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Narendra Kumar Vs. District Inspector of Schools, Agra and Others

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Court : Allahabad

Decided On : May-18-2001

Reported in : 2001LabIC3924; (2001)2UPLBEC1888

Judge : Sunil Ambwani, J.

Acts : [Constitution of India](#) - Article 30; Uttar Pradesh Intermediate Education Act, 1921 - Sections 16 and 16F(3); Uttar Pradesh Intermediate Education Regulation - Regulations 101 and 102; Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1989

Appeal No. : C.M.W.P. No. 8101 of 2000

Appellant : Narendra Kumar

Respondent : District Inspector of Schools, Agra and Others

Advocate for Def. : S.C. and ;Amit Kumar, Adv.

Advocate for Pet/Ap. : Ashok Bhushan and ;Anil Bhushan, Adv.

Disposition : Writ Petition dismissed

Judgement :

Sunil Ambwani, J.

1. The petitioner is challenging the order dated 8.2.2000 passed by District Inspector of Schools, Agra. Annexure-10 to the writ petition, by which he has rejected the approval of petitioner's appointment as clerk in Shree Digamber Jain Inter College, Agra. The facts giving rise to the petition are as follows :

2. Shree Digamber Jain Inter College is a minority institution, a certificate in this regard has been issued by District Inspector of School. Agra on 20.9.1976. It is alleged that on a leave vacancy arising on one year's leave taken by permanent clerk, the management appointed petitioner and the documents were sent to District Inspector of School. Agra. for approval. A reminder was also sent to him in this regard. However, before approval could be granted, the said clerk retired. The committee of management advertised the substantive vacancy in daily newspaper 'Aaj' on 22.6.1999. This advertisement was also published in the newspaper 'Statesman' on 30.6.1999. Petitioner applied for the same. The selection was postponed and the information of postponement was published in daily newspaper 'Dalnik Jagran' on 18.7.1999. Subsequently interview was notified on 8.9.1999, on which date Interviews were held, in which 10 candidates appeared before the selection committee. Petitioner was found as the best candidate on the basis of quality points marks, and was selected. The papers regarding petitioner's selection were forwarded to District Inspector of School. Agra. by the management on 9.9.1999. The District Inspector of Schools, Agra raised certain queries, which were replied to, and clarified by the management stating that there is only one post of clerk and in absence of which the work of the institution is suffering and thus management issued appointment letter to the petitioner on 10.10.1999, in pursuance to which, petitioner joined on 15.10.1999. By order dated 8.2.2000. District Inspector of Schools. Agra, has refused approval of appointment on two grounds ; firstly, that no approval of the advertisement and examination of the posts was taken from his office ; and secondly that according to G.O. No. 578/Das-Savinl-I/99 dated 16.6.1999. Instructions were issued not to make appointments on the posts, which were to fall vacant on retirement.

3. Heard Sri Anil Bhushan. learned counsel appearing on behalf of the petitioner and learned standing counsel for the respondents. Learned counsel for the petitioner has submitted that prior approval is required under Chapter III of

Regulation 101. The committee of management sought prior approval but the District Inspector of Schools did not communicate any decision in this regard to the management. He submitted that Regulation 101 does not prescribe time limit within which the Inspector of Schools has to give prior approval, .n Inspector must exercise his powers within a reasonable time. In *Regional Provident Fund Commissioner v. M/s. K.T. Rolling Mills Put. Ltd.*, JT 1995 (1) SC 138, it was held that when a power is conferred by statute without mentioning the period within which it could be invoked, the same has to be done within reasonable period, as all powers must be exercised reasonably, and exercise of the same within reasonable period would be a facet of reasonableness. Learned counsel has also relied upon the decision of this Court In *Rajendra Yadav v. Deputy Director of Education. Gorakhpur and others.* 1999 (3) AWC 2123. in which this Court relied that if Inspector has not communicated his decision within two weeks, it shall be deemed to have accorded his approval. In this decision, this Court has relied upon other provisions, namely. Section 16 of the U. P. Intermediate Education Act. 1921 and para 2 (3) (iii) of U. P Secondary Education Service Commission (Removal of Difficulties) Order. 1989. in holding that two weeks from the date of receipt of letter seeking approval would be reasonable period within which the District Inspector of Schools must communicate his decision to the appointing authority, failing which he shall be deemed to have accorded approval. On the second reason given in the impugned order, learned counsel submitted that the ban on the appointments was not applicable to Government-aided educational institutions. Learned counsel further submitted that the provisions of the U. P. Intermediate Education Act, 1921 seeking prior approval for appointments are not applicable to minority institutions. For this proposition, he relied upon a recent judgment of Supreme Court In *C/M. St. John Inter College v. GirdhariSingh and others*, Civil Appeal No. 5397 of 1997. decided on March 30. 2001.

