

(1998) 07 AHC CK 0049

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 21372 of 1990

Rakesh Kumar Divedi

APPELLANT

Vs

Director of Education of Schools
U.P.Allahabad & Ors.

RESPONDENT

Date of Decision: July 20, 1998

Hon'ble Judges: D.K.Seth, J

Final Decision: Dismissed

Judgement

D.K. Seth, J.

In the present writ petition the petitioner has prayed for a writ of mandamus commanding the respondents to Regularise his service on the substantive post of C.T Grade Teacher and for payment of his salaries w.e.f. 1531982 till date.

2. It is alleged by the petitioner that there was a short term vacancy in the institution known as Gramodyogik Intermediate College, Ashok Nagar Bharswan, Fatehpur, for which a notice was duly pasted in the notice board of the institution after sending intimation to the District Inspector of Schools on 1021982 fixing 731982 as date for interview. The petitioner had appeared in the interview on 731982 and was selected for the appointment. The institution issued an appointment letter to the petitioner on 1231982. Pursuant to the such appointment letter, the petitioner had joined his duties on 1531982. It is alleged that the school authority had sent the particulars of the candidates selected and also the list of the quality point marks allotted to them to the District Inspector of Schools concerned on 3041982 and sought for the approval to the appointment of the petitioner given on 1231982. The District Inspector of Schools had disapproved the appointment of the petitioner.

3. On this back ground, Sri A.N. Tripathi, learned Counsel for the petitioner, contends that since the petitioner was appointed on short term vacancy under the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second), Order, 1981 and the procedure prescribed in paragraph 2 for such recruitment has been complied with and as the District Inspector of Schools having

not intimated his approval within seven days, the appointment of the petitioner shall be deemed to have been approved and as such the petitioner is entitled to the payment of his salary from 1531982 as well as he is also entitled for regularisation.

4. Sri K.R. Singh, learned standing Counsel appearing on behalf of the respondents, on the other hand, submits that the provisions of paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties (Second) Order, 1981, hereinafter referred to as Second Removal of Difficulties Order, having not been complied with, the appointment of the petitioner is invalid. The petitioner, having been refused approval by a specific Order, the question of prior approval does not arise. He points out that from the pleadings, it appears that there was infraction in the procedure for appointment as is provided in para 2 of the Second Removal of Difficulties Order. According to him, the provisions provided in para 2 are mandatory, infraction of which would lead to the invalidity of such appointment. He had pointed out that the papers were sent to the District Inspector of Schools on 3041982 and the approval was refused on 1551982 which, according to him, is within time. Then, again he points out that there cannot be any appointment before the expiry of seven days from the date of receipt of details alleged to have been sent. He specifically argued that there is no possibility of regularisation of petitioner's service as there has been no regular/substantive vacancy.

5. Sri AN. Tripathi, learned Counsel for the petitioner, in reply, relying on the decision in the case of Radha Raizada & Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College & Ors. 1994 (3) UPLBEC 1551, rendered by A Full Bench of this High Court, submits that no prior approval from the District Inspector of School is required when such ad hoc appointment is to be made under the Second Removal of Difficulties Order. He also relied on a decision in the case of Arvind Mishra and Others v. Deputy Director of Education Gorakhpur Region, Gorakhpur & Ors., 1996 (3) UPLBEC 1984 in order to contend that the ad hoc appointment does not require any prior approval. He then relied on a decision in the case of Shri Niwas Singh v. District Inspector of Schools, Ghazipur & Ors., 1998 (1) UPLBEC 276 in order to contend that the decision in the case of Radha Raizada is prospective and cannot be attracted in the present case which has arisen on the basis of Second Removal of Difficulties Order, 1981.

6. I have heard Sri A.N. Tripathi, learned Counsel for the petitioner and Sri K.R. Singh, learned standing Counsel at length.

7. So far as the decision in the case of Arvind Mishra (supra) is concerned, it has hardly any application in the facts and circumstances of this case. In the said case, para 5 of the first Removal of Difficulties Order has been dealt with, which point has no manner of application in respect of ad hoc appointment made on a short term vacancy. Since the procedure for making short term vacancy is provided in para 2 of the Second Removal of Difficulties Order and the short term vacancies are not governed by the First Removal of Difficulties Order, therefore, the compliance of

para 5 of the First Order is not necessary in respect of appointment against short term vacancies. The appointment against short term vacancies is to be governed by the provisions of second order. First Removal of Difficulties order applies in case of ad hoc appointment against substantive vacancy which is altogether different. Therefore, there is difference between the two orders i.e. First and Second Removal of Difficulties Orders. Whereas in the present case sub para (2) of Para 2 of the Second Removal of Difficulties Order applies in full force. Thus the ratio decidendi in Arvind Mishra (supra) has no manner of application in the present case.

8. So far as the decision in the case of Shri Niwas Singh (supra) is concerned, there is no two opinion that the decision in the case of Radha Raizada applies prospectively.

9. So far as the decision in the case of Radha Raizada (supra) is concerned, in paras 41, 42 and 43 it has dealt with the procedure of ad hoc appointment against short term vacancies. Para 41 of the judgment dealt with the situation that if contingency arises for ad hoc appointment of teacher by direct recruitment against substantive vacancy the procedure provided under the first Removal of Difficulties Order has to be followed. Paragraph 5 of the First Removal of Difficulties order provides that the management shall, as soon as may be, inform the District Inspector of Schools about the details of vacancy and the District Inspector of Schools shall invite application from the local employment Exchange and also through public advertisement in at least two news papers having adequate circulation. Para 43 of the Judgment deals with appointment in respect of short term vacancy. In the case of Arvind Mishra (supra) similar view was taken relying on the said decision in the case of Radha Raizada. There is no two opinion about the same. Sri Tripathi capitalised the observation made in para 43 of the said judgment to be extent that no further approval of the District Inspector of Schools is required for ad hoc appointment against short term vacancy. But the sentence, on which Sri Tripathi relied heavily, has to be read in the context of the judgment itself. The said observation infers the impression that if the procedure of para 2 of the Second order has been gone through and only when the procedure provided in para 2 of the Second Order is complied with, then further approval on such appointment is not required. Thus, it is to be supposed that the grant of approval to the ad hoc appointment to the short term vacancy is by way of either direct grant or may be by indirect grant i.e. if within seven days from the date of receipts of the particulars no such approval is granted, it is deemed to be approved and no further approval would be required, the ratio decidendi in Radha Raizada (supra).

