

(2013) 03 AHC CK 0288

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No's. 47432 of 2009, 73547 of 2010, 56738 of 2011, 43466 of 2012 and 12720 of 2012

Committee of Management,
Rashtriya Krishak Inter College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 19, 2013

Citation: (2013) 6 ALJ 727 : (2013) 3 UPLBEC 2549

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Anand Kumar Srivastava and Rajeev Mishra, for the Appellant; Anil Kumar Pandey, Uma Nath Pandey and R.K. Ojha, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Arun Tandon, J.

Heard Sri. Rajeev Mishra, Advocate for the Committee of Management, Rashtriya Krishak Inter College, Sri. R.K. Ojha, Advocate for Ram Sanahi and learned Standing Counsel for the State-respondents. Facts on record of these five writ petitions, which are interlinked, are a classic example as to how the employer, employee and the office of the District Inspector of Schools and the Regional Joint Director of Education play with the statutory provisions and thereby create a situation, where the public money which could have been utilized for better purpose, is in fact paid as salary to a person not legally entitled to it, thereby defrauding the public exchequer. Statutory provisions applicable are rendered waste paper by these four players in the game.

2. All these petitions have been clubbed together and are being decided by this common judgment.

2A. Facts on record of these writ petitions are as follows:

Rashtriya Krishak Intermediate College, Sudipur, Basti (hereinafter referred to as the "institution") is an aided and recognized Intermediate College. Provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act, 1921" and the regulations framed thereunder as also the provisions of Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as the "Act, 1971" are fully applicable to the said institution.

One Mr. "A", who was working in the institution, expired in 1992. His son was appointed on a superannuary post as Class IV employee. Father of Ram Sanahi, who was working as Class IV employee in the institution expired in 1994. Son of Mr. "A" was adjusted against the said vacancy. There is no dispute in that regard. Ram Sanahi set up a claim for compassionate appointment in the institution and this claim remained pending for full 5 years. An order dated 27th February, 1999 was passed by the District Inspector of Schools, Basti, offering compassionate appointment to Ram Sanahi in the institution itself against a superannuary post as Class IV employee. Ram Sanahi is stated to have joined the institution on the superannuary post on 27th February, 1999 and to have continued as such for years together. In 2004, an other employee, Mr. "B", who was working as Daftri in the institution expired during harness. His son was offered compassionate appointment against the same post of daftri in 2004 itself by the employers on the asking of the District Inspector of Schools. Upto that stage, neither Ram Sanahi, nor the Committee of Management of the institution, nor the District Inspector of Schools raised any objection qua continuance of Ram Sanahi against superannuary post.

3. Under Regulation 106 of Chapter III of the Regulations framed under the Act, 1921, Ram Sanahi had to be adjusted against the first available vacancy, not only in the institution but in any other recognized institution in the District of Basti.

3A. It is needless to record that all Class IV posts are required to be filled by direct recruitment only. Therefore, against the first available vacancy in District Basti on Class IV posts in recognized and aided intermediate college, Ram Sanahi should have been adjusted, so that his appointment in the institution against superannuary post should have been brought to an automatic end. But the employers, employee and the District Inspector of Schools know of no such statutory provision. All vacancies on Class IV posts in District Basti after 1999 were filled otherwise. Further another person was appointed on compassionate ground against the vacancy which was caused in the institution in 2004, while Ram Sanahi was continued against superannuary post.

4. What is worst to note is that from the counter affidavit filed by the District Inspector of Schools in writ petition No. 47432 of 2009, it is apparent that in 1999 itself at least 18 vacancies were caused in various recognized and aided institutions in District Basti but against none of these vacancies, Ram Sanahi was adjusted. Ram Sanahi himself did not raise any grievance within reasonable time for his adjustment

against any available vacancy in the District Basti during all this period, which spans over more than 6 years.

5. Trouble starts only when a vacancy on Class III post is caused in the institution. Ram Sanahi now asserts his legal rights and seeks promotion against the said Class III post. Ram Sanahi being aware that an employee working against an ex-cadre post (superannuary post) could not be considered for promotion against cadre post, therefore, for the first time he set up a plea for being absorbed against the first available vacancy. This is how the litigation starts, culminating in five writ petitions before this Court.

6. How bad is the situation and how arbitrary have been the acts of the authorities, the employer and the employee is reflected from the orders, which have been passed in short span of one year giving rise to all these five petitions.

