

Sanjay Kumar Singh Vs. District Inspector of Schools and anr.

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Court : Allahabad

Decided On : Aug-20-1997

Reported in : (1997)3UPLBEC2210

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Intermediate Education Act; Uttar Pradesh Secondary Education Service Commission Act, 1982

Appeal No. : Civil Misc. Writ Petition No. 16567 of 1994

Appellant : Sanjay Kumar Singh

Respondent : District Inspector of Schools and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : G.K. Singh and ;R.N. Singh, Advs.

Judgement :

O.P. Garg, J.

1. These are two connected writ petition is in which common questions of facts and law are involved. They are, therefore, being disposed of together by this common judgment.

2. Brief advertance of the fact is necessary One Babu Ram Misra who was a lecturer in Economics in the institution known as Nagar Palika Inter College, Mughalsarai, Varanasi, which is governed by the provisions of U.P. Intermediate Education Act, 21 and the U.P. Secondary Education Service Commission Act, 1982 was to be superannuated on 30th June, 1987 but on account of the orders of this Court in various writ petitions, he continued on the said post till 29-10-'i987 on which date the stay order was vacated. The vacancy so caused gave rise to a dispute between two rival claimants namely Ramdeo Prasad (Petitioner in writ petition NO. 21022 of 1994) who claimed promotion being the senior most teacher in L. P. grade having the requisite and essential qualification and the ether Sanjay Kumar Singh (Petitioner in Writ Petition No. 16567 of 1995), who was appointed on ad hoc basis by the President of the Nagar Palika.

3. The case of the petitioner Ramdeo Prasad is that on the date on which the vacancy actually occurred i.e. 29-10-1987 he had acquired the requisite minimum qualification and having a master degree in the subject of Economics and he being the senior most teacher in L T. grade was entitled to be promoted to the post of lecturer in Economics. According to him, he, in fact, was allowed to work as lecturer in Economics He applied for claiming promotion by moving an application on 7-8-1989. His grievance is that respondent no. 3 Sanjay Kumar Singh (Petitioner in writ petition No. 16567 of 1994) was illegally appointed on 3-12-1990 by thring to winds all the rules, regulations and the procedure prescribed for the appointment and that his claim (Ramdeo Prasad) was unrightfully denied by not appointing him as the lecturer Economics. On account of continuance of Sanjay Kumar Singh on the post, Ramdeo Prasad has prayed in his writ petition No. 21022 of 1904 that the appointment order dated 3-12-1990 made in favour of respondent no. 3, Sanjay Kumar Singh be quashed and that he be restrained from taking intermediate Classes in Economics. It is further prayed that a direction in the nature of mandamus be issued to respondents 1 and 2 district Inspector of Schools, Varanasi and Committee of Management respectively to permit the petitioner Ramdeo Prasad on the post of lecturer Economics with effect from 1-7-1987.

4. On the other hand, the case of Sanjay Kumar Singh is that Ramdeo Prasad was not entitled and eligible for promotion as on the date on which the vacancy occurred, he did not possess minimum qualification i.e. Master's degree in the subject. In the absence of any eligible qualified teacher who could be promoted, the Committee of Management as per rules notified the said vacancy to the Secondary Education Service Commission, When no recommendation was made by the Commission within the period prescribed, he (Sanjay Kumar Singh) was appointed by the Committee of Management on the post of lecturer Economics on ad hoc basis on 3-12-1990. The relevant paper relating to ad hoc appointment were submitted to District Inspector of Schools, Varanasi for requisite approval but no action was taken. The representations made by the petitioner (Sanjay Kumar Singh) did not produce any result. He was compelled to file a writ petition no. 31199 of 1991 before this Court. The said writ petition was allowed on 23-1-1992 and a direction was issued to the District Inspector of Schools, Varanasi to ensure payment of salary and other dues to him within a period of two months from the date of production of a certified copy of the order. Pursuant to the order dated 23-1-1993 the District Inspector of Schools by order dated 16-11-1993 accorded financial sanction to the appointment of the petitioner, On coming to know of the said order, Ramdeo Prasad moved an application for recalling the order dated 23-1-1993 passed in writ petition no. 31199 of 1991. This application was dismissed on 2nd December 1993. On 21-12-1993 the District Inspector of Schools, Varanasi issued an order addressed to his Account Officer to stop the salary of the petitioner Sanjay Kumar Singh on the ground that the earlier order dated 23-1-1993 has been recalled by the court on 2-12-1993. According to Sanjay Kumar Singh the impugned order dated 21-12-1993 passed by the District Inspector of Schools Varanasi is totally illegal, unjust and arbitrary and is clearly in conflict with the order dated 23-1-1993 passed by this Court. It is prayed that the impugned order dated 21-12-1993 (Annexure-5 the writ petition) be quashed and a direction in the nature of mandamus be issued for making payment of salary to the petitioners regularly alongwith the arrears.

