
(2010) 07 AHC CK 0192

Allahabad High Court

Case No: Special Appeal No. 914 of 2010

Mahfooz Ahmad Khan

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: July 2, 2010

Acts Referred:

- Uttar Pradesh Intermediate Education Act, 1921 - Regulation 17(g), 16FF

Hon'ble Judges: F.I.Rebello, CJ and A.P.Sahi, J

Final Decision: Partly Allowed

Judgement

A.P. Sahi, J.

Heard Shri Anurag Khanna, learned counsel for the appellant and Shri M.S. Pipersenia, learned Standing Counsel appearing for respondent nos. 1 and 2.

2. The writ petitioner appellant Mahfooz Ahmad is claiming salary from the date of his appointment, i.e. 21.01.2008 on the ground that his appointment stood already approved under the regulations but he has been denied salary without looking to the provisions, which entitle the appellant to receive salary from the date of his appointment.

3. The controversy had come up before this Court earlier in Civil Misc. Writ Petition No. 65710 of 2008 and a learned Single Judge of this Court after traversing the facts came to the conclusion that the appointment of Mohd. Asif Iqbal on compassionate basis against the same post on which the appellant had been selected was illegal and accordingly the order of appointment of Mohd. Asif Iqbal was quashed by order dated 21st July, 2009.

4. It has been pointed out by Mr. Anurag Khanna, learned counsel for the appellant that in the said writ petition, an interim order was passed on 18th December, 2008 whereby a restraint was put on the respondents permitting the joining of Mohd. Asif Iqbal. A perusal of the judgment dated 21st July, 2009 indicates that the selection and appointment of the appellant was directed to be looked into and examined by the District Inspector of Schools strictly in accordance with the provisions contained in Section 16FF of the U.P.

Intermediate Education Act, 1921 (hereinafter referred to as the "Act 1921").

5. Pursuant to the said directions, the District Inspector of Schools has proceeded to grant approval to the appellant on the post in question vide order dated 4th December, 2009. However, such approval limits the payment of salary from the date of approval of his appointment. It is at this stage that the appellant approached this Court by filing the writ petition giving rise to the present appeal contending that salary should be disbursed from 21.01.2008 treating his appointment to have been deemed to be approved.

6. The learned Single Judge in the order impugned dated 29.04.2010 has held that the mandamus prayed for by the appellant for payment of salary from the date of appointment, i.e. 21.01.2008 till the date of actual approval by the District Inspector of Schools cannot be issued and the salary for the said period cannot be paid from the State exchequer. It has been further observed that it is open for the appellant to approach the appropriate forum for realisation of the salary for the aforesaid period from the Committee of Management of the institution.

7. Mr. Khanna, learned counsel for the appellant, contends that the aforesaid opinion expressed by the learned Single Judge is not in conformity with law. He has invited the attention of the Court to the provisions of Section 16FF of the Act 1921 and Regulation 17 (g) of Chapter II of the Regulations framed under the said Act. He contends that the appointment has to be followed by approval by the Competent Authority, namely, the District Inspector of Schools. But in the instant case, it is the District Inspector of Schools who failed to consider the aforesaid provisions and extend the benefit of approval to the appointment of the appellant. He submits that in view of the provisions contained in Regulation 17 (g) (supra), the appointment of the appellant will be deemed to have been approved as a teacher in the institution after the expiry of 30 days from the date of submission of papers before the District Inspector of Schools by the Committee of Management of the institution. He further submits that the aforesaid provision was not taken note of by the learned Single Judge and, therefore, the impugned order is liable to be set aside with a direction to the District Inspector of Schools to ensure payment of salary from the actual date of appointment of the appellant, i.e. 21.01.2008.

8. Mr. M.S. Pipersenia, learned Standing Counsel, on the other hand, contends that the Act 1921 makes a provision for prior approval by the Competent Authority under Section 16FF of the Act 1921 and, therefore, the approval having been granted on 4th December, 2009, the District Inspector of Schools has not committed any error nor could the learned Single Judge direct for payment of salary from the State exchequer.