7. The Manager of the institution on 18th August, 2009 passes an order relieving Ram Sanahi of his duties against superannuary post in the institution on the ground that despite repeated request, Ram Sanahi has not been adjusted against a substantive vacancy in any other institution during all this period in clear violation of Regulation 106 of Chapter III of the regulations framed under Act, 1921. This order, on representation being made by Ram Sanahi, is set aside by the District Inspector of Schools under his order dated 27th August, 2009. The Committee of Management has filed writ petition No. 47432 of 2009 against the said order (hereinafter referred to as the "1st writ petition"). In the said writ petition, an interim order has been granted by this Court on 7th September, 2009, whereby the order of the District Inspector of Schools dated 27th August, 2009 had been stayed.

8. In view of the aforesaid interim order, the District Inspector of Schools passes a fresh order on 3rd October, 2009 adjusting Ram Sanahi against a vacancy available in Jai Kisan Intermediate College, Imiliyadeeh, Basti. This order of adjustment was challenged by Ram Sanahi by means of Civil Misc. Writ Petition No. 61824 of 2009, which was dismissed by the High Court on 17th November, 2009. The question of Ram Sanahi being continued in Rashtriya Intermediate College against superannuary post, therefore, came to an end with the dismissal of writ petition No. 61824 of 2009 filed by Ram Sanahi.

9. According to the Committee of Management of the institution, it had already relieved Ram Sanahi prior to the passing of the said order to be precise on 18th August, 2009.

10. Ram Sanahi filed Writ Petition No. 73547 of 2010 (hereinafter referred to as the "2nd writ petition") with a grievance that he is not being permitted to join in Jai Kisan Intermediate College. In the said writ petition only counter and rejoinder affidavits have been called for.

11. After nearly two years of the dismissal of the writ petition No. 61824 of 2009 filed by Ram Sanahi, the Regional Joint Director of Education, Basti Region, Basti steps in and on 24th August, 2011, he passes an order for adjustment of Ram Sanahi in Rashtriya Intermediate College against a vacancy said to have been caused on 31st May, 2010 with the retirement of one Pawan Kumar Dubey. It was further directed in the said order that till his joining in the institution, he remained attached to the office of the Regional Joint Director of Education.

12. This Court made a pointed query from the learned counsel for the parties present as to under which statutory provision, the Joint Director of Education can attach a Class IV employee of a recognized and aided intermediate college in his office and take work from him and thereafter ensure payment of salary from the accounts of the aided and recognized institution. None of the counsels present could answer the query.

13. The Committee of Management of the institution is stated to have made representation against the order dated 24th August, 2011. The Joint Director of Education modified the earlier order dated 24th August, 2011 vide order dated 27th August, 2011 and directed adjustment of Ram Sanahi in Valmiki Intermediate College. Consequential order is stated to have been issued by the District Inspector of Schools on 16th September, 2011. Against the said two orders, Ram Sanahi filed writ petition No. 56738 of 2011 (hereinafter referred to as the "3rd writ petition"), wherein an interim order has been granted in his favour. The Committee of Management filed Special Appeal No. 2095 of 2011 which was dismissed on 8th November, 2011.

14. The Joint Director of Education on 27th August, 2012 revoked his earlier order of attachment of Ram Sanahi to his office. In the note to the said order/letter it was directed that the Principal and Manager of Rashtriya Intermediate College must accept the joining of Ram Sanahi and should submit his salary bill accordingly. Against the said order, the Committee of Management of the institution has filed writ petition No. 43466 of 2012 (hereinafter referred to as the 4th writ petition).

15. The Joint Director of Education issued a show-cause notice to the Committee of Management alleging non-compliance of his orders u/s 6 of Act, 1971. Writ Petition No. 3356 of 2013 filed by the Committee of Management against the show-cause notice was dismissed on 21st January, 2013.

16. The District Inspector of Schools submitted a report for supersession of the Committee of Management with the Joint Director of Education under his letter dated 16th February, 2013. The Joint Director of Education passes an order dated 25th February, 2013 u/s 6(4) of Act, 1971 superseding the Committee of Management of the institution. This order is under challenge in writ petition No. 12720 of 2013 filed by the Committee of Management (hereinafter referred, to as the "5th writ petition").

17. In order to keep the record straight, it may be recorded that a letter was submitted by the Committee of Management refusing joining of Ram Sanahi. The District Inspector of Schools vide letter dated 27th November, 2012 required the institution to comply with the earlier order.