5. Counter and rejoinder affidavits have been filed in both the writ petitions. With the consent of the parties counsel both the petitions are being finally disposed of at the admission stage. Sri Rakesh Bahadur, learned counsel for Ramdeo Prasad

and Sri V.K. Singh learned counsel appearing on behalf of Sanjay Kumar Singh and the learned Standing counsel have been heard at considerable length.

6. To being with, it may be mentioned that it is indubitable fact that consequent upon the retirement of Babu Ram Misra vacancy has arisen on the post of lecturer in Economics in Nagar Palika Inter College Mughalsaree Varanasi. It is also not disputed that if the vacancy has arisen on the post of lecturer it was to be effect from amongst the senior most teacher in L.T. grade who were eligible and qualified for the post on the date of vacancy. Ramdeo Prasad was at the relevant time one of the senior most teachers in L. T. grade. He was having a degree of Master of Arts in History and has also appeared in M.A. Economics examination. His case is that he was allowed to take the classes as a lecturer on the assurance that he would be promoted in due course. He was never appointed and instead Sanjay Kumar Singh was appointed on ad hoc basis in an illegal manner by order dated 3-12-1990 passed by Sri Sirajul Haq the then president of the Nagar Palika, Mughalsarai, Varanasi Though the Committee of Management respondent no. 2, has supported the case of the petitioner, the stand taken by the learned counsel for Sanjay Kumar Singh is that the petitioner or for that nature, no teacher in the L. T. grade was eligible and qualified for being appointed on promotion as a lecturer in Economics,

7. In order to consider the case of the petitioner Ramdeo Prasad it has to be determined as to on which date the vacancy has occurred and whether on the date of the vacancy he fulfilled the minimum qualification required for the post of lecturer. As said above, the vacancy has actually occurred on 30-6-1988, which was the date of superannuation of Babu Ram Misra. He however continued to work till 29-3-1987 i.e., for about four months more on account of stay orders in various writ petitions. The stay order came to an end 29-10-1987. A faint suggestion was made by the learned counsel for Ramdeo Prasad that the vacancy had actually occurred on 29-10-1987 on which date Babu Ram Misra had actually ceased to work on account of the vacation of the stay order by this Court. This submission has been contested by the learned counsel for Sanjay Kumar Singh, According to him the vacancy had in fact, arisen on 30-6-1987 itself, which was the date of superannuation of Babu Ram Misra and it would be of no consequence

that he had continued to work under some interim orders of this Court for a period of about four months. In support of his contention Sri V.K. Singh placed reliance on 1985 AWC at page 433 *Shyam Manohar Shukla v. State of U.P. and Ors.* in which it was held that where the interim order passed in a case is ultimately vacated, it is to be taken and treated as not having been passed at all. Reliance was also placed on *Shyam Lal v. State of U.P.*, AIR 1968 All 139 and *Sri Ram Charan Das v. Pyare Lal*, AIR 1975 All 280 (DB) which have settled the law that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all. In view of the above authoritative pronouncements, it is clear that the date on which the interim order was vacated i.e., 29-10-1987 is irrelevant in the instant case and the vacancy shall be treated to have come into existence actually on 30-6-1987 which was the date on which Babu Ram Misra was to stand superannuated. Now the question is whether Ramdeo Prasad fulfilled the minimum requisite qualification for the post of lecturer on 30-6-1987 or not. It is one of the essential qualification for promotion to the higher post in the that a teacher should possess the Master degree in the subject in which the vacancy of lecturer has arisen. The post of lecturer In Economics had fallen vacant on 30-6-1987 and on that date admittedly Ramdeo Prasad was not having the degree of M.A. in Economics. According to his own averments he had undertaken the various papers relating to M.A. Economics examination in the month of May. 1987 last paper being on 27-5-1987. The result of the examination was declared in September, 1987, meaning thereby Ramdeo Prasad who was successful in M.A. Economics examination came to possess the minimum requisite qualification in the month of September 1987 i.e., much after the date on which the vacancy for the post of lecturer in Economics had occurred. He was therefore, not eligible for being considered to the post of lecturer on the date of occurrence of the vacancy. To fortify the above point a reference may be made to 1995 (1) ESC at page 74 (All), *Dr. Raman Kumar Pandey v. Sukhram Pal Singh Sehrawat and Ors.*, in which it was held that subsequent acquisition of minimum qualification does not make the person eligible for promotion even if he had appeared in final examination. In JT 1994 (1) SC at page 94 *U.P. Public Service Commission, Uttar Pradesh, Allahabad and Anr. v. Alpana*, the candidate who had applied for the competitive examination of Munsif was not possessed the degree of law which

