

Anoop Singh Vs. District Inspector of Schools, Kanpur Dehat and Others

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Court : Allahabad

Decided On : Sep-05-1997

Reported in : 1998(1)AWC352; (1997)3UPLBEC1967

Judge : R.R.K. Trivedi, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16G; Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974; [Constitution of India](#) - Article 226; Uttar Pradesh Intermediate Education Regulation, 1921 - Regulation 2 and 2 (2)

Appeal No. : C.M.W.P. No. 10132 of 1988

Appellant : Anoop Singh

Respondent : District Inspector of Schools, Kanpur Dehat and Others

Advocate for Def. : K.R. Singh, Adv.

Advocate for Pet/Ap. : P.N. Saxena, Adv.

Judgement :

R.R.K. Trivedi, J.

1. Heard learned counsel for the petitioner, Sri K. R. Singh, learned counsel appearing for respondent No. 3 and learned standing counsel for respondent No.

1. Learned counsel for the parties have agreed that this writ petition may be decided finally at this stage.
2. Facts giving rise to this writ petition are that Sri Ram Krishna Sachan, who was serving in the Institution known as Nonapur Intermediate College, Nonapur, district Kanpur Dehat as Head Clerk, died on 8th October, 1987. Petitioner Anoop Singh filed an application claiming appointment as Head Clerk in pursuance of the Government Order dated 23rd September, 1981. Committee of Management accepted the prayer of the petitioner and appointed him as Head Clerk on 1st February, 1988 on probation for one year from the date of Joining. Petitioner joined the post w.e.f. 1st February, 1988. The Committee of Management sent papers regarding appointment to the District Inspector of Schools, Kanpur Dehat with the covering letter dated 1st February, 1988. The District Inspector of Schools, Kanpur Dehat, however, by order dated 20th April, 1988, Annexure 5 to the writ petition, Intimated the Committee of Management that the appointment of the petitioner as Head Clerk is not in accordance with Regulation 2 (2) of the Regulations framed under Section 16G of Intermediate Education Act and hence the appointment of the petitioner as Head Clerk was rejected. Aggrieved by the aforesaid order, the petitioner has approached this Court under Article 226 of the Constitution.
3. Learned counsel for the petitioner has submitted that under the Government Order dated 23rd September, 1981 which has been filed as Annexure 1 to the writ petition, it has been provided that rules relating to appointment may be relaxed while making the appointment under this order. Learned counsel has also submitted that as the purpose behind the order dated 23rd September, 1981 is to provide immediate help to the family of the deceased employee, the appointment of the petitioner as Head Clerk cannot be termed in violation of the Regulation 2 (2) of the Regulations as pointed out by the respondent No. 1 in the impugned order. Learned counsel has also submitted that the petitioner Joined the post on 1st February, 1988 and since then he is serving on the post and has also been paid salary as operation of the impugned order was stayed by this Court on 17th May, 1988. Learned counsel has submitted in alternative that if the appointment of the petitioner as Head Clerk could not be made directly, at least he was entitled to

be appointed as Clerk and the respondents may be directed to accept the claim of petitioner for the alternative appointment. It is submitted that after 9 years now petitioner shall be over-age and if he is deprived of the job he shall suffer irreparable hardship and his family shall be without any income.

4. Sri K. R. Singh, learned counsel appearing for respondent No. 3, on the other hand, has submitted that the impugned order is justified. The Government order cannot by pass the statutory rules and regulations framed under the Act. Under Regulation 2 of Chapter III of the Regulations framed under the Act, it is provided that the post of Head Clerk could be filled only by promotion from amongst the Clerks, It has been further submitted that respondent No. 3 was fully justified and he was entitled to be promoted as Head Clerk, but on account of petitioner's Illegal appointment, he has been deprived of the chance of promotion.

5. I have considered the submissions of the learned counsel for the parties. Hon'ble Supreme Court in a recent judgment in case of Hira Man v. State of U. P, and others, JT 1997 (7) SC 324, has interpreted the scope and extent of relaxation which can be granted under the provisions of Uttar Pradesh Recruitment of Dependants of Government Servants (Dying-in-Harness) Rules, 1974 while giving appointment on compassionate ground. The Government Order dated 23rd September, 1981 contains identical provisions about the relaxation, etc, and in my opinion, the view expressed by Hon'ble Supreme Court shall be applicable to the present case also. It has been held by the Apex Court that the rules provided for appointment on compassionate ground cannot override the other rules providing appointment on the post by promotion. In the case before Hon'ble Supreme Court, the post which was to be filled in, was of promotion quota, which the Hon'ble Supreme Court said could not be filled by direct recruitment under the Rules of 1974.

6. Considering the aforesaid judgment of the Apex Court so far as the first submission of the learned counsel for the petitioner made on behalf of the petitioner is concerned, has no force and the impugned order passed by respondent No. 1 is perfectly justified.

7. However, coming to the next submission, it may be noticed that after death of his father on 8th October. 1987, petitioner promptly approached the Committee of Management and claimed appointment by making an application. Thus the petitioner, though could not be appointed as Head Clerk in view of the provisions contained in Regulation 2 (2) of the Regulations, his claim could be accepted for appointment on the post of Clerk for which he was fully qualified. This aspect of the case was ignored by respondent No. 1.

8. Learned counsel for respondent No. 3 submitted that In fact respondent No. 3 was entitled for appointment as Head Clerk, his claim has been ignored. The appointment of petitioner has not been questioned by respondent No. 1 except being in contravention of Regulation 2 (2) of the Regulations, hence in the facts and circumstances of the case, in my opinion, after long period of nine years, it shall not be in the interest of Justice to render petitioner Jobless. But at the same time, he cannot be allowed to continue as Head Clerk on basis of the illegal appointment. The Impact of the order passed by respondent No. 1, which is being maintained by this Court, shall be that there shall be vacancy in the post of Head Clerk and the Management shall select from amongst the Clerks a suitable candidate for the post of Head Clerk which shall cause vacancy in post of Clerk on which petitioner may be appointed.

9. For the reasons stated above, this petition is disposed of finally with following directions :

(1) The Committee of Management shall immediately take steps to select a suitable candidate for being appointed as Head Clerk and in this process, claim of respondent No. 3 and other eligible candidates shall be taken Into account in accordance with law.

(2) The candidate so selected shall be appointed as Head Clerk.

(3) The post of Clerk which shall fall vacant after this selection shall be filled in by appointing petitioner.

(4) The process of selection and appointment of Head Clerk shall be completed within three months from the date a copy of this order is filed.

(5) During this period, petitioner may be allowed to work on the post of Head Clerk but he shall be paid salary of the post of Clerk.

10. There will be no order as to costs.

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