18. An impleadment application has been filed by one Harish Chandra Singh in writ petition No. 12720 of 2013, who refers to an order of the Assistant Registrar, Firms, Societies and Chits dated 31st January, 1991, wherein it is recorded that Sri Hanumant Prasad Singh is not even a primary member of the society. Paragraph-5 of the impleadment application refers to the details of the money said to have been embezzled by the manager.

19. In my opinion the impleadment application is wholly misconceived and out of context. So far as the present writ proceedings are concerned, the continuance of Hanumant Prasad Singh as manager including payment of salary to Ram Sanahi, other staff and employee under his signatures and his being accepted as manager all throughout is not under challenge. Impleadment application of Harish Chandra Singh, who claims to be life member of the society is, therefore, rejected. If he has any grievance in the matter of Hanumant Prasad Singh being wrongly recognized as the manager or in respect of his misdeeds, he is at liberty to approach the authority concerned or to file his own writ petition for the purpose.

20. Sri. Rajeev Mishra, learned counsel for the Committee of Management of the institution challenging the order passed u/s 6(4) of Act, 1971 dated 25th February, 2013 contended that the appointment and the continuance of Ram Sanahi against superannuary post in the institution for decades itself was illegal. He was liable to be adjusted against the first vacancy available in District Basti. Therefore, no wrong was done by the Committee of Management by relieving him on 18th August, 2009. In any view of the matter once writ petition filed by Ram Sanahi against his adjustment in Jai Kisan Intermediate College being writ petition No. 61824 of 2009, was dismissed by the High Court on 17th November, 2009, the chapter qua his continuance in the institution came to an end. Thereafter there could not have been any further orders by the Joint Director of Education or by the District Inspector of Schools for fresh adjustment of Ram Sanahi against subsequent vacancy, which had been caused on 31st May, 2010 in the institution. He submits that all such orders are without jurisdiction and have the effect of over reaching the Court proceedings both in respect of the order dismissing the writ petition filed by Ram Sanahi referred to above as well as the pending proceedings of writ petition filed by Ram Sanahi being writ petition No. "2nd". He submits that the Committee of Management cannot be penalized for wrong done by the education authorities themselves.

21. Sri. R.K. Ojha, learned counsel for Ram Sanahi submits that the Committee of Management of the institution had never objected to his continuance in the institution against superannuary post. It is only when that the petitioner had set up a claim for being promoted on the post of clerk, the vacancy whereof was caused

due to promotion of Amar Pratap Singh, assistant clerk to the post of head clerk under resolution dated 25th June, 2009 that the Committee of Management started acting against Ram Sanahi. He submits that the entire action taken by the Committee of Management of the institution is mala fide. He further points out that the Committee of Management vide resolution dated 25th July, 2007 had appointed one Shyam Shanker Shukla as Assistant Clerk, with a note appended to his appointment letter dated 28th August, 2007 to the effect that as and when substantive vacancy occurs in the institution, he shall be adjusted against the same. Sri R.K. Ojha emphatically contends that at no point of time prior to 2009 any objection was raised by the Committee of Management qua continuance of Ram Sanahi in the institution against superannuary post, which spans a period of nearly 10 years.

22. Sri. Rajeev Mishra, learned counsel for the Committee of Management in rejoinder points out that the Committee of Management had objected to the continuance of Ram Sanahi in the year 2007 itself. These complaints have been ignored by the District Inspector of Schools.

23. From the counter affidavit filed by the District Inspector of Schools in response to the query made by this Court as to how many vacancies were caused on Class IV post in District Basti since 1999 in various recognized and aided institutions, it is apparent that 199 vacancies were caused in various institutions between 1999 to July, 2009 on Class IV post.

24. From the submissions made by the learned counsel for the parties and the records of these five writ petitions, following facts stand admitted:

Regulations 101 to 107 of Chapter III of the regulations framed under Act, 1921 regulate the method of appointment on compassionate ground in a recognized and aided intermediate college. Regulations 103 to 106 contemplate appointment on suitable post having regard to the qualifications of the candidate concerned on compassionate ground and in certain contingency provide for creation of superannuary Class IV post for such compassionate appointment. Regulation 106 places an embargo on continuance against of superannuary post after a substantive vacancy becomes available. On simple reading of the Regulation, it will be seen that any person working against superannuary post has to be adjusted against first available vacancy which may be caused in any recognized institution in the entire district concerned. For ready reference Regulation 106 is being quoted herein below:

Regulation 106:--The appointment of the member of the family of the deceased employee as per his academic eligibilities shall be done in trained graduate grade or on any clerical post so far as possible in that institution in which the deceased employee was in service. If there is no vacancy in trained graduate grade for teacher or in ministerial cadre in such institution. he shall be appointed in any other

recognised, aided institution of the district where such vacancy lies.

