SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ashok Kumar Vs. District Inspector of Schools, Varanasi and Others

Ashok Kumar Vs. District Inspector of Schools, Varanasi and Others

SooperKanoon Citation : sooperkanoon.com/475666

Court : Allahabad

Decided On : Mar-03-1998

Reported in : 1998(2)AWC1471

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Regulations 31 and 101

Appeal No. : C.M.W.P. No. 39550 of 1996

Appellant : Ashok Kumar

Respondent : District Inspector of Schools, Varanasi and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Bhushan, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 28.2.1996 passed by the District Inspector of Schools whereby representation of the petitioner has been rejected.

2. The facts, in brief, are that one Pramod Prakash Singh was working as Class IV employee in Gandhi Smarak Inter College, Sahabganj, districtVaranasi

(hereinafter referred to as the institution). The Principal of the institution dismissed him from service on 1.10.1990. He submitted a representation to the Committee of Management and further to the District Inspector of Schools against the order of termination.

3. In the meantime, the Principal of the institution appointed the petitioner on the post of peon in the institution on 27.6.1992. The papers were forwarded to the District Inspector of Schools for according financial sanction. The matter was not decided. The petitioner filed Writ Petition No. 11761 of 1994 in this Court. The writ petition was disposed of by this Court on 5.5.1995 with the observation that the petitioner can submit a representation to the District Inspector of Schools and on such representation, the District Inspector of Schools shall dispose of the same by a reasoned order. The petitioner submitted the representation to the District Inspector of Schools. The representation has been rejected by the impugned order.

4. I have heard Sri Ashok Bhushan, learned counsel for the petitioner, and Sri C. K. Rat, learned standing counsel on behalf of the State.

5. It is admitted to the learned counsel for the petitioner that the order of termination of Pramod Prakash Singh was set aside by the District Inspector of Schools and he has been reinstated in service with effect from 23.4.1994. The petitioner has confined his claim for payment of arrears of salary for the period 6.7.1992 to 24.3.1994, the period he worked in the institution before Pramod Prakash Singh was reinstated in service. The District Inspector of Schools rejected the claim of the petitioner for two reasons. Firstly, the post of Daftari was a promotional post and no appointment to the post of peon could have been made and secondly, the appointment of the petitioner was subject to the prior approval of the District Inspector of Schools.

6. The post of Daftari has not been shown as a Class III post. The petitioner was appointed as Class IV employee. He was not claiming any salary for Class III post. The view taken by respondent No. 1 in this respect is erroneous. Regulation 31 provides that if any employee is punished, the prior approval of the District Inspector of Schools is required. This provision, however, further indicates that in

case of Class IV employee, the employee is to submit an appeal before the Committee of Management and further if the Committee of Management has not decided the appeal within six weeks or has rejected the appeal, the employee can submit a representation to the District Inspector of Schools. In a case of Class IV employee, it is not necessary to obtain prior approval from the District Inspector of Schools. After the dismissal of the employee from service, unless the order of stay is given either by the Committee of Management or the District Inspector of Schools, it will be open to the appointing authority to take appropriate steps for filling up the vacancy.

7. The prior approval of the appointment by the District Inspector of Schools was not required by the appointing authority or the Committee of Management prior to 30th July. 1992. Rule 101 was introduced by Government Notification No. 400/15.7.1992 on 30th July, 1992 which provided that if any appointment is made other than that of teachers, the prior approval of the District Inspector of Schools is required.

8. The version of the petitioner is that the petitioner was appointed on 27.6.1992 and he joined the institution on 6.7.1992. This provision was not in existence. A Division Bench of this Court in Om Prakash v. District Inspector of Schools. 1982 UPLBEC 232, held that prior approval of District Inspector of Schools was not required for making appointment. Learned standing counsel submitted that prior approval as such may not have been required, the District Inspector of Schools was entitled to examine as to whether the appointment was validly made inasmuch as he has to accord financial sanction before it takes a decision to pay salary to an employee of an institution.

9. There is no controversy on this legal aspect. The District Inspector of Schools has to assign a reason as to on what ground the appointment has not been approved. The District Inspector of Schools has given the reason that the post on which the petitioner was appointed was a promotional post. This has been found incorrect. He has not assigned any other reason.

10. Considering the facts and circumstances of the case, the impugned order passed by respondent No. 1 dated 28.2.1996 is hereby quashed. Respondent No.

1 will examine the matter afresh keeping in view the observations made above.

11. In case there was no stay order passed against the order of termination either by the Committee of Management or by the District Inspector of Schools, the Committee of Management, in those circumstances, was Justified to make appointment and such appointment was subject to the decision of appeal/representation which was filed by Pramod Prakash Singh. The District Inspector of Schools before directing for payment of salary can also enquire as to whether the petitioner had actually worked between the period 6.7.1992 to 24.3.1994. The petitioner can submit a representation along with a certified copy of this order and a true copy of the writ petition. On such representation, respondent No. 1 shall dispose of the same by a reasoned order within two months after affording opportunity to the petitioner, the Principal and the Committee of Management of the institution. The writ petition is accordingly disposed of.

12. Considering the facts and circumstances of the case, the parties shall bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com