

(1996) 08 AHC CK 0033

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 1202 of 1982

Kripa Shankar Tripathi

APPELLANT

Vs

Deputy Director of Education,
IVth Region and Others

RESPONDENT

Date of Decision: Aug. 6, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Intermediate Education Regulations, 1921 - Regulation 6(1)

Citation: (1997) 1 UPLBEC 533

Hon'ble Judges: J.C. Gupta, J

Bench: Single Bench

Advocate: C.M. Srivastava and R.N. Pandey, for the Appellant;

Final Decision: Dismissed

Judgement

J.C. Gupta, J.

By means of the petition under Article 226 of the Constitution, the petitioner has prayed for quashing of the order dated 1-1-1982 passed by the Deputy Director of Education respondent No. 1 (Annexure 5) and the appointment of respondent No. 4.

2. The allegations made in the writ petition in short are that upon the retirement of Sri Janki Nath Tripathi, a permanent vacancy of a Sanskrit teacher in L. T. Grade in the Sarvarya Mahavidyalaya, Prayag, Madhwapur, Allahabad occurred. The aforesaid vacancy and other vacancies for appointment of Sanskrit teacher in L T. grade and other grade were advertised on 26-9-1979 for being filled up by direct recruitment. Upon a representation by the petitioner and some other teachers of the institution, the District Inspector of Schools ordered that the appointment in L T. grade in the institution through promotion was less than 40 per cent the vacancy in the post of a trained Sanskrit teacher in L. T. grade be filled up by promotion from against the teachers with prescribed qualifications on the basis of

seniority-cum-merits. One Girja Shanker Pandey was appointed in C. T. grade in pursuance of the advertisement by direct recruitment. He was not a teacher already working in L. T. grade in the institution and was not eligible for the purpose of appointment as a Sanskrit teacher in the aforesaid vacancy of Sri Janki Nath Tripathi nor Sri Pandey was approved in the absence of the recommendation by a duly constituted Selection Committee. Therefore, merely because Sri Pandey was illegally teaching Sanskrit, the vacancy caused by the retirement of Sri Janki Nath Tripathi, could not be deemed to have been filled up. Section 16-F of the Act prohibited teaching of Sanskrit subject in High School classes by a teacher not duly appointed in the L. T. grade.

3. The Committee of Management through a resolution dated 17-1-1981 decided to promote and appoint Sri Kamta Prasad Misra, respondent No. 4 in the vacancy in question and submitted proposal to the District Inspector of Schools for approval. According to the petitioner he was not eligible for the post of Sanskrit teacher for High School classes in L. T. grade as he did not have the minimum qualification for Sanskrit teacher as prescribed under Chapter V Appendix-A of the list of minimum qualifications. The minimum qualifications for such a teacher is trained B. A. with Sanskrit. Sri Kamta Prasad Misra was not a B. A. with Sanskrit as such was not eligible for promotion in the aforesaid vacancy. Only the petitioner could be considered as he was the seniormost eligible teacher possessing the required qualifications being M. A. with Hindi and B. A. with Sanskrit, Hindi and Ancient History as his subjects. The District Inspector of Schools by his order dated 9-2-1981 (Annexure 4) accepted petitioner's plea and rejected the proposal sent by the Committee of Management for the appointment of respondent No. 4 on the ground that he did not possess the requisite qualifications. The Committee of Management filed an appeal under Regulation 7 of Chapter II of the Regulations before the respondent No. 1 who by the impugned order dated 1-1-1982 (Annexure 5) allowed the appeal, set aside the order of the District Inspector of Schools and accepted the proposal sent by the Committee of Management for appointing respondent No. 4 as a teacher in L. T. grade. According to the petitioner the vacancy in question was earmarked for a trained Sanskrit teacher in L. T. grade and not for Hindi or Hindi-cum-Sanskrit teacher as miss-understood by respondent No. 1. The other ground of challenge is that Sri Girja Shankar Pandey, who was appointed as a Sanskrit teacher in C. T. grade by direct recruitment in pursuance of the advertisement published in 26-9-1979, was not competent to teach Sanskrit in L. T. grade in Hindi School classes. His teaching to the High School classes in Sanskrit was unauthorized and against the mandate of the Statute and the post of the Sanskrit teacher remained vacant Sri Girja Shankar Pandey was not already working in the institution having been appointed by direct recruitment in C. T. grade much after the occurrence of vacancy in question and as such was not eligible for promotion. He also not possess the requisite experience and length of service as required under Regulation 6. In short, the case is that the mere fact of teaching Sanskrit by a C. T.

grade teacher, appointed by direct recruitment after the occurrence of vacancy would not have an effect of filling up the vacancy of the Sanskrit teacher in L. T. grade which occurred on account of the retirement of Sri Janki Prasad Tripathi. It is further claimed that respondent No. 1 has wrongly assumed that it was open to an institution to get any subject in any class taught by any teacher in any grade.