9. We have examined the contentions of both the parties and perused the material available on record.

10. Section 16FF of the Act 1921, which is relevant for deciding the present controversy, reads as follows:

"16FF. Savings as to minority institutions. (1) Notwithstanding anything in subsection (4) of Section 16E, and Section 16F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management :

Provided that one of the members of the Selection Committee shall

(a) in the case of appointment of the Head of an institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a teacher, be the Head of the Institution concerned.

(2)The procedure to be followed by the Selection Committee referred to in subsection (1) shall be such as may be prescribed.

(3)No person selected under this section shall be appointed, unless

(a) in the case of the Head of Institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4)The Regional Deputy Director of Education or the Inspector, as the Case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualification prescribed and is otherwise eligible.

(5)Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of teacher.

(6)Every order passed by the Director or the Regional Deputy Director of Education on a representation under subsection (5) shall be final."

11. The aforesaid provision is further substantiated by Regulation 17 (g) of the Regulations framed under the Act 1921, which reads as follows:

"17. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognized institution referred to in Section 16FF, shall be as follows:

(a)

12. A perusal of the aforesaid provisions leaves no room for doubt that the District Inspector of Schools is duty bound to consider grant of approval within the time prescribed therein. In the instant case, admittedly, instead of granting approval to the selection of the appellant, a compassionate appointment was made in favour of Mohd. Asif Iqbal against the same post. It is at this stage that the appellant preferred Writ Petition No. 65751 of 2008, wherein following interim order was passed by this Court on 18th December, 2008:

"Supplementary affidavit filed today be accepted and taken on record.

Learned Standing Counsel has accepted notice on behalf of respondent nos. 1 & 2.

Issue notice on behalf of respondent nos. 3 and 4.

Each one of the respondents is granted six weeks time to file counter affidavit. Rejoinder affidavit may be filed within next two weeks.

List thereafter.

It has been contended on behalf of petitioner that candidature of the petitioner has been nonsuited on totally unsustainable ground by contending that against the vacancy against which petitioner has been offered appointment qua same Mahfooz Ahmad Khan from amongst dying in harness category has been recommended, petitioner submits that as far as minority Institutions" are concerned therein provision as contained under the first proviso to Regulation 103 to 107 of Chapter III of U.P. Act No. II of 1921 are not applicable.

Prima facie arguments advanced appears to have some substance. Consequently till the next date of listing no coercive action shall be taken for ensuring joining of Mohd. Asif Iqbal, respondent no.4 under dying in harness category."

13. As a consequence of the aforesaid interim order, it appears that the compassionate appointee was not paid salary and, accordingly, the appellant under the said interim order claimed continuance in the institution.

14. This aspect of the matter, in our opinion, has not been considered by the learned Single Judge. Apart from this, the provisions aforesaid clearly indicate that the District Inspector of Schools has to grant approval or else approval will be deemed to have been granted within thirty days from the date of submission of papers before him unless rejected. It is only after a judicial intervention that the approval for appointment of the appellant has been granted. It was neither the Committee of Management nor the appellant who has not complied with the procedure prescribed and, thus, they were not at fault. It was the process adopted by the District Inspector of Schools by offering appointment on compassionate ground to Mohd. Asif Iqbal that the entire controversy arose which delayed the decision and it was only after the final judgment rendered on

21st July, 2009 that the decision for grant of approval to the appointment of the appellant was taken.

15. In our opinion, the aforesaid aspects including the provisions of deemed approval ought to have been taken note of by the District Inspector of Schools while granting approval to the appointment of the appellant. The claim of salary by the appellant for the period between 21.01.2008 to 04.12.2009 has, therefore, to be examined in view of what has been noticed above.

16. We, accordingly, modify the order of the learned Single Judge dated 29th April, 2010 by providing that the District Inspector of Schools shall proceed to examine the aforesaid aspect of the matter, and shall pass an appropriate order within eight weeks from the date of production of a certified copy of this order before him without being influenced by the order passed by the learned Single Judge.

The appeal is partly allowed. However, in the circumstances of the case, there shall be no order as to costs.