was the minimum requisite qualification on the date fixed for receipt of the application forms. It was held that inspite of the fact that the candidate had subsequently acquired the degree of law, she was not qualified to apply for the post.

8. In the light of the above facts, the petitioner Ramdeo Prasad had no case at all for promotion in the post of lecturer as he did not possess the minimum qualification on the date on which the vacancy had occurred. The mere fact that on some assurance he was taking classes which were expected to be taken by the duly appointed lecturer in Economics would not clothe him with a legal right to claim promotion. It was merely an internal arrangement that he was required to take up the classes in Economics. This arrangement ultimately ceased when Sanjay Kumar Singh came to be appointed on ad hoc basis.

9. Now it is the time to consider the case of the rival claimant I.e., Sanjay Kumar Singh. He was admittedly appointed by the President of the Nagar Palika on 3-12-1990 on ad hoc basis Learned counsel for Ramdeo Prasad pointed out that there was no justification for appointment en ad hoc basis of an outsider particularly when the post was initially to be filled up by promotion. This submission is now (sic) in view of the finding recorded above that neither Ramdeo Prasad nor any other teachers was qualified for promotion, to the post of lecturer in Economics. Since none of the teachers in L.T. grade had the requisite qualification for being promoted to the post of lecturer in Economics, the ether way left out was to approach the Commission to make appointment and if the Commission did not act promptly or responded well within time in that event the Management, had the right to appoint a teacher under certained specified conditions on ad hoe basis till such time a duly select, regular candidate is appointed. Relevant papers were submitted to the Commission but since no action was taken Saanjay Kumar Singh was appointed on ad hoc basis. It appears that the District Inspect of Schools did not accord approval to the ad hoc appointment of Sanjay Kumar Singh with the result he had to approach this Court by filing writ petition No. 31199 of 1991, which was finally decided on 23-1-1993 by this Court with the direction that the District Inspector of Schools, Varanasi shall ensure payment of salary and other dues to Sanjay Kumar Singh in accordance with law within a period of two months from

the date of production of a certified copy of the order.

10. In pursuance of the said order, the District Inspector of schools issued instructions to the Management/principal of the College on 16-11-1993 (Annexure-3 to the writ petition No. 1655 of 1994) to make payment of salary to Sanjay Kumar Singh. Ramdeo Prasad moved an application for reviewing/recalling the order dated 23-1-1893 passed in the aforesaid writ petition. This application was rejected on 2-12-1993 by this Court primarily on the ground that by order dated 23-1-1993 the rights of the parties were not decided and that Ramdeo Prasad being totally stranger, he cannot agitate the matter and it was the legal obligation of the District Inspector of schools to decide as to whether Sanjay Kumar Singh was entitled to the payment of salary or not. After rejection of the application moved by Ramdeo Prasad before this Court by order dated 2-11-93 Annexure-4 to the writ petition No. 16567 of 1994, the District Inspector of Schools Passed the impugned order (Annexure-5) on 21-12-1993 observing therein that the earlier order dated 23-1-1993 has been recalled by this Court on the application of Ramdeo Prasad and therefore payment of salary cannot be made to Sanjay Kumar Singh, The Account Officer was directed by the District Inspector of Schools to stop payment of salary to Sanjay Kumar Singh. It is this order which has been challenged and criticised by V.K. Singh learned counsel for Sanjay Kumar Singh. It was urged that the impugned order dated 21-12-1993 passed by the District Inspector of Schools is clearly based on misreading of the order dated 2-12-1993 passed by this Court and that it is also clearly in conflict with this Court order dated 23-1-1993, This submission of the learned counsel is not without force.

