be, within one month of the date of receipt of concerned records, will give his decision thereon and, failing to do so, it will be deemed to be approved].

Regulation 18.--(1) Within fifteen days of the receipt of the recommendation of the Selection Committee constituted under Sub-sections (1) or (2) of Section 16-F, and in case of an institution referred to in Section 16-FF, the approval of the authority specified therein, the Manager shall, on authorization under resolution of the Committee of Management, issue an order of appointment by registered post to the candidate in the form given in Appendix 'B' requiring the candidate to join duty within ten days of the receipt of such order failing which the appointment of the candidate will be liable to cancellation.

(2) In case of promotions and ad-hoc appointments also formal order of promotion or appointment in the form as near as possible to the form referred to in Clause (1)

shall be issued to the person concerned under the signature of the Manager.

(3) A copy of every order referred to in Clauses (1) and (2) shall be sent to the Inspector and in case of appointment of the head of institution a copy thereof shall also be sent to the Regional Deputy Director of Education

Regulation 19.--Where any person is appointed as, or any promotion is made on any post of head of institution or Teacher in contravention of the provisions of this chapter or against any post other than a sanctioned post the Inspector shall decline to pay salary and other allowance, if any, to such person where the institution is covered by the provisions of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, and in other cases shall decline to give any grant for the salary and allowances in respect of such person.'

11. Thus, as per provision quoted above it is fully reflected that appointment to the post of Principal or Teacher in Minority Institution has to be made in consonance to the provisions as mentioned above. At the point of time when approval is to be accorded, it has to be seen that person who has been selected possesses minimum qualification prescribed and is otherwise eligible. However, as far as payment of salary is concerned, under Regulation 19 of Chapter II of U.P. Intermediate Education Act, 1921, payment of salary can be declined where any person is appointed in contravention of the provisions of Chapter II or against any post other than a sanctioned post. Thus, any incumbent who is appointed on the post other than a sanctioned post or in contravention of provisions of Chapter II is not at all entitled for payment of salary under U.P. Act 24 of 1971. Till date as far as, case in hand is concerned District Inspector of Schools has not taken any decision in respect of validity of appointment of petitioner. In the counter-affidavit stand has been taken that petitioner's appointment has been made against non-sanctioned post. Contention of the petitioner is that he has been appointed against the post of Buddha Ali. This fact has not been disputed that Buddha Ali was working against sanctioned post against which maintenance grant was being paid by the State Government. In this background it has been contended that petitioner was appointed against sanctioned post and presumption which was sought to be

drawn, is incorrect presumption.

12. This Court in the case of Krishna Kumar Singh v. District Inspector of Schools, reported in 1995 AWC 183, has taken the view that in case appointment is made on a sanctioned post same cannot be invalidated subsequently merely on the ground that the Teachers working in the institution are in excess as provided under the policy laid down by the Education Department of the Government. It is open to the Government to abolish the post, and proceed in accordance with law, Here in the present case also it is not at all case taken in the counter-affidavit that post of Buddha Ali has been abolished and he was not working against sanctioned post, whereas petitioner has been appointed against aforementioned post. In this background, this stand that petitioner's appointment was not made against sanctioned post is unfounded, and unsustainable.

13. As district Inspector of Schools has not at all taken any decision in the matter, whereas District Inspector of Schools is obliged to consider approval in terms of provisions as contained under Section 16-FF of U.P. Intermediate Education Act, 1921 and Regulations framed thereunder, as such concerned District Inspector of Schools is directed to consider claim of the petitioner in regard to grant of approval within one month from the date of presentation of certified copy of this order.

14. As far as Civil Misc. Writ Petition No. 26977 of 2003 is concerned same is dismissed inasmuch as, District Inspector of Schools has clearly erred in law while issuing letter dated 3.5.2003, inasmuch as, power of adjustment lies with the Joint Director of Education, and that too then pre-requisite terms and conditions envisaged under Section 16-EE of U.P. Intermediate Education Act, 1921 are fulfilled. Here fresh vacancy accrued on account of retirement of Kranti Kumar Akyan, as such Managing Committee had full authority to advertise the same and to proceed to make appointment against the same, as per provisions quoted above.

15. Consequently, Civil Misc. Writ Petition No. 5018 of 2000 is disposed of and Civil Misc. Writ Petition No. 26977 of 2003 is dismissed.

16. No orders as to cost.

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