

Harendra Pal Singh Vs. District Inspector of Schools and ors.

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Court : Allahabad

Decided On : Aug-28-2002

Reported in : 2002(4)AWC3143; (2003)1UPLBEC160

Judge : Rakesh Tiwari, J.

Appeal No. : C.M.W.P. No. 36401 of 1991

Appellant : Harendra Pal Singh

Respondent : District Inspector of Schools and ors.

Advocate for Def. : Prem Prakash, ;R.P. Tewari and ;Subodh Kumar, Advs. and ;Mukesh Kumar, S.C.

Advocate for Pet/Ap. : S.N. Sinha and ;R.B. Tripathi, Advs.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard learned counsel for the parties and perused the record.
2. This writ petition has been filed challenging the validity and correctness of the order of termination dated 5.12.1991, passed by the D.I.O.S., Bareilly.

3. The relief claimed by the petitioner is that the Impugned order dated 5.12.1991 (Annexure-9 to the writ petition) be quashed. It has further been prayed that a direction in the nature of mandamus commanding the respondents to pay salary to the petitioner as long he works in the temporary vacancy be issued.

4. The case of the petitioner is that he was appointed in temporary vacancy in C.T. grade in Kishan Inter College, Faridpur, Bareilly, by the resolution of the Committee of the Management dated 10.7.1991. Copy of the appointment letter has been annexed as Annexure-1 to the writ petition. It is alleged that the D.I.O.S. has granted approval to the appointment of the petitioner vide order dated 1.8.1991 and he had received salary for the months of August, September and October, 1991.

5. Certain queries were made about the nature of the post which was duly replied by the respondent No. 2 by his letter dated 2.9.1991 in which he has stated that the post is of general C.T. grade as sanctioned by the D.I.O.S. and the petitioner's appointment is perfectly valid. Copy of the letter dated 2.9.1991, has been annexed with the writ petition, as Annexure-7. It appears that the D.I.O.S. has cancelled the approval granted to the appointment of the petitioner vide order dated 5.12.1991.

6. Aggrieved by the order dated 5.12.1991, the petitioner has challenged his termination on the ground that it has been passed without giving any notice to him and that it was wrongly stated that the management has given two different resolutions whereas only one resolution No. 15 dated 10.7.1991, was sent, copy of which has been annexed with the writ petition as Annexure-1.

7. Learned counsel for the petitioner has placed reliance on the letter of the management Annexure-7 to the writ petition in which it has been stated that the post is of general C.T. and not of Art teacher and there is no post of Art teacher in the institution. It is averred in paragraph 8 of the writ petition that the petitioner has come to know through reliable information that the approval has been cancelled because the educational authorities had put pressure on the D.I.O.S. for appointing their own candidate in the said vacancy. However, in paragraph 9 of the writ petition, it is alleged that the temporary vacancy is still continuing and the

appointment of the petitioner has not been cancelled by the management.

8. From perusal of Annexure-7 letter dated 2.9.1991, it appears that the petitioner was appointed by the Committee of Management in C.T. grade in short-term leave vacancy of Shri Raj Karan Verma.

9. During the course of argument, standing counsel has pointed out that C.T. Grade was declared as dying cadre on 11th August, 1989, hence there can be no appointment in short-term vacancy or otherwise in C.T. grade even against leave vacancy. It is further argued by the standing counsel that the initial appointment of the petitioner itself being void does not vest any right in the petitioner to claim salary in the temporary vacancy or continuity in service.

10. Counsel for the petitioner submits that Sri Raj Karan Verma had been submitting leave applications and joined another college and as such, temporary vacancy has been converted into a permanent one. He could not show any provisions of law as to how a person can be appointed in a substantive vacancy when the C.T. grade has been declared as dying cadre. If a grade, i.e., C.T. grade has been declared as dying cadre, then no appointment can be made in short-term vacancy or otherwise. The petitioner has no right to continue in the said vacancy of Sri Raj Karan Verma even otherwise, it was a short-term vacancy and it cannot be said to be a permanent vacancy after August, 1989, particularly, in the backdrop that the vacancy was of C.T. grade, which was declared as dying cadre. The petitioner cannot be granted any relief in this writ petition filed in year 1991. He has no right to the post.

11. In view of the observations made above, the writ petition is dismissed.

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