4. Counter-affidavit on behalf of respondent No. 3 has been filed, wherein in paragraph 4 it is stated that after the impugned order dated 1-1-1982 was passed, financial approval was accorded on 18-1-1982 for the appointment of respondent No. 4, but later on by the order dated 17-4-1982 the District Inspector of Schools withdrew the financial approval because the post on which the respondent No. 4 was directed to be promoted, did not remain alive according to the "Manak", hence the approval given for appointment of respondent No. 4 was recalled. According to the defence of respondent No. 3 once the approval given for the appointment of respondent No. 4 has been recalled, respondent No. 4 continued to work in C. T. grade and since the post did not remain alive, the writ petition has become infructuous. It is further stated that the petitioner was appointed on 12-7-1973 ; whereas the respondent No. 4 was appointed on 13-9-1966 and in order of seniority the name of petitioner stood at Serial No. 4. He was thus not the seniormost teacher in C. T. grade. In addition to that, the petitioner did not possess the requisite qualification on the date of occurrence of vacancy i.e. on 1-7-1976 as by that date he has not put in five years continuous substantive service having been appointed on 12-7-1973. It is further stated that Sri Janki Nath Tripathi was teaching both Hindi and Sanskrit in the institution and due to his retirement a vacancy of a teacher in L. T. grade arose, which as per the order of District Inspector of Schools, was to be filled up by promotion. The Committee of Management resolved to promote respondent No. 4 as he was eligible and entitled to the promotion being the senior most teacher in C. T. grade. It is further claimed that although Girja Shanker Pandey was appointed in C. T. Grade, but in fact he was possessing qualification of D. Phil in Sanskrit and was qualified for teaching Sanskrit subject to the students of classes IX, X, XI and XII. Apart from that, the then Principal of the institution Sri Ram Nihor Tripathi was also M. A. in Sanskrit and was teaching Sanskrit to Intermediate classes. Three more teachers in L. T. grade were fully qualified to teach Sanskrit to classes IX and X being B. A. with Sanskrit. As such there was no need of any fresh recruitment on the post of L. T. grade teacher in Sanskrit. In these circumstances the name of respondent No. 4 was recommended by the Committee of Management for his promotion and appointment as a teacher in L. T. grade. In nutshell the case of respondent No. 4 is that the petitioner was neither senior most teacher of the institution nor he was qualified to be promoted in L T. grade.

5. The first and foremost question that arises for consideration is whether the petitioner on the admitted position of facts possessed the requisite qualifications entitling him for promotion as a teacher in L. T. grade ?

6. Regulation 6 (1) of Chapter II of the Regulation framed under the U. P, Intermediate Education Act deals with the appointment of the teacher in Lecturer grade or in L. T. grade on a vacancy occurring. This regulation is meant for being applied to the case of promotion, for which two qualifications are required :

1. That a teacher must have a minimum of five years continuous substantive service to his credit on the date of occurrence of the vacancy.

2. That he must possess the minimum qualifications for teaching the subject.

7. In the instant case indisputably the vacancy in question occurred on 1-7-1976; whereas the petitioner was appointed as a Assistant Teacher in C. T. Grade on 12-7-1973. From this it is clear that on 1-7-1976 the petitioner had not completed the requisite period of five years of continuous service. The learned Counsel for the petitioner argued that the vacancy for making appointment was notified on 26-9-1979. The District Inspector of Schools by his order dated 1-2-1981 ordered the said vacancy to be filled up by promotion. Therefore, for the purpose of Regulation 6 the relevant date would be 9 2-1981 and as by that date the petitioner had acquired requisite experience, a lacuna or defect which the petitioner had on 1-7-1976 stood cured and removed.