Provided that if for the same time being no vacancy exists in any recognised aided institution of the district then in the institution where deceased was serving at the time of his death appointment against any surplus post of teacher in trained graduate grade or clerical post of class four shall immediately be made. Such surplus post shall be deemed to be created for this purpose and shall be continued until any vacancy in that institution or in any other recognised, aided institution of the district is available and in this case service rendered by such surplus post holder shall be counted for the purpose of pay fixation and retirement benefits.

25. After Sarju Prasad, father of Ram Sanehi had expired in 1994, he was not offered appointment on compassionate ground for five years at a stretch and it was only in 1999 that an order was issued for his appointment against a superannuary post in 1999 to be precise on 27th February, 1999.

26. From the counter affidavit filed by the District Inspector of Schools, it is apparent that a vacancy was caused in Jhinku Lal Intermediate College, Kalwari, Basti on 31st January, 1999 against duly created post. This is without reference to other vacancies which had occurred between 1994 to 1999, details whereof have been furnished by the District Inspector of Schools in the counter affidavit Why was Ram Sanehi not appointed against the substantive vacancies as per Regulation 106 is not known. Appointment of Ram Sanehi. against superannuary post in February, 1999 was in teeth of Regulation 106 of Chapter III of the Regulations framed under Act, 1921.

27. Even assuming without admitting that such appointment could have been granted to Ram Sanehi against superannuary post in 1999. The minimum expected from the office of the District Inspector of Schools and the employer was that against the first available vacancy in District after February, 1999, Ram Sanehi should have been adjusted and his appointment against superannuary post should have been brought to an automatic end. But nobody will follow law, inasmuch as everybody is happy that fresh appointments are made against available vacancies in the District Basti, while Ram Sanehi is continued against superannuary post. Nobody complaints, neither the Committee of Management, nor Ram Sanehi nor the District Inspector of Schools qua his continuance and payment of salary during all this period.

28. What is worst to note is that in 2004, a vacancy was caused in the same institution with the death of an employee "C", who was working as Daftri, but neither the employer nor Ram Sanehi nor the District Inspector of Schools ask for adjustment of Ram Sanehi against said vacancy. For what reasons such indifferent attitude has been adopted is not known. Another person is appointed against the said vacancy. Ram Sanehi, who was working in the same institution does not object. He is aware that he was liable to be adjusted against the first available vacancy but he will not respond and will not take any action, inasmuch as he is happy with the

salary against the superannuary post which he was getting. This continues for a further period of 5 years, when all of sudden, the Management of the institution decides to relieve Ram Sanehi on 18th August, 2009 on the ground that it had written letters to the District Inspector of Schools to adjust Ram Sanehi, against any other vacancy in the District but the District Inspector of Schools has not responded. This according to Ram Sanehi was a mala fide action, inasmuch he had set up a claim for promotion on the post of assistant clerk and the Management was interested in its own man.

29. This Court has no hesitation to record that the parties have awoken to their rights, only when it involves monetary benefit and not otherwise; Ram Sanehi will not act till the issue of promotion accrues, he is happy with his continuance against superannuary post, he did not seek his absorption against the first vacancy in any institution in the District and not even against the vacancy in the same institution caused in the year 2004. The Management is happy with Ram Sanehi till 2009. When Ram Sanehi sets up a claim for promotion, the Management decides that Ram Sanehi should be removed as he is working against a superannuary post. The District Inspector of Schools also becomes active and passes an order for adjustment of Ram Sanehi in Jai Kisan Intermediate College only on 3rd August, 2009 i.e. after a decade of his first appointment. Why did the District Inspector of Schools not respond for all these years has not been explained by any of the parties.

30. Even after Civil Misc. Writ Petition No. 61824 of 2009 filed by Ram Sanehi challenging the order of his adjustment in Jai Kisan Intermediate College is dismissed by the High Court on 17th November, 2009, the District Inspector of Schools and the Regional Joint Director of Education do not ensure his joining in Jai Kisan Intermediate College. This compels Ram Sanehi to approach the High Court by means of writ petition No. 2nd, wherein counter and rejoinder affidavits are called for.

