(1997) 09 AHC CK 0081

Allahabad High Court

Case No: C.M.W.P. No. 10468 of 1994

Amit Kumar Pandey		APPELLANT
	Vs	
District Inspector of Schools, GHazipur and others		RESPONDENT

Date of Decision: Sept. 3, 1997

Citation: (1998) 1 AWC 221

Hon'ble Judges: O. P. Garg, J

Bench: Single Bench

Advocate: R. G. Padia, Prakash Padia and Mithish Kumar Gupta, for the Appellant; S. C., for the Respondent

Final Decision: Allowed

Judgement

O. P. Garg, J.
By means of this writ petition, it is prayed that the order dated 1.3.1994, which is contained in Annexure 5 to the writ petition, passed by District Inspector of Schools (for short "D.I.O.S.") Ghazipur--respondent No. 1 be quashed and the respondent No. 1 be commanded to release salary of the petitioner w.e.f. 31.12.1993 onwards.

2. Counter and rejoinder-affidavits have been filed. Dr. R. G. Padia, learned counsel for the petitioner, as well as, learned standing counsel for the respondent No. 1 were heard at a considerable length.

3. There is an institution Navli Inter College, Navli, district Ghazipur, which is duly recognised Intermediate College and is on the grants-in-aid list of the State Government. One Salig Ram Gupta who was working as permanent Lecturer in English retired on 30.6.1992 and in his place one Shiv Murat Singh was promoted from the post of Assistant Teacher in L.T. grade to the post of Lecturer in English. The appointment of Shiv Murat Singh was approved by D.I.O.S. on 20.7.1993. In the vacancy, which occurred on account of promotion of Shiv Murat Singh, as Lecturer in English, the petitioner was

appointed as Assistant Teacher in L.T. grade, .after complying with the necessary formalities. A letter along with all the relevant documents was sent to the D.I.O.S. for according approval to the appointment of the petitioner, which was made to fill up the short term vacancy under the provisions of Removal of Difficulties Order (Second). 1981. The D.I.O.S., by the impugned order dated 1.3.1994, refused to grant the approval primarily on the ground that the process for filling in the vacancy caused on account of promotion of Shiv Murat Singh could not be commenced prior to 20.7.1993 on which date approval was granted to the appointment of Shiv Murat Singh. The impugned order has been challenged on the ground that the Management had full power to initiate the procedure for making appointment regarding a short term vacancy and that this can be done even before the actual vacancy arises, and that the vacancy would not occur on the date on which approval to the appointment of the teacher who was promoted as a Lecturer was accorded, but on the date the promoter incumbent actually joined.

4. At the outset, it may be mentioned that the validity or otherwise of the appointment of the petitioner under the Second Removal of Difficulties Order. 1981 is not challenged by the respondents. Even otherwise, the appointment of the petitioner was made after complying with the provisions contained in paragraph 2 of the Removal of Difficulties Order. 1981. The post was advertised on 21.1.1993 inviting the applications from the eligible candidates and the aspirants for the post were interviewed on 14.3.1993. The petitioner obtained highest quality point marks and was recommended by the Select Committee for appointment. The relevant papers were sent to the D.I.O.S. on 18.3.1993 and when no reply was received within the mandatory period of 7 days, as contemplated in para 2 (3) (iv) of the Removal of Difficulties Order, 1981, an order of appointment dated 31.12.1993 was issued to the petitioner, who joined the institution on the same day.

5. The only point for consideration in the present writ petition is that whether the Management could initiate process for filling up short term vacancy even before granting of approval by the D.I.O.S. to the appointment on promotion of the seniormost teacher in the L.T. grade to the post of Lecturer. In the instant case, approval to the appointment of Sri Shiv Murat Singh was accorded on 20.7.1993. By the impugned order dated 1.3.1994, the D.I.O.S.--respondent No. 1 has taken the view that since the vacancy in the L.T. grade arose on the date on which approval was accorded to the appointment of Sri Shiv Murat Singh on 20.7.1993, the advertisement. interview and selection to the post of Assistant Teacher in the L.T. Grade could not take place. The ground taken by the D.I.O.S. in the impugned order to disapprove the appointment of the petitioner is wholly untenable and wide off the mark. There is no prohibition in any Education Law that the process of filling up the vacancy cannot be initiated in anticipation of vacancy, muchless, a short term vacancy. In the instant case, the vacancy has, in fact, arisen in the L.T. grade on the date on which Shiv Murat Singh was appointed on promotion as Lecturer in English. The fact that his appointment on promotion was approved subsequently by the D.I.O.S. on 20.7.1993, would not deprive the incumbent, namely, Sri Shiv Murat Singh, of his legitimate claims and benefits on the post of Lecturer from the date on which he

actually joined. The approval, which is accorded by the D.I.O.S. subsequent to appointment would relate back to the date of actual joining. Natural corollary of this finding is that the vacancy in L.T. grade had occurred on the date on which Shiv Murat Singh vacated the post.

6. Even if, for the sake of argument. It may be taken that the vacancy had, in fact, arisen on 20.7.1993, on which date, the approval was accorded to the appointment of Sri Shiv Murat Singh, the petitioner was appointed on 31.12.1993 on which date admittedly the vacancy was in existence even according to the stand taken by the D.I.O.S. Learned counsel for the petitioner made a reference to Prabhu Dayal and others v. District Inspector of Schools, Firozabad and others 1995 AWC 71, in which it was held that Management is not debarred from taking steps in advance by advertising the post, inviting the applications and holding the interview, etc., to fill up a vacancy, which is likely to arise subsequently. The analogy of the aforesaid cage is applicable on all fours to the facts of the present case also.

7. In the light of above discussion, the impugned order dated 1.3.1994, which is based on an entirely illegal premise has to be set aside and in view of the provisions of paragraph 2 (31 (iv) of the Second Removal of Difficulties Order, 1981, the petitioner shall be deemed to have been duly approved for appointment in the short term vacancy on account of promotion of Sri Shtv Murat Singh.

8. In the result, the writ petition is allowed and ignoring the order dated 1.3.1994, the petitioner shall be deemed to have been validly appointed as Assistant Teacher in L.T. grade, in the short term vacancy, w.e.f.. 31.12.1993. It is directed that the respondent No. 1 shall release and pay salary to the petitioner for the period 31.12.1993 onwards till such period the petitioner continues to work on the said post.