

(2002) 01 AHC CK 0046

Allahabad High Court

Case No: C.M.W.P. No. 20386 of 1999

Prashant Kumar Tyagi

APPELLANT

Vs

District Inspector of
Schools, Moradabad
and Others

RESPONDENT

Date of Decision: Jan. 23, 2002

Citation: (2002) 2 AWC 1302

Hon'ble Judges: R.K. Agrawal, J

Bench: Single Bench

Advocate: Prakash Padia, for the Appellant; R.K. Mathur, S.C., for the Respondent

Final Decision: Allowed

Judgement

R.K. Agrawal, J.

Heard Sri Prakash Padia, learned counsel for the petitioner, Sri R.K. Mathur, who represents the Committee of Management, respondent No. 3 and the learned standing counsel, who represents respondent Nos. 1 and 2.

2. By means of this writ petition, the petitioner has prayed for quashing the order dated 1.5.1999 passed by respondent No. 1 and order/letter dated 10.5.1999 passed by respondent No. 3 (Annexures-8 and 9) respectively. A further prayer has been made for a direction to the respondents to pay salary of the petitioner along with arrears of salary w.e.f. 22.2.1999.

3. On account of retirement of one Lecturer in the College, said vacancy was filled in by ad hoc promotion and thus short-term vacancy arose in the college in L.T. grade. As the aforesaid vacancy in L.T. grade was filled up on short-term basis, the Manager requested the D.I.O.S. to fill up the same. As no action was taken by the D.I.O.S., the management appears to have advertised the post in question in two daily newspapers, namely, "Pioneer" and "Aaj1. The extracts of the advertisement published in the newspapers are Annexures-1 and 2 to the writ petition. The

petitioner claims to have been duly selected in respect to which an appointment letter was Issued on 20.2.1999. In the light of the appointment letter so issued, the petitioner joined his duties on 22.2.1999. When the papers were sent by the management to the D.I.O.S. on 23.2.1999 and no orders were passed, reminders were also given on 24.3.1999 and 6.4.1999 for issuing necessary order according to the financial approval, Thereafter by order impugned in this petition, i.e., 1.5.1999, it has been communicated that as no permission has been obtained for making appointment on the post in question, grant of approval/financial sanction is not possible. It is this order of the D.I.O.S, which made the petitioner aggrieved to come to this Court. Learned counsel for the petitioner submits that in view of the admitted facts and the materials as has been brought on record, it was a case of appointment on short-term vacancy in respect to which also after due Information to the D.I.O.S., the appointment/selection has taken place after publication in two newspapers having wide circulation. In this respect, according to learned counsel for the petitioner, the management was fully competent to make appointment as the case was covered under Second Difficulty Removal Orders. Learned counsel argues that the D.I.O.S. appears to have some misconception of the fact when he has refused to accord approval to the petitioner. Learned standing counsel, on the basis of the counter-affidavit, argues that as the appointment of the petitioner was irregular, the D.I.O.S. has rightly passed the impugned order.

4. A perusal of the facts as stated in the counter-affidavit do not give any clear ground in response to the facts so pleaded in the affidavit. The averments made in the writ petition in respect to the short-term vacancy and in respect to Its publication in the newspapers and giving information to the D.I.O.S. even before proceeding with the selection, appear to have not been denied in the counter-affidavit. As the petitioner was duly selected in pursuance of the advertisement for short-term vacancy and in view of the fact that even after seven days, no disapproval was communicated and as such, the petitioner was entitled to continue on his post and to receive salary.

5. In view of this, order as has been passed by the D.I.O.S. cannot be sustained. This Court by passing interim order has already permitted the petitioner to continue in service and as such, as has been submitted by learned counsel for the petitioner, the petitioner is continuing in service.

6. Accordingly, this writ petition succeeds and is allowed. The impugned orders dated 1.5.1999 and order/letter dated 10.5.1999 as passed by respondent No. 3 (Annexures-8 and 9) are hereby quashed. As the petitioner is working he shall be entitled to his salary in accordance with law.

7. There will be no order as to costs.