

Arvind Kumar Sharma Vs. District Inspector of Schools and ors.

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Court : Allahabad

Decided On : Mar-16-2004

Reported in : [2004(101)FLR631]; (2004)2UPLBEC2088

Judge : D.P. Singh, J.

Acts : Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971; Uttar Pradesh Act, 1982 - Sections 18; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 13709 of 2000

Appellant : Arvind Kumar Sharma

Respondent : District Inspector of Schools and ors.

Advocate for Def. : A.K. Srivastava and ;S.C.

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

Disposition : Petition dismissed

Judgement :

D.P. Singh, J.

1. Pleadings are complete and the Counsel for the parties agree that the petition may be disposed off finally under the Rules of the Court.

2. Heard Counsel for the parties.

3. This petition is directed against an order dated 29.12.1999 by which payment of salary to the petitioner for the post of Assistant Teacher has been refused.

4. Sri Garg Inter College, Itaura, Firozabad is a duly recognized Intermediate College receiving grant-in-aid from the State Government and is covered by U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. Sri Siya Ram Sharma, father of the petitioner, was a permanent teacher in the LT Grade in the aforesaid institution, he took medical leave for six months with effect from 3.9.1997 and in the resultant short term vacancy the petitioner was allegedly appointed by an order dated 3.9.1997. However, the District Inspector of Schools vide his order dated 22.1.1998 refused to grant financial approval as at the relevant time there was a ban imposed by the State Government. The petitioner approached this Court, which by a judgment dated 20.2.1998 held that the ban did not cover short term vacancies. The District Inspector of Schools, in pursuance of the judgment, passed an order dated 3.2.1999 granting financial approval only for a period of six months i.e., from 2.9.1997 to 3.3.1998. It is alleged that the father of the petitioner retired on 30.6.1998 and the management allowed him to continue on the post but the District Inspector of Schools did not make any payment to the petitioner after 3.3.1998, i.e., after expiry of the financial approval already granted. The petitioner again filed a Writ Petition No. 45444 of 1999 which was finally disposed off vide order dated 27.10.1999 with a direction to the DIOS to decide the representation of the petitioner. In pursuance thereof, the present impugned order was passed.

5. Learned Counsel for the petitioner has urged that as his appointment was approved on the short term vacancy and which vacancy has since been converted into a substantive vacancy, the DIOS was not justified in not paying salary to the petitioner even though he was continuing to teach in the institution and none other has been selected for appointment either under Section 18 of the U.P. Act No. 5 of 1982 or under First Removal of Difficulties Order, Apart from some learned Single Judge's decision, he has also placed reliance on a Division Bench decision of this Court rendered in District Inspector of Schools, Kanpur v. Diwakar Lal and Ors.,

(2000) 3 UPLBEC 2494. In my view, the facts of this case are entirely different and the ratio would not apply to the present facts. In the Diwakar Lal's case (supra), the short term vacancy had arisen due to the ad hoc promotion of the incumbent and the claimants continued in service for years when the vacancy became substantive. In those circumstances, the Court was of the view that the incumbent should not be thrown out either before any appointment is made on that post or till their work was satisfactory. In the present case, the approval for ad hoc appointment was limited only up to 3.3.1998 and thereafter the short term vacancy ceased to exist and new substantive vacancy came into being on 3.6.1998. Neither any process of selection was commenced nor any appointment was made after the substantive vacancy came into existence. To put it otherwise, there was no subsisting approval of petitioner's ad hoc appointment when the substantive vacancy arose, therefore, there was no question to his legally continuing in service. The DIOS was right in holding that the management had no right to make any adhoc appointment against a substantive vacancy after 14.7.1991. A Full Bench of this Court in Radha Raizada v. Committee of Management, Viddayawati Darbari Girls College, (1994) 3 UPLBEC 1551, while taking into consideration the different legislative changes brought under UP Act No. 5 of 1982 divided the period in three stages. While dealing with the last stage, which is relevant for this case, in Paragraph No. 43, it held :

'..... The duration of such adhoc appointment is till the teacher who was on leave or under suspension joins the post or when the short term vacancy otherwise ceased to exist', further in the same paragraph it held;

'.....However, it has come to notice that some times the management resort to unfair practice in case of such appointment. For that contingency there is adequate safeguard provided in U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971.'

6. The issue can be examined from another angle.

7. It is the case of the petitioner himself that the father of the petitioner Sri Siya Ram Sharma, took six months medical leave just prior to his retirement and on which the petitioner was allegedly appointed but the DIOS rightly so granted

approval only for those six months i.e., up to 3.3.1998 but the substantive vacancy came into existence on 30.6.1998. It is not the case of the petitioner that he was reappointed or any further approval was granted after 3.3.1998. He is trying to take the benefits of ratio laid-down in Diwakar Lal's case (supra) where the approval was not for a definite period and the incumbent continued on the post on the strength of the approval order till the vacancy became substantive. It cannot be denied that the management is powerless to make any appointment in substantive vacancy and that power is exerciseable by the education official under First Removal of Difficulties Order or the Commission. It is well settled that what cannot be done directly cannot be done indirectly. The management could not make any adhoc appointment in substantive vacancy, and if the modus operandi as adopted in this case is accepted, it would allow the management to do what is prohibited. In any event, it would be playing fraud upon the Statute. In my view, the petitioner had absolutely no right or lien to claim salary from the State Exchequer and if he had worked without financial approval of the DIOS after 3.3.1998, he can claim salary only from the management.

8. No other point has been urged by the parties.

9. In view of the discussions, hereinabove, I do not find that this is a fit case for interference under Article 226 of the [Constitution of India](#). The petition is dismissed but without cost.