

Amar Pal Vs. District Inspector of Schools, Aligarh and Others

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Court : Allahabad

Decided On : Jul-13-1999

Reported in : 1999(4)AWC2798

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Secondary Education Service Commission Rules, 1995 - Rules 10, 11, 11(4), 12, 12(5) and 13; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : C.M.W.P. No. 28566 of 1997

Appellant : Amar Pal

Respondent : District Inspector of Schools, Aligarh and Others

Advocate for Def. : K.P. Shukla and ;A.K. Yadav, Advs. and ;S.C.

Advocate for Pet/Ap. : Vinod Sinha, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner was selected by U. P. Secondary Education Service Commission as a Lecturer in Civics on 5th April, 1996. The petitioner was assigned to Udai Raj Hindu Inter College Kashipur. Nainital. Since in view of an interim order granted on

a writ petition filed by one of the teacher in the said School claiming promotion to the post of Lecturer in Civics, the petitioner was not appointed in the said School. The Commission thereafter assigned Rastrlya Vidyalaya Inter College. Khair, Aligarh. It is alleged that on account of some dispute in the said School, the petitioner could not be accommodated therein. In such circumstances the District Inspector of Schools by his letter dated 8th October, 1996, assigned Babu Lal Jain Inter College, Aligarh in order to adjust the petitioner. Despite successive letters written by the District Inspector of Schools, the school authority did not allow the petitioner to join. In this background, the present writ petition has been filed seeking appropriate relief.

2. The respondent District Inspector of Schools had filed his counter-affidavit. The Committee of Management represented by Mr. K. P. Shukla had also filed a counter-affidavit as well as a supplementary counter-affidavit. Mr. Vinod Sinha, counsel for the petitioner had filed a rejoinder-affidavit to the counter-affidavit. He does not propose to file rejoinder-affidavit in respect of the supplementary counter-affidavit since he intends to rely on a document signed by the Principal and the Manager of the School in order to counter the statements made in the supplementary counter-affidavit. Mr K. R. Singh had supported the counter-affidavit filed on behalf of the District Inspector of the Schools relying on the relevant records annexed therewith.

3. Mr. Vinod Sinha. learned counsel for the petitioner contended that since the petitioner has been selected by the Commission and he could not be adjusted against the school allocated on two earlier occasions by the Commission, the District Inspector of Schools is empowered by virtue of Circular dated 1st June, 1997 issued by the Government to adjust the petitioner against any vacancy in a School within the district. Therefore, the assignment of the petitioner to Babu Lal Jain Inter College cannot be questioned. The Committee of Management has no locus startdi to oppose such adjustment. Therefore, according to him, the writ petition should be allowed.

4. Mr. K. P. Shukla, learned counsel for Committee of Management on the other hand contends that the post sought to be filled up by adjustment of the petitioner is

against 50% promotional quota and as such the said post cannot be filled up by direct recruitment. He next contends that the Commission has no Jurisdiction to select a candidate for the petitioner's school since no requisition was sent as yet for filling up the vacancy by direct recruitment. He next contends that the Commission cannot assume jurisdiction to select a candidate for the vacancy in the school in the absence of any advertisement published in respect of the said vacancy by the Commission before making the selection. He next contends that if no selection is made in respect of a particular vacancy then the Commission cannot have any jurisdiction to assign the petitioner or any selected candidate to such school. He next contends that in the present case the assignment of the petitioner to the respondents' school was not made by the Commission. On the other hand, it is made by the District Inspector of Schools. According to him, the District Inspector of Schools is not authorised to assign or allocate school to selected candidates. Therefore, the petitioner is not entitled to join the school. He next contends that since the post is to be filled up by promotion, therefore, there is no scope for filling up the post by direct recruitment and the post should be filled up by promotion from among the eligible candidates working in the school. He had relied on Rules 10, 11, 12 and 13 of the U. P. Secondary Education Service Commission Rules, 1995, contending that the school had already sent requisition for filling up the vacancy by promotion, which ought to have been allowed. He also relies on the decision in the case of Committee of Management, To run Infer College, Kunda, District Man v. District Inspector of Schools, Man and others. (1997 (2) ESC 1350 (All) in support of his contention.