10. This question has to be looked into on the basis of interpretation of clauses and explanation provided in subclause (iii) of Para 2 of the Second Removal of Difficulties Order which requires the management to intimate the vacancy to the District Inspector of Schools and also paste a notice of the same in the notice board. After such notification, the management is free to select the candidates. The manner of selection as has been laid down provides that the compilation of quality point marks

shall be done under the personal supervision of the Head of the institution. Clause (ii) provides that the names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval. The prior approval signifies that the approval is to be obtained before hand. The expression of word prior approval qualify clause (iv) which requires to be dealt with at a latest stage.

11. Clause (iii) requires the District Inspector of Schools to communicate his decision within seven days of the date of receipt of particulars by him, failing which the inspector will be deemed to have given his approval. There cannot be any ambiguity in interpretation to the extent of deeming approval in default of intimation of the approval within seven days. Nowhere in the writ petition, it has been pleaded that on which date the details forwarded on 3041982 has been received in the office of the District Inspector of Schools. It is also nowhere pleaded that the Committee of Management had waited for seven days after the receipt of such particulars by the District Inspector of Schools and only after the deemed approval came into being the appointment letter was issued. The expression of clause (iii) is qualified by clause (ii) regarding prior approval which interpretation finds support by clause (iv). Clause (iv) requires that on receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the management shall appoint the selection candidate and an order of appointment shall be issued under the signature of the Manager. Thus, only after the approval, as, contemplated in clauses (ii) and (iii), is received by the Committee of Management, the appointment letter can be issued under the signatures of the Manager. Therefore, the expression prior approval in clause (iii) is qualified by the expression used in clause (iv) which requires the school authority to issue appointment letter only after the receipt of approval but at the same time clause (iv) also contemplates the contingency of deemed approval of clause (iii). It contemplates that on failure to communicate the decision within seven days by the District Inspector of Schools, the management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

12. In the present case, the pleading has not disclosed such a position. There is nothing on record to indicate that after seven days of the receipt of details sent by the school authority on 3041982, the Management had issued the appointment letter.

13. Sri A.N. Tripathi, learned Counsel for the petitioner also contended that according to him the question of deemed approval would arise on the expiry of seven days from the date when the details are forwarded in terms of clause (ii), namely, on 3041982 and after the expiry of seven days from the date of sending of such details. The deemed approval is automatic. He contends that even if the

appointment letter has been issued before the papers were sent without waiting for the expiry of seven days from the date of the receipt of papers by the District Inspector of Schools since no approval was granted, there is automatic deemed approval. Therefore, according to him, the order of disapproval cannot be sustained.

14. The said submission of Sri Tripathi seems to be attractive though, in my opinion appears to be misconceived on various grounds. Firstly the petitioner has not disclosed as to on which date the papers were received by the District Inspector of Schools and on which date the period of seven days had expired. In the absence of such material, it cannot be said that the disapproval made on 1551982 was not within seven days from the date of the receipt of papers by the District Inspector of Schools. Secondly, clauses (ii), (iii) and (iv) specifically laid down the prior approval and issue of appointment letter only after the expiry of seven days from the date of receipt of papers. Thirdly, on the ground that the appointment letter, which had to be issued under the signature of Manager after the receipt of approval or on the expiry of seven days from the date of receipt of papers as contemplated in clause (iii). In the present case, the appointment letter was issued on 1231982 and, therefore, it cannot be said that the appointment letter was issued after the deemed approval. In the present case, there being no such appointment letter after the deemed approval, it is not possible to accept the contention of Sri Sri Tripathi. I have already observed that the procedure laid down in para 2 of the second Removal of Difficulties Order is mandatory and has to be complied with as has been provided therein. The procedure is clear. There is no ambiguity. There can be no interpretation except that has been made in the case of Radha Raizada (supra) which is to be followed. The prospectivity of the decision in the case of Radha Raizada is confined to the advertisement to be published in two news papers instead of being pasted on the notice board, which is not being attracted in the present case.

15. On the other hand, in the present case, the interview was held on 731982 and the appointment letter was issued on 123 1982 which is less than seven days, namely within five days. This appointment letter has no existence in the eye of law as it is issued within five days of the interview without complying the procedure prescribed in clauses (ii) and (iv). There has been infraction of the procedure provided in subpara (3) of Para 2 and the petitioner joined on 1531982. The papers were sent to the District Inspector of Schools on 3041982. In view of clause

(iv), such an appointment letter cannot be issued. On the other hand, such an appointment letter has to be issued strictly in terms of provisions prescribed in clauses (iii) and (iv).

16. Therefore, in the eye of law, the appointment of the petitioner having been done without complying the provisions of para 2 of Second Removal of Difficulties Order, the petitioner has no legal right to the post and in that view of the matter, there is no question of regularisation. The petitioner's appointment is alleged to have been

done under the provisions of Second Removal of Difficulties Order. But, since the conditions thereunder are not complied with, the petitioner cannot claim any legal right and benefit under the said provisions of the Order.

17. In the result, the writ petition fails and it is accordingly dismissed. There is no order as to cost.