

Vinod Kumar Vs. District Inspector of Schools and ors.

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Court : Allahabad

Decided On : Oct-25-2002

Reported in : 2003(1)AWC289; (2003)1UPLBEC100

Judge : Rakesh Tiwari, J.

Acts : Uttar Pradesh Secondary Education Service Selection Boards Act, 1982 - Sections 18

Appeal No. : C.M.W.P. No. 25604 of 1993

Appellant : Vinod Kumar

Respondent : District Inspector of Schools and ors.

Advocate for Def. : C.P. Srivastava, ;Ashok Bhushan and ;Anil Bhushan, Advs. and ;S.C.

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

Disposition : Petition allowed

Judgement :

Rakesh Tiwari, J.

1. Heard learned counsel for the parties and perused the record.

2. The vacancies of Assistant Teachers in L. T. grade fell vacant on account of retirement of two teachers of the same grade in Adarsh Uchchattar Madhyamik Vidyalaya, Daula, district Meerut (hereinafter referred to as the college). The college is an Intermediate College and has been recognised by the U. P. Board of High School and Intermediate Education and its on the Grants-in-Aid of the State Government.

3. On occurrence of the vacancies in the college, they were notified to the Service Commission on 15.4.1991. As no appointment was recommended by the Commission, the Managing Committee of the college proceeded to make appointment under Section 18 of the U. P. Secondary Education Service Selection Boards Act, 1982, by advertising the vacancies in the newspaper 'Dainik Prabhat', dated 25.6.1991.

4. In pursuance of the aforesaid advertisement for the two posts of teachers in Mathematics and Drawing subjects, the petitioner submitted his application. After interview, one Babu Ram Yadav was selected for the post of Drawing teacher and the petitioner was selected in L.T. grade for the post of Mathematics teacher. Pursuant to his selection, the petitioner joined the post on 8.7.1991. The Committee of Management also forwarded all the relevant papers regarding the appointment of both the teachers to the District Inspector of Schools for approval. However, the District Inspector of Schools, respondent No.1, did not pass any order approving or disapproving their appointments, as such reminders, dated 17.11.1991, 20.1.1992 and 27.10.1992 were sent by the Management of the college to the District Inspector of Schools for approval of appointment of the petitioner and payment of salary to them.

5. Aggrieved, Babu Ram Yadav, who was selected as Drawing teacher, filed Writ Petition No. 1974 of 1992 in this Court. By judgment and order, dated 23.4.1992, this Court directed the District Inspector of Schools to pay salary to Babu Ram Yadav. The petitioner also filed Writ Petition No. 41471 of 1992 which was disposed of by judgment and order, dated 13.11.1992 directing the District Inspector of Schools to decide the petitioner's representation regarding payment of salary. The District Inspector of Schools, vide order dated 21.6.1993 held that

there are only 13 sanctioned posts of teachers in L. T. grade in the college out of which 12 posts had already been filled and 13th post was filled up in pursuance of the letter, dated 11.1.1993 issued from the office of the District Inspector of Schools appointing one Smt. Rajeshwari Devi on ad hoc basis. Thus, the District Inspector of Schools disposed of the representation concluding that there was no vacant post on which the services of the petitioner could be approved. It is pertinent to state here that 12 posts which were filled up also includes the post on which Babu Ram Yadav was appointed as Drawing teacher in pursuance of the advertisement, dated 25.6.1991. It is not known how Smt. Rajeshwari Devi was selected. She was appointed for one month when counter-affidavit was filed.

6. The petitioner contends that as he was also appointed on 8.7.1991 along with Babu Ram Yadav in pursuance of advertisement, dated 25.6.1991, there was no post on which the District Inspector of Schools could have validly appointed Smt. Rajeshwari Devi, vide letter, dated 11.1.1993 and as such ad hoc appointment of Smt. Rajeshwari Devi on the post of the petitioner for a short period was illegal and with ulterior motive to defeat his claim. After filing counter-affidavit, her appointment was cancelled. He submits that he was not given any opportunity to prove that documents regarding his appointment were in fact sent by the Management to the District Inspector of Schools, as such the impugned order also suffers from the vice of violation of principles of natural Justice. The appointment letter of Smt. Rajeshwari Devi has been annexed as Annexure-4 to the writ petition to show that she has been appointed on 11.1.1993. The petitioner further contended that Smt. Rajeshwari Devi was not qualified to teach Mathematics even to High School class and could not have been appointed to the post. The petitioner is aggrieved by the order, dated 21.6.1993 passed by the District Inspector of Schools on the basis of which the Manager of the college has terminated the service of the petitioner, vide letter dated 24.6.1993.

7. At the time of admission of the writ petition, this Court passed the following order on 15.7.1993 :

'Sri Vinod Kumar standing counsel accepted notice for respondent Nos. 1 and 2. He prays for and is granted a month's time to file counter-affidavit. Petitioner will

have two weeks thereafter to file the rejoinder-affidavit.

The petitioner shall take steps to serve respondent No. 3 personally in addition to the normal mode of service.

List after expiry of the aforesaid period.

In this petition, the petitioner and one Babu Ram Yadav were appointed by the management under appointment order dated 8.7.1991. Papers for obtaining necessary approval in respect of both the teachers were forwarded to the D.I.O.S. However, approval in respect of Babu Ram Yadav was granted and no orders were passed in respect of the petitioner.

The petitioner approached this Court by means of the writ petition which was finally decided on 18.11.1992 and the D.I.O.S. was directed to decide the matter pending before him. The D.I.O.S. by his order dated 17.6.1993 has refused to grant approval on the ground that he has made one appointment on 11.1.1993 and there is no vacant post now in the college and the approval cannot be granted. In my opinion, the D.I.O.S. has been responsible for the delay in the matter as he kept the matter pending and did not pass any order. Petitioner cannot be allowed to suffer.

The petitioner shall be allowed to work on the post and shall be paid his salary, until further orders of this Court.'

In pursuance of the aforesaid interim order, the petitioner is continuing in service.

8. Smt. Rajeshwari Devi was appointed for short period and is no more in service. She was also not qualified to teach Mathematics.

9. In view of the undisputed facts, as appears from the narration above, the petitioner had a right to be appointed on 13th post as he was appointed along with Babu Ram Yadav in pursuance of advertisement, dated 25.6.1991 and the District Inspector of Schools could not have appointed Smt. Rajeshwari Devi, vide letter, dated 11.1.1993 by withholding the approval of the appointment of the petitioner. It is the duty of the Court not only to do Justice but also to prevent injustice and the

Court would be failing in its duty if it does not prevent the injustice meted out to the petitioner by the respondents as the District Inspector of Schools deliberately withheld the approval of the appointment of the petitioner and colluded with other respondents in appointment of Smt. Rajeshwari Dev for ulterior motives vide order, dated 11.1.1993, which is improper.

10. In view of the reasons state above, the order, dated 21.6.199 passed by the District Inspector of Schools and orders dated 24.6.199 passed by the Manager of the college, cannot be sustained and are liable to be quashed.

11. The writ petition is allowed. The impugned orders, dated 21.6.1993 and dated 24.6.1993 are quashed. The respondents are directed to pay salary to the petitioner from the date of his appointment and by adjustment of the salary already paid to him in pursuance of the interim order of this Court, dated 15.7.1993. The petitioner shall also be entitled to all consequential benefits of the post since his date of appointment.

12. No order as to costs.

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