8. in the decision in Committee of Management, Sri Param Hans Intermediate College v. Additional Director of Education U. P., reported in 1981 UPLBEC 50, a Division Bench of this Court had the occasion to examine Regulation 6 (1) and it was held that the condition precedent is possession of minimum of five years" continuous substantive service. Such five years" service should have been completed on the date of occurrence of the vacancy. Therefore, the testing date under Regulation 6 (1) is the date of occurrence of vacancy.

9. In another decision in Harish Chandra Misra v. District Inspector of Schools, Jaunnur and Ors. (1986) 1 UPLBEC 169, this Court has held that in the care of promotion, the intention appears to be that a person applying must have the qualifications required on the date of occurring of the vacancy, otherwise he cannot be considered for the same. The insistence is with reference to the date of occurring of the vacancy. The contention that the requirement of minimum qualification is not to be decided with reference to the date of occurrence of the vacancy, but with reference to the date on which the appointment was made, was rejected.

10. In another decision of this Court in Hart Narain v. District Inspector of Schools, Deoria and Ors., reported in 1984 AWC 48, the same view has been taken that the relevant date for consideration of appointment by promotion under Regulation 6 (1) is the date of occurrence of vacancy and no other date.

11. In view of this settled position of law, it is apparent from the facts of the present case that on July 1, 1976, the date on which the vacancy occurred due to the retirement of Sri Janki Nath Tripathi the petitioner had not put in the requisite

period of five years of continuous substantive service in C.T. grade on account of his having been appointed in that institution on 12-7-1973. Consequently he lacked the basic requirement for being considered for appointment of a teacher in L T. Grade on occurrence of the aforesaid vacancy. On that date he had not acquired any right which could entitled him for consideration for promotion from C. T. Grade to L T. Grade and that being the position he cannot have a right to seek writ jurisdiction of this Court under Article 226 of the Constitution.

12. Before invoking writ jurisdiction under Article 226 of the Constitution of India, the petitioner must satisfy the Court that a legal right exists in his favour which has been invaded or infringed. In the absence of the existence of a legal and enforceable right in his favour, petitioner is not entitled to get any writ or direction issued in his favour under Article 226 of the Constitution, where the petitioner does not possess any enforceable legal right in himself, this Court is not required to make a futile attempt to Judge the correctness or otherwise of the action or order of the authority concerned because such an attempt will be purely academic and of no consequence. Therefore, on this ground alone this writ petition is liable to be dismissed.

13. The learned Counsel for the petitioner argued that Regulation 20 of Chapter II states that where the Committee of Management has failed to advertise any sanctioned post, which has fallen vacant, in accordance with the Regulations within a period of three months from the date of occurrence of the vacancy, such post shall be deemed to have been surrendered and shall not be filled up, unless its creation is sanctioned afresh by the Director. The learned Counsel for the petitioner contended that as the vacancy in question was not advertised within a period of three months from the date of occurrence of the vacancy on 1-7-1976, the post stood surrendered and since it was advertised for being filled up on 26-9-1979, the said date could only be taken to be the date of occurrence of the vacancy. I fail to appreciate this line of argument of the learned Counsel for the petitioner specially in the absence of pleadings to that effect. There is nothing in the writ petition as to when the fresh sanction by the Director was accorded. In any view of the matter if the said post could not legally be filled up in the absence of creation of the post afresh under the sanction of the Director, neither the petitioner nor any other person could be considered for the appointment by promotion.

14. There is yet another aspect of the case which has to be considered. By the impugned order of respondent No. 1 the order of the District Inspector of Schools was set aside and the recommendation of the Committee of Management for the promotion of respondent No. 4 was restored. Accordingly the respondent No. 4 was promoted and financial approval was accorded by the District Inspector of Schools on 1-1-1982. However, later on the said financial approval was withdrawn by the order dated 18-1-1982 on the ground that the post was not alive on the relevant date on the basis of the "Manak" and the promotion of respondent No. 4 has been

recalled. In the changed stated of affairs, when the financial approval for the post in question has been withdrawn and even promotion of respondent No. 4 has been recalled no cause of action services to the petitioner and the writ petition is liable to be dismissed also on the ground having become infructuous.

15. For the above reasons and discussions, this writ petition is liable to be dismissed and accordingly it is dismissed. There shall be no order as to costs.