11. A close reading of the orders dated 23-1-1993 and 2-12-1993 passed by this Court would make it amply clear that the court has passed and affirmed the direction that the District Inspector of Schools shall release and pay salary to Sanjay Kumar Singh if it is payable 'according to law'. The impugned order dated 21-12-1993 passed by the District Inspector of Schools does not indicate that the payment of salary was denied to Sanjay Kumar Singh on the ground that he was not entitled to receive the same 'according law'. On the other hand the impugned order indicates that the payment of salary was withheld on the ground that the earlier order dated 23-1-1993 passed by this Court stands recalled. This is nothing

but a total misreading of the two orders passed by this Court.

12. The subsequent order dated 2-12-1993 has the effect of rejecting the application moved by Ramdeo Prasad. Earlier order dated 23-1-1993 was neither set aside nor re-called. As a matter of fact, it was reaffirmed with the clarification that Sanjay Kumar Singh shall be paid his salary if he otherwise is entitled according to law. Ramdeo Prasad was never promoted on the post of lecturer in Economics and therefore he could not get the salary of the said post. He was simply making frantic effort to fulfil his aspiration to become a lecturer but unfortunately he could not succeed as he did not have the minimum requisite qualification on the date on which the vacancy had occurred. Ramdeo Prasad, therefore, was totally out of fray and had no locus standi to challenge or to seek review or modification of the order dated 23-1-1993 dated in writ petition No. 31199 of 1991, Sanjay Kumar Singh was appointed on ad hoc basis and he, infact, continued to work as lecturer in Economics in the college from 10-12-1990. He is armed with the order dated 23-1-1993 passed by this Court whereby a categorical direction was issued to the District Inspector of Schools and the Manager of the college to make payment of salary to him . This order was acted upon by the District Inspector of Schools by passing order dated 16-11-1993. This order, however, was given a complete go-bye by the impugned order 21-12-1993 on a totally misconceived assumption that the order dated 23-1-93 has been recalled The impugned order is absolutely based not only on wrong facts but on wrong interpretation and the misreading to the point of distertion of the order dated 2-12-93 whereby the application moved by Ramdeo Prasad was rejected. A person who has been allowed to work in pursuance of the order of appointment on ad hoc basis passed by a competent authority cannot be deprived of his legitimale dues particularly when his claim is further fortified and supported by the decision of this Court made in writ petition No. 31188 of 1991. If the impugned order dated 23-1-1993 is allowed to stand it would have the effect of setting as naught and rendering completely otiose the order dated 23-1-1993 passed by this Court without any corresponding advantage to the other rival claimant Ramdeo Prasad who had unsuccessfullystaked his clam to the post.

13. In the light of the order dated 23-1-1993 passed in Writ Petition No. : 31199 of 1991 Sanjay Kumar Singh is entitled to receive the salary right from his joining the post of lecturer in Economics throughout the period he has been working on the post and till such a regular selection and appointment on the post of lecturer in Economics is made from the Commission. The ad hoc appointment cannot be allowed to continue indefinitely.

14. For the reasons stated above, writ petition No, 21022 of 1994 filed by Ramdeo Prasad is dismissed while the Writ Petition No. 16567 of 1994 filed by Sanjay Kumar Singh succeeds. It is allowed and the order dated 21-12-1993 passed by the District Inspector of Schools, Varanasi (Annexure-5 to writ petition No. 16567 of 1994) is quashed. It is hereby directed that the respondents, i.e. District Inspector of Schools, Varanasi and the Committee of Management Nagar Palika Inter Collage, Moghal Sarai, Varanasi shall make payment of all the past arrears and dues of salary and allowances etc. to the petitioner Sanjay Kumar Singh for the period he had actually worked within a period of two months from the date of this order and shall continue to pay the same in future regularly. It is however, made clear that the continuance of Sanjay Kumar Singh in service in ad hoc basis is subject to the appointment and joining of a regular candidate who may be selected in due course according to law through the agency of the Commission. Since more than a decade had elapsed reconed from the date of occurrence of the vacancy on the post of lecturer Economics, it is expected that the authorities shall act swiftly to fillup the vacancy by a regular candidate duly selected as ad hocism cannot continue forever.