

Ashraf Ali Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-05-2008

Reported in : [2008(117)FLR927]

Judge : Sanjay Misra, J.

Appellant : Ashraf Ali

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. G.K. Singh

Judgement :

Sanjay Misra, J.

1. Heard Sri G.K. Singh learned Counsel for the petitioner and learned Standing Counsel for respondent No. 1 and 2 Sri Jitendra Singh on behalf of Sri. Mahfooz Qazi (complainant who has not been made a party in the writ petition).

According to learned Counsel for the petitioner the petitioner was given appointment as Assistant Teacher in Muslim Qudrat Inter College, Seohara, District Bijnor on the vacancy created due to promotion of one Sri Shamim Ahmad Zaidi and by an order dated 21.8.1995 (Annexure 4 to the writ petition) passed by the District Inspector of Schools, Bijnor the approval to his appointment was duly given. According to the petitioner upon the complaint of one Sri Mahfooz Qaji who

claims to be the member of the committee the District Inspector of Schools has proceeded and passed the impugned order directing for cancelling the appointment of the petitioner and stopping his salary on the ground that at the time of appointment in the year 1995 the petitioner did not possess the requisite qualifications to be appointed.

2. According to learned Counsel for the respondents the approval order dated 21.8.1995 itself was conditional and the approval was granted on the ground that if any such fact contrary comes to his notice the approval would automatically stand withdrawn. They therefore state that when the fact that the petitioner was not eligible for appointment came to the knowledge of the authorities the impugned order has been passed. Sri Jitendra Singh states that since the year 1996 Sri Mahfooz Qazi has been complaining relating to appointment of the petitioner illegally and it is only now that the District Inspector of Schools has considered the complaint and passed the impugned order, therefore, it cannot be said that the impugned order has been passed after 13 years of appointment of the petitioner.

3. Sri G.K. Singh contended that the impugned order in any case is liable to be set aside since no notice or opportunity of hearing was given to the petitioner, while directing to proceed with cancellation of his appointment and stopping the salary of the petitioner, he states that the impugned order has been passed in gross violation of principles of natural justice which is required to be given in accordance with Section 16-E(10) of the U.P. Intermediate Education Act.

4. Having considered the submission of learned Counsel for the parties and perused the impugned order it appears that no notice was given to the petitioner nor any opportunity was extended to him prior to passing the same. For this reason alone the impugned order cannot be said to have been passed in a fair manner since any civil consequences which may be visited upon the petitioner are to be made only after affording an opportunity to him. Therefore without going into the merits of the dispute raised by either of the parties the impugned order is liable to be set aside for having been passed in violation of principles of natural justice. For the aforesaid reasons the impugned order dated 16.4.2008 (Annexure 11 to the writ petition) stands set aside and the competent authority is required to

consider the complaint of Sri Mahfooz Qazi in accordance with law after giving opportunity to the petitioner and any other person who would be otherwise interested in the same preferably within two months.

The writ petition stands allowed to the above extent. No order is passed as to costs.

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