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Raj Kumar Singh and Another Vs. District Inspector of Schools, Azamgarh and Others

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Court : Allahabad

Decided On : Dec-11-1998

Reported in : 1998(4)AWC655

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh Intermediate Education Regulations, 1921 - Regulations 100 and 101

Appeal No. : C.M.W.P. No. 37602 of 1998

Appellant : Raj Kumar Singh and Another

Respondent : District Inspector of Schools, Azamgarh and Others

Advocate for Def. : S.C. and K.R. Singh

Advocate for Pet/Ap. : V.K. Singh, Adv.

Judgement :

D.K. Seth, J.

1. By an order dated 3rd November. 1997, prior approval was accorded for filling up the two posts of Assistant Clerks and four posts ofPeons. Accordingly,

petitioners No. 1 and 2 were appointed on the posts of Peons. By an order dated 16th December, 1997, the financial approval was accorded to the appointments of the petitioners from the date of their finding which is apparent from Annexure 6 to the writ petition.

2. Mr. V. K. Singh, learned counsel for the petitioners contends that despite these two orders, the petitioners are not being paid their salaries.

3. Mr. K. R. Singh, learned. Standing Counsel contends that said appointments could not be made without prior a proval in view of Regulation 101. Chapter III of the Regulations framed under the U. P. Intermediate Education Act, 1921. in the present case, prior approval to the appointment having not been granted, there is no scope for payment of salary.

4. I have heard both Mr. V. K. Singh and Mr. K. R. Singh at length.

5. Regulation 100, Chapter III of the said Regulations provides that various provisions mentioned in the said Regulation would not be applicable in case of Class IV staff. The appointing authority of the Class IV staff has been described as the Principal in the said Regulation 100. Regulation 101 prescribes that no vacancy in the posts other than teachers could be filled up without prior approval of the District Inspector of Schools. The expression used is that 'no vacancy could be filled up except with prior approval'. This has been sought to be interpreted by Mr. K. R. Singh to mean appointment. Appointment of a particular person against a vacancy is completely different from filling up the vacancy. If it was so intended, in that event, it could have included that neither the vacancy could be filled up without prior approval nor the appointment could be given without prior approval. In absence of any specific provision, the expression used cannot be interpreted to mean as Mr. K. R. Singh wanted to mean. By virtue of Annexure I. dated 3rd November, 1997. approval to the Principal was accorded for filling up the post of Peon. After the approval was given, the Principal being the appointing authority having appointed the petitioner, financial sanction was also accorded. This very fact shows that the authority also did not insist that prior approval to the appointment ought to have been obtained after approval to fill up the post was accorded. The very grant of financial sanction proves counter to the contention of

Mr. K. R. Singh.

6. Be that as it may, the approval having been granted before the appointment was made and before the vacancy has been filled up and financial sanction having been accorded after the appointment has been made, question of granting prior approval to the appointing cannot be any more in issue.

7. In the facts and circumstances, if approval as contained in Annexure 1 and 6 as aforesaid are granted, in that event, the petitioners would be eligible and entitled to receive salary during which they had actually worked from the date of their joining.

8. In the circumstances, this writ petition is disposed of by directing the concerned respondents to consider the petitioners case on the basis of the representations that may be filed within a period of four weeks from date in the light of the observations made above for the payment of salary to the petitioners provided they have been so appointed duly pursuant to the advertisement for filling up the posts and prior approval was accorded by the order dated 3rd November, 1997 contained in Annexure 1 and their appointments have been so approved by the order dated 16th December. 1997, contained in Annexure 6. Such a consideration shall be affected as early as possible, within a period of 2 months from the date of receipt of representations alongwith the copy of this order. No cost.

Let a copy of this order may be issued to the learned counsel for the petitioner on payment of usual charged within 7 days.

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