5. I have heard both the learned counsel at length.

6. It appears that there was a vacancy in the school in respect of which a requisition was forwarded by the Committee of Management to the District Inspector of Schools on 27th July, 1995, together with the particulars of the eligible teachers in the Form No. 6 as required under Rule 11 of the 1995 Rules. The District Inspector of Schools by his letter dated 2nd July, 1996 informed the school authority that the vacancy was to be filled up by direct recruitment since there are already 4 posts of Lecturers filled up by promotion out of 6 sanctioned strength. Therefore, vacancy could not be filled up by promotion and, therefore, appropriate

requisition be sent. There is nothing on record to show that the school authority had ever sent any requisition with regard thereto. The particulars of the teachers forwarded along with the requisition by the school authority was sent by the Manager as well as the Principal. A perusal of the same, which is Annexure-C.A.1 to the counter-affidavit filed by the District Inspector of Schools, shows that the teachers from serial Nos. 1 to 5 who were holding posts of Lecturers were all appointed between 1961 and 1969. The Lecturers in serial Nos. 1 to 4 are shown to have been holding the post of Lecturers by promotion. Thus, out of 5 posts shown in the said list, 4 were filled up by promotion while the 5th post was filled up by transfer. It is not disputed that there are six posts of Lecturers. According to Rule 10. 50 per cent of the posts are to be filled up by promotion. Admittedly 50 per cent of 6 posts are 3. But the fact remains that four of the posts of the Lecturers were filled up by promotion. Therefore, one post, which could be filled up by direct recruitment has since been filled up by promotion. Thus, there is no scope for filling up the vacancy by promotion.

7. Then again the said claim or requisition of the school authority for filling up the vacancy by promotion was refused by the District Inspector of Schools on 2nd July, 1996. This order has since not been challenged by the Committee of Management. So long as the said order remains, the Committee of Management cannot come out with a case for claiming the posts to be filled up by promotion. The school authority having not assailed the same, they appear to have admitted the position. Mr. Shukla has not shown anything to this Court that this order was ever challenged by the Committee of Management. He has also not disputed the veracity and correctness of Annexures-C.A.I. The Annexure-C.A. 1 appears to be Zerox copy of the original which bears the signature of the Manager and the Principal, which is apparent from the Zerox copy of the said document where the signatures also figure in the Zerox copy. Mr. Shukla submits that he is not disputing the signatures but he is submitting that the copy has not been given to him. Therefore, the Court had supplied the copy to Mr. Shukla for inspection. Mr. Shukla had inspected the same. After inspecting, Mr. Shukla did not dispute the said signature. Then again in the counter-affidavit, it has not been pleaded that the requisition for filling up the vacancy by promotion sent on 27th July, 1995 is still pending. It is not the case of the school authority that instead of deciding the

same, the vacancy is being sought to be filled up. It is also not contended that no communication has been received by the school authority with regard to the requisition.

8. Be that as it may. The Committee of Management was well aware of the situation as to how the posts of Lecturers were to be filled up. That apart, a statement has come from the District Inspector of Schools on the basis of the records available in his office, which is corroborated by the particulars of the teachers of the said School contained in Annexure-C.A. 1. There being no discrepancy in between the said statement of particulars of teachers and the letter dated 2nd July. 1996, there is no scope for disputing the same. Thus, the school authority knew it well that the said post was not to be filled up by promotion since the promotional quota was already full in excess by one post.

9. Thus, the ground taken to oppose the appointment on the ground that the post is from the promotional quota appears to be a mis-statement made by the Committee of Management knowing fully well and having reason to believe the same to be incorrect and untrue which statement has also been made through supplementary counter-affidavit affirmed by Mr. Santosh Kumar Jain, the Manager. It has been stated that the post is to be filled up by promotion within the 50 per cent quota which is true to his knowledge. He has also stated that the vacancy was not intimated to the Service Commission according to Rule 11 of the 1995 Rules. The fact remains that this vacancy was intimated by the Committee of Management by its letter dated 27th July, 1995. according to Rule 11 of the 1995 Rules. Though claiming it to be a vacancy to be filled up from promotional quota but still he has made a statement that the Committee of Management has not intimated the vacancy to the Service Commission, in paragraph 2 of the supplementary counter-affidavit. According to Rule 11 of the 1995 Rules, such intimation to the Commission is to be forwarded through the District Inspector of Schools. Thus, it appears that the statement made in paragraph 2 is incorrect on the face of the record. Similar statement made in paragraph 5 of the supplementary counter-affidavit with regard to the statement that the vacancy was within 50 percent quota, appears to be incorrect having regard to the Annexures-C.A.I. Thus, he has made incorrect statement In paragraph 2 as well. In such

circumstance there are reasons to believe that the said Manager Sri Santosh Kumar Jain has purported to use some materials on oath before the Court of law knowing or believing or having reason to believe the same to be incorrect.