4. On the other hand, counsel for respondents submitted that before giving advertisement, the office of District Inspector of Schools was not informed, and that the advertisement was made without prior approval. The committee of management acted illegally in allowing the petitioner to join In contravention of the provisions of the Act. He further submitted that the State Government had totally restricted the appointments on the vacancies caused on the retirement by G.O.

dated 16.6.1999, which is applicable to all Government Officers, public sector undertakings and local bodies and as such the appointment was illegal and could not be approved.

5. I have considered the submissions of the parties. Regulation 101 of Chapter III made under the U.P. Intermediate Education Act, 1921, provides that the appointing authority shall not fill-up any vacancy of non-teaching staff in any recognised and aided institution without prior approval of the Inspector. Regulation 102 provides that intimation of vacancy falling due on retirement shall be given three months prior to the date of retirement, and in case of death, resignation or otherwise within seven days. In the present case, the facts indicate that the management appointed the petitioner on a vacancy caused on long leave taken by permanent clerk, and thereafter advertised the vacancy on his retirement. Although an averment has been made in para 7 that the management intimated the vacancy but no document has been annexed in the writ petition to show that any application or intimation any given for prior approval. Along with the rejoinder-affidavit of Prem Singh, father of the petitioner, a letter dated 1.6.1999 has been annexed as Annexure-1 seeking permission to fill-up the post falling vacant on the vacancy caused on the retirement of permanent clerk. The second annexure of the said rejoinder is areminder dated 15.6.1999. The Inspector in his counter-affidavit has denied that any application seeking prior approval for appointment was given to his office. In the counter-affidavit of Moti Lal Jain, filed on behalf of the Manager of the Institution, it has been stated that there is no statement to the effect that the management had applied for prior approval. On the contrary. It has been stated that papers were forwarded to the office of Inspector for approval. A perusal of Annexure-6 to the writ petition reveals that when documents for approval were sent by letter dated 9.9.1999. it was not Indicated that any request for prior approval is pending. On 11.10.1999 the Inspector, vide Annexure-7 to the writ petition. required the management to submit documents regarding the number of sanctioned post, the details of promotion quota. the resolution of the committee of management and proof of re-advertisement, the chart of the selection and the number of appointments, which were made under dying in harness rules. From the aforesaid documents, I find that the statement of fact that request was sent for prior approval is not correct, and thus the decisions cited above have no

application to the facts of present case.

6. In the case of C/M. St. John Inter College (supra), the validity of Section 16C (3) (a) of the U. P. Intermediate Education Act. 1921. providing for prior approval for terminating the services of teachers on an aided minority institutions, was a subject-matter of consideration. The Supreme Court has set aside the majority views of the Full Bench of this Court, and concluded that the question of prior approval of the competent authority In case of order of termination of an employee of a minority institution does not arise. The provision of prior approval for appointment has a different object to be achieved. This approval required examination of the fact whether a vacancy has actually occurred. the nature of vacancy, promotion quota availability of any employee under dying-in-harness rules and the financial resources with the State Government to bear the burden of the salary and the Government policy. If any, In that regard, etc. This prior approval is by way of financial sanction and examination of availability and nature of vacancies. A college, under grant-in-aid, has to follow financial discipline and such discipline has to be ensured by the competent authority. In case this prior approval is not required, the committee of management may appoint employees beyond its sanctioned strength or against any policy of Government. The object and purpose of prior approval does not, in any way. violate Article 30 of the [Constitution of India](#), and that it is only a regulatory provision which does not take away or infringe the rights of minorities.

7. In the aforesaid circumstances, the writ petition fails and is accordingly dismissed. There will be no order as to costs.

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