31. In order to short circuit the Court proceedings, it is now the turn of the Regional Joint Director of Education to awake after two years of earlier order of adjustment and to issue an order dated 24th August, 2011 for adjustment of Ram Sanehi against the vacancy which occurred in the institution on 31st May, 2010 as detailed above: Further, litigation is generated by filing of writ petition No. 3rd and thereafter for consequential action taken by filing of writ petition No. 4 and petition No. 5.

32. If only the three players in the game had taken action in accordance with proviso to Regulation 106 of Chapter III of the Regulations framed under Act, 1921" in the year 1999 itself for adjustment of Ram Sanehi against first available vacancy in the District, probably all this litigations would have been avoided. The State would have saved valuable money, which has been paid against superannuary post for these 15 years.

33. To expect the State authorities and the Management and the employee to act in accordance with law would be too much for this Court as everybody works in self interest, no one cares for the State and the law applicable. The only relevant factor for all in the present scenario is money. This Court will not be a participant in the game plan of the said parties nor will it be a mute spectator to such arbitrary acts of the three players of the game. It shall protect the State interest. The money, which has been drawn by Ram Sanehi in collusion with the Committee of Management, the District Inspector of Schools and the Regional Joint Director of Education against superannuary post contrary to proviso to Regulation 106 of Chapter III of the Regulations framed under Act, 1921 must be returned to the State exchequer and everyone must be reminded that sooner or later, the hands of law shall bring them to justice.

34. The recovery in the facts of the case has to be affected in following manner:

(a) For the period from 27th February, 1999 to 2004, the money shall be recovered from the concerned District Inspector of Schools, Basti inasmuch as during all these period, the District Inspector of Schools did not take steps for Ram Sanehi being adjusted against any other substantive vacancy available in any other institutions of the District.

(b) For the period subsequent to 2004 till 18th August, 2009 salary has to be recovered from the person, who was in effective control over the institution i.e. the Management of the institution, inasmuch as it had decided to make appointment against first vacancy which had become available in the institution in 2004 instead of absorption of Ram Sanehi who was working against superannuary post.

(c) For the period subsequent to 18th August, 2009, the salary must be recovered from the District Inspector of Schools and the Regional Joint Director of Education equally, inasmuch as it is because of their orders that Ram Sanehi has not worked in any institution and still has been paid salary from the funds, which were allocated for a recognized and aided institution. It is ordered accordingly.

35. Respondent No. 1 shall recover the money as aforesaid in accordance with law within eight weeks of the receipt of the order.

36. This Court has no hesitation to record that no relief prayed for promotion or continuance in the institution as claimed by Ram Sanehi in his writ petition Nos. 73547 of 2010 and 56738 of 2011 can be granted. He had to be adjusted against first available vacancy in any institution of District Basti and further since the writ petition filed by him against his adjustment in Jai Kisan Intermediate College has been dismissed by the High Court on 17th November, 2009, which order has become final. Ram Sanehi must be asked to join in Jai Kisan Intermediate College and the manager and principal of the said institution must be compelled to accept the joining of Ram Sanehi without delay. The aforesaid exercise must be completed within four weeks of the receipt of the certified copy of this order by the District

Inspector of Schools and the Regional Joint Director of Education after affording opportunity of hearing to the Committee of Management of Jai Kisan Intermediate College. If for certain lawful reasons, Ram Sanahi is not permitted to join in Jai Kishan Intermediate College, orders may be passed for adjustment of Ram Sanahi against any other vacancy on Class IV post available in any other institutions of District Basti, except Rashtriya Krishak Intermediate College, Basti.

37. So far as the challenge made by the Committee of Management to the order dated 16/25th February, 2013 is concerned, this Court feels that the order in the facts of the case may be interfered with only if the management is held responsible for illegal payment of salary because of continuance of Ram Sanahi after 2004 i.e. even after a vacancy had become available in the institution, but another person was appointed against the same, thereby violating the proviso to Regulation 106 of Chapter III of the regulations framed under Act, 1921. It is therefore, directed that the order dated 16/25th February, 2013 shall cease to remain inoperative only after the institution repays the amount of salary directed to be recovered from it as aforesaid.

38. Part of the order dated 16th August, 2012 under challenge in Writ Petition No. 43466 of 2012 filed by the Committee of Management of the institution, insofar as it directs Ram Sanahi be permitted to join in Rashtriya Krishak Intermediate College is quashed. This petition is partly allowed. All other connected petitions are disposed of subject to the directions issued above.