10. Thus, It is apparent on the face of the record that the post against which the petitioner is being sought to be adjusted is not a promotional post.

11. Admittedly, the persons who could have been eligible for promotion have not raised any grievance against such adjustment. Neither of them came forward to challenge such appointment. On the face of the record, the Committee of Management could not have acquired any locus standi to challenge the adjustment or appointment of the petitioner even if the posts were to be filled up by promotion unless there were eligible candidates available and such candidates are agreeable or Intend to be promoted. If such candidates themselves are not eager to be promoted or do not come forward to claim promotion. In that event it is not open to the Committee of Management to claim locus standi to challenge such appointment. through direct recruitment by the Commission. Though the vacancy was to be notified according to Rule 11 of the 1995 Rules according to time stipulated therein, which, admittedly, took place some times in 1995, yet the Committee of Management has mis-led the District Inspector of Schools by sending requisition for filling up the vacancy by promotion and did not send proper requisition for filling up the said post. Thus, the Committee of Management had created the situation by manipulating the whole process. There cannot be any earthly reason to believe such a step was taken by the management with bona fide intention. On the other hand, from the facts, the conduct of the Committee of Management seems to be contrary.

12. In paragraph 2 of the supplementary counter-affidavit, it is stated that no requisition was sent by the Committee of Management when the Committee of Management was bound to said requisition according to Rule 11 of the 1995 Rules. In such cases, according to sub-rule (4) of Rule 11 of the 1995 Rules, if vacancies are not notified by the management, in that event it is open to the Inspector to notify such vacancy to the Commission. Thus, the Committee of Management having not discharged its own duty in accordance with Rule 11. there

having been no teacher claiming the promotion to the post of Lecturer and none having come forward to challenge the said appointment, the Committee of Management cannot assume locus standi to challenge the adjustment or appointment of the petitioner in the school.

13. It is not open to the Committee of Management to challenge the selection by the Commission on the ground that there was no advertisement with regard to the vacancy of the concerned school. In any event, the Committee of Management cannot assume Jurisdiction to challenge the selection by Commission or the allocation of the Institution by the Commission. If such a proposition is accepted, in that event. It will completely render the whole system un-workable. In that event all appointment should be challenged by the Committee of Management. That Part, the test of locus standi is to be determined on the basis as to the interest of the school authority. The interest of the school authority is to see that the education is properly administered by the school and that there are teachers in the school and there is no vacancy continuing. Whether such vacancy is filled up by promotion or by recruitment or whether such vacancy be filled by one teacher or the other, is no concern of the Committee of Management though it may question the qualification of the candidate selected.

14. In the present case, the qualification of the petitioner is not under challenge. Whether the said vacancy is filled up by the petitioner or any other teacher is no concern of the Committee of Management, since the Committee of Management will not suffer anything. On the other hand if the vacancy is filled up, the Committee of Management would be benefited. Thus, the Committee of Management cannot claim locus standi to oppose or challenge the selection.

15. The petitioner was selected by the Commission, according to sub-rule (5) of Rule 12 of the 1995 Rules and was allocated to the Institution. But the said vacancy at Nainital School having not been available by reason of an interim order passed, he was allocated another school. where also he could not be adjusted. In such circumstance, the District Inspector of Schools had sought to accommodate and adjust him in the present school. The second allocation was made in a school at Khair, Aligarh. The adjustment was sought . to be made in the concerned

school, which is also situated at Aligarh. Mr. Vinod Sinha had drawn my attention to a communication made on 21st November, 1996 contained in Annexure-5 to the writ petition. In the said communication, the District Inspector of Schools had communicated the Committee of Management that the requisition for filling up a vacancy by promotion was declined by the District Inspector of Schools through his letter dated 2nd July, 1996 and that in terms of Circular dated 1st June, 1996, the District Inspector of Schools had adjusted the petitioner against the said School. The Circular dated 1st June, 1996 is Annexure-1 to the supplementary affidavit, wherefrom it appears that when there is any difficulty in giving appointment in a school allocated to a candidate by the Commission, in such case such candidate may be adjusted against existing vacancy within the district by the District Inspector of Schools. Thus, by reason of such Circular, the District Inspector of Schools is empowered to allocate or adjust the petitioner against the vacancy of the concerned school. Mr. Shukla had contended that the said Circular cannot over-ride Rule 11 of the 1965 Rules, or the relevant provisions of law, since it is only an administrative instruction the question of allocation of a school is in fact administrative action. In case of administrative exigencies whole system or procedure has to be adjusted. The power of the Commission is to allocate a school. Every time whenever there is difficulty, if it has to revert to the Commission, in that event the Commission would be burdened with the unnecessary exercise in terms of Rule 13. It is the District Inspector of Schools who has to intimate and to see that the selected candidates are accommodated and adjusted in the school. A provision of law cannot conceive all kinds of exigencies. In case in course of administration certain exigencies crop up. It may be handled or tackled administratively. It is only a question of adjustment of a selected candidate in one school or the other. It is not fundamental to the question of selection. It does not deny any right of the Committee of Management or anyone else. The Committee of Management, however, objects to the appointment to the extent that the candidate has been selected by the Commission is not fit to join the school. But such a stand cannot be taken unless it is shown that he lacks the requisite qualification for being so selected. Unless some amount of manoeuvrability is provided, it is not possible to run the administration. There must be some scope or space for movement for the administration to suit a

