

Jai Kumar Singh Vs. the District Inspector of Schools and ors.

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Court : Allahabad

Decided On : May-01-2001

Reported in : (2001)2UPLBEC1571

Judge : Ashok Bhushan, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh Intermediate Education Regulations - Regulation 2(2)

Appeal No. : Civil Misc. Writ Petition No. 18483 of 1998

Appellant : Jai Kumar Singh

Respondent : The District Inspector of Schools and ors.

Advocate for Def. : C.K Rai and ;A.N. Rai, Advs. and ;S.C.

Advocate for Pet/Ap. : Santosh Kumar Singh, Adv.

Disposition : Petition allowed

Judgement :

Ashok Bhushan, J.

1. Heard learned Counsel for the petitioner, Sri C.K. Rai appearing for the respondent No. 4 and Sri A. N. Rai appearing for respondent No. 3. The respondents No. 2, 3 and 4 have already submitted counter affidavit to which

rejoinder affidavit has been filed by the petitioner. With the consent of the parties, I proceed to dispose of the writ petition finally.

2. There is an educational institution, namely, Mahabir Singh Intermediate College, Badilpur Haldi, Ballia which is a recognised institution receiving grant in aid. In the aforesaid institution sanctioned strength of Class III employee is three. One post of Librarian Clerk/Assistant Clerk fell vacant on 31.12.1994 on the retirement of Basudeo Singh. The respondent No. 3, Triloki Nath, who is a Class IV employee in the institution laid his claim for promotion on the aforesaid post of Clerk under Chapter III, Regulation II of the Intermediate Education Act on the ground that the said post is the promotional post. The Committee of Management, however, did not accede the claim of respondent No. 3 and proceeded to make appointment by direct recruitment on the post of clerk which fell vacant due to retirement of Basudeo Singh. The Committee of Management made direct appointment of Kunwar Tribuwan Singh and the papers seeking approval of the District Inspector of Schools were forwarded. In the institution one post of Head Clerk fell vacant due to retirement of Achhaybar Nath Mishra, the Head Clerk. On the said post, vide resolution dated 15.11.1995 Baij Nath Prasad who was Assistant Clerk was promoted. On account of promotion of Baij Nath Prasad his post fell vacant. The Committee of Management again proceeded to make appointment by direct recruitment on the second post which fell vacant due to promotion of Baij Nath Prasad and this time Committee of Management made appointment of the petitioner. The District Inspector of Schools did not pass any order approving or disapproving the appointment of the petitioner as well as the respondent No. 4. A writ petition was filed by the petitioner being writ petition No. 10891 of 1996, Jai Kumar Singh v. The district Inspector of Schools. Ballia and Ors., in which this Court passed an order on 2.4.1996 directing the District Inspector of Schools to pass appropriate orders in accordance with law on the papers submitted before him regarding appointment of the petitioner (Jai Kumar Singh). Another writ petition was filed by Kunwar Tribhuwan Singh being writ petition No. 10893 of 1996 in which this Court by order dated 1.4.1996 directed the respondents to decide the representation dated 20.10.1995 filed by Kunwar Tribhuwan Singh In pursuance of the orders passed by the High Court, the District Inspector of Schools has decided the matter vide his order dated 4.5.1998 and approved the

appointment of Kunwar Tribuwan Singh and further observed that the appointment of the petitioner was illegal. The aforesaid order dated 4.5.1998 is annexed as Annexure-8 to the writ petition.

3. Learned Counsel for the petitioner submitted that the order dated 4.5.1998 passed by the District Inspector of Schools is erroneous and based on misinterpretation of Chapter III, Regulation II of the U.P. Intermediate Education Act. It has been further submitted that the post which fell vacant due to promotion of Basudeo Singh was the post which ought to have gone under 50% promotion quota and the appointment of respondent No. 4 would not have been made on the aforesaid post by direct recruitment and the approval order of District Inspector of Schools is erroneous. Learned Counsel for the petitioner further submitted that since the post which fell vacant due to retirement of Basudeo Singh, under promotion quota, Triloki Nath would be promoted on the said post and the second post which fell vacant by promotion of Baij Nath Prasad under direct recruitment quota, petitioner must be approved.

4. Shri C. K. Rai, Counsel for the respondent No. 4 submitted that after retirement of Basudeo Singh, the post fell vacant for direct recruitment quota on 31.12.1994. The post which fell vacant should have been gone under direct recruitment quota and he has rightly been appointed on the said basis and there is no order passed disapproving his appointment. He has further submitted that Triloki Nath was considered by the Management and not found eligible for the promotion to Class III post. Hence there is no error in the approval order dated 4.5.1998. Learned Counsel for the respondent No. 3 submitted that Triloki Nath was eligible for the post which fell vacant on the retirement of Basudeo Singh. Learned Counsel for the respondent No. 3 also stated that no adverse entry was given at any time. The respondent No. 3 was eligible for promotion and his right cannot be neglected. In the order dated 4.5.1998 passed by the District Inspector of Schools has issued direction to the Committee of Management to submit the proposal of promotion.