particular situation. 'When one such allocation is made to a particular candidate to a particular school, such candidate cannot be adjusted in any other vacancy'. If such an interpretation is accepted, the net result would be to disturb the whole system Jeopardising the interest of Institution keeping the posts vacant for an indefinite period while affecting the rights of such selected candidates. It is not a question of fundamental or legal right of the Committee of Management attempted to be put forth through the question raised. The Committee may be Interested in the filling up of the vacancy. It does not gain personally if it is filled up by promotion or transfer or recruitment. It cannot claim legal right beyond the filling up of the post. It is the interest of the education, which is paramount. A post cannot be left vacant for an indefinite period though a candidate by the Commission is available. Then again the Circular dated 1st June, 1996 is still holding the field and has not been challenged by anyone else. Neither the school authority had challenged the same. Unless the same is challenged by the respondents in a writ petition filed by the petitioner claiming the relief under the said Circular, it is not open for this Court to enter into such question unless it is shown that the same is wholly without jurisdiction or that there is no existence of such Circular.

16. As observed earlier, I do not find any reason to hold that the said Circular is Issued without any jurisdiction. Inasmuch as the State Government in its administration of education is empowered to issue directions from time to time. Having regard to the hardship and difficulties faced, it is open to the State Government to issue such direction in order to ameliorate the situation In the best interest of education. Thus, I find that there is no illegality or irregularity in the issuance of the Circular dated 1st June, 1996.

17. Thus, there is no infirmity in the adjustment of the petitioner in the concerned school by the District Inspector of Schools in the facts and circumstances of the case.

18. The decision in the case of Committee of Management, Tarun Inter College, Kunda (supra) does not apply in the present case since the same had dealt with the question of appointment of un-qualified teacher. It was not a case of duly qualified candidates selected by the Service Commission. In the said case, the

teachers sought to be appointed were not qualified for the post, which is not a case in the present writ petition. Therefore, no reliance can be placed on the said decision for the purpose of the contention raised by Mr. Shukla in the present case.

19. In the result, the writ petition succeeds and is allowed accordingly. The Committee of Management, Including the Manager and the Principal/Head Master of the School is, hereby, directed to allow the petitioner to join the school as soon as he reports for duty, which he should do on or before 31st July, 1999.

20. Let a writ of mandamus do issue accordingly. The respondent District Inspector of Schools shall ensure compliance of this order and take appropriate steps. In case the petitioner is still refused joining by the school authority, in that event it would be open to the District Inspector of Schools for initiating proceedings for superannuation of the Committee of Management or for appointment of Authorised Controller or Drawing and Disbursing Officer, as the case may be. if so thinks fit.

21. Since I cannot but observe that the school authority had taken unreasonable stand and attempted to mislead the Court even by affirming affidavits with incorrect statements having reason to believe that the statements were Incorrect or untrue, therefore the following direction is being issued in order to send a correct signal that the proceedings of a Court should not be taken lightly and the sanctity of the Court is not violated or flouted with Impunity.

22. In view of such mis-statements, the learned Registrar is, hereby, directed to issue a notice upon Sri Santosh Kumar Jain to explain or show cause as to why a proceeding under Section 340 the Code of Criminal Procedure should not be initiated against him before the appropriate Court. Such notice has to be Issued within four weeks from the date of receipt of the record. The record be placed before the learned Registrar within two weeks from date. The Registrar shall give six weeks to Sri Santosh Kumar Jain to submit his explanation. After the explanation is submitted, the Registrar shall place the record before this Court within two weeks from the date of receipt of the said explanation intimating Mr. Jain the date on which the matter will be listed before this Court.