5. I have considered the submissions made by the learned Counsels for the parties. It is not disputed that the sanctioned strength of post in the institution is three. It is stated that both Achhaybar Nath Mishra and Baij Nath Prasad were

appointed by direct recruitment and were not under promotional quota. Chapter III, Regulation 2 of the Regulations framed under the U.P. Intermediate. Education Act provides as under-

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2 iz/kku fyfid ,oa fyfid Js.kh dsLohr inksa ds dqy la;k dk ipkl izfr'kr laLFkk ea dk;Zjr fyfidksa ,oa prqFkZJs.kh deZpkfj;ksa esa ls inksfUur }kjk Hkjk tk;sxk A ;fn deZpkjh in gsrq fu/kkZfjrvgZrk j[krk gks rFkk og vksxs in ij 5 o'kZ dh vfojy ekSfyd lsok dj pqdk gksrFkk mudk lsok vfrys[k vPNk gks inksUufr vuqi;qDr dks NksM+ dj T;s'Brk dsvk/kkj ij dks tk;sxh A

bl IEcU/k esa ;fn dksbZ deZpkjh izcU/k lfefr dsfdlh] fu.kZ; dk vkns'k ls O;fLFkr gks rks og mlds fo:) ,sls fu.kZ; ;k vkns'k dsfnukad ls nks llrkg ds Hkhrj fujh{kd dks vH;kosnu dj ldrk gS] fujh{kd ,slsvH;kosnu ij ,sls vkns'k ns ldrk gS] ftUgsa og mfpr le>s A fujh{kd dk fu.kZ;vfUre gksxk vkSj izcU/kkf/kdkj 'kh?kz dk;kZfUor fd;k tk;sxk A

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6. Regulation 2(2) of the Act provides that 50% of the total sanctioned strength of Head Clerk and Clerk should be filled in by promotion. The Note to Regulation 2 further provides that while computing 50% of the post, the number less than half should be ignored and half or more than half should be treated as one. The total number of sanctioned strength being three, promotion quota according to Regulation 2 (2), comes to 1.5 and by virtue of Note, two posts have to be treated under promotion quota. On 31.12.1994 when Basudeo Singh required the post which fell vacant was to be filled by promotion of Class IV employees. Since the promotion quota was not completed on 31.12.1994, the said post went in the promotion quota. The Committee of Management committed error in treating the aforesaid post under the direct recruitment quota and further committed error in making appointment of respondent No. 4. With regard to the claim of promotion of

respondent No. 3, the respondent No. 3 has been representing to the District Inspector of Schools, claiming his promotion on the post of Basudeo Singh. In this context, reference is made to the letter of Principal which has been filed as C.A.-I to the counter-affidavit of Kunwar Tribhuwan Singh dated 18.6.1998. In the aforesaid letter it is clearly admitted that on the post of Basudeo Singh which fell vacant on 31.12.1994, Triloki Nath and Kalidas have made an application, for their promotion. Triloki Nath also made representation to the District Inspector of Schools against the direct appointment of Committee of Management for two vacant post in the Institution. Triloki Nath claimed that his promotion should be made on the post of Clerk. Triloki Nath further claimed that his promotion should be approved from 31.1.1995.

7. The District Inspector of Schools in his impugned order dated 4.5.1998 has taken the view that Kunwar Tribhuwan Singh has been appointed earlier, Jai Kumar Singh was appointed on the post which fell vacant subsequently. The District Inspector of Schools further stated that out of the two posts, one post has to be filled under promotion quota. After taking aforesaid view the District Inspector of Schools has approved the appointment of Kunwar Tribhuwan Singh and directed the Management to sent resolution on promotion of Triloki Nath, presumably on the second post the District Inspector of Schools has passed his decision that it was under the quota of direct recruitment whereas the District Inspector of Schools ought to have decided as to whether one post which fell vacant due to retirement of Basudeo Singh, fell in promotion quota or direct recruitment quota. From the facts stated, it is clear that the post which fell vacant due to retirement of Basudeo Singh was under the promotion quota and ought to have been filled by promotion. The appointment of respondent No. 4 being on the post of Basudeo Singh, which fell under the promotion quota, was wrongly approved by the District Inspector of Schools. On the post of Baij Nath Prasad, promotion of Triloki Nath ought to have been considered. As far as the direction with regard to the resolution being passed for promotion in favour of Triloki Nath, no error can be found. However, the promotion of Triloki Nath has to be on the post which fell vacant due to retirement of Basudeo Singh. The District Inspector of Schools has failed to consider the question of approval of petitioner's appointment who was directly appointed on the second post which fell vacant due

to promotion of Bajj Nath Prasad. The order of District Inspector of Schools in so far as it approves the appointment of Kunwar Tribhuvan Singh is liable to be quashed. Regarding the claim of promotion Triloki Nath there is no convincing material on record to suggest that he was ineligible for promotion, hence no fault can be found with the order of District Inspector of Schools directing the Committee of Management to submit for resolution of promotion Sri C. K. Rai, Counsel appearing for the respondent No. 4 has submitted that second post could be re-advertised and the approval for appointment of petitioner should not be considered. At present no such direction can be made. It will be open to respondent to raise all his objection in accordance with law before the District Inspector of Schools when he considers the question of approval for appointment of the petitioner.

8. The District Inspector of Schools is directed to consider the claim of the petitioner for approval on the post of Assistant Clerk which fell vacant due to promotion of Bajj Nath Prasad. The direction of District Inspector of Schools to the Management to submit resolution for promotion of Triloki Nath is maintained. The District Inspector of Schools should take appropriate decision as directed above within a period of two months from receiving the copy of the order. The writ petition is, therefore, partly allowed as indicated above.

9. The parties shall bear their own costs.