

(2007) 07 AHC CK 0208

Allahabad High Court

Case No: None

Committee of Management,
Prahlad Rai Banarsi Lal Girls
Intermediate College

APPELLANT

Vs

Smt. Urmila Devi Singh, Art
Teacher, Prahlad Rai Banarsi Lal
Girls Intermediate College,
Regional Inspectress of Schools,
Gorakhpur Region and District
Inspector of Schools

RESPONDENT

Date of Decision: July 5, 2007

Citation: (2007) 7 AWC 6679

Hon'ble Judges: S. Rafat Alam, J; Rakesh Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This intra-court appeal, under the Rules of the Court arises from the Judgment and order dated 24.07.1997 passed by the Hon'ble Single Judge disposing of finally the writ petition No. 10853 of 1980 of the petitioner-respondent seeking the relief of permitting the petitioner-respondent to resume the teaching work in the Institution and to make payment of salary to her w.e.f. 16.11.1976 onwards.

2. The brief facts, emerging from the record are that the petitioner-respondent No. 1, Shrimati Urmila Devi Singh was appointed as an untrained teacher in Prahlad Rai Banarsi Lal Girls Intermediate College, Khalilabad district Basti (hereinafter described as the "Institution") on 8.10.1974. Initially her appointment was for a fixed period i.e. for the academic session 1974-75. This appointment was duly approved by the Regional Inspectress of Girls Schools, VII Recion, Gorakhpur. Petitioner-respondent No. 1, who was a graduate possessing Inter Grade drawing certificate from Bombay was engaged to teach Art subject in the Institution. She was

the Only Art teacher in the institution. Petitioner-respondent No. 1 was allowed extension of her employment and she continued to teach in the institution till 15.11.1976. All the appointments granted by the appellant-respondent were duly approved by the Regional Inspectress of Gins School, the appropriate authority. The Hon"ble Single Judge taking note of para 3 of the 5th removal of Difficulties Order, 1976, has treated Shrimati Urmila Devi to have been appointed in substantive capacity from the date of her acquiring the requisite training qualification in terms of para 3(d) of the said Removal of Difficulties Order, 1976. Para 3 of the 5th Removal of Difficulties Order, 1976 is relevant and is quoted below:

3. Where any person was appointed by the Committee of Management as a teacher on or before June 30, 1975 for any period as a temporary measure with the approval or permission of the Inspector and such person has worked thereafter up to November, 15, 1976, he shall be deemed to have been appointed in a substantive capacity.

(a) in case the appointment was initially made in a clear vacancy, from the date of appointment;

(b) in case the appointment was initially made in a leave vacancy or a vacancy occurring for a part of the session or otherwise then in clear vacancy, from the date when such vacancy assumed the character of clear vacancy;

(c) in case the appointment was initially made on a post, the creation of which was sanctioned subsequently by a competent authority in that behalf from the date of such sanction;

(d) in case he did not possess the prescribed training qualification at the time of initial appointment from the date of acquisition of such training qualification.

Provided that in cases referred to in Sub-clauses (a)(b) and (c) such person possesses the prescribed qualification or has been exempted from the requirements of minimum qualifications and was duly selected and appointed in accordance with law for the time being in force.

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EXPLANATION:-The period during which any such teacher has, between the date of his appointment and November, 15, 1976 ceased to work for any reason not arising out of his own request shall not continued a break in to service for purposes of this clause.

3. It appears from the record that the Hon"ble Single Judge after carefully delving into the records has found that the respondent No. 1 was appointed before 30.6.1975 (i.e. 8.10.1974) and she continued in set vice till 15.11.1976 and by virtue of her initial appointment, which was made before 30th June, 1975 and her continuance in service till 15 11.1976 the respondent became entitled to be

appointed in substantive capacity. It further appears from the record that she was prevented to work after 15.11.1976 and she was not paid her salary. After pursuing the departmental remedies available to her, she ultimately filed Civil Misc. Writ Petition No. 10853 of 1980, in which an interim order was granted on 22.1.1981. The Management of the Institution and the concerned Regional Inspectress of Girls School were directed to pay her salary and it was made open to them to take work or not to take work from her. Despite all attempts by the Management to get the interim order vacated, the same had continued till the disposal of the writ petition vide Judgment and order dated 24.7.1997 by which the writ petition of Shrimati Urmila Singh was allowed and she was held to be entitled for substantive appointment and was allowed all consequential benefits arising out of such appointment and continuance in the service.

4. Shri Shashi Nandan, learned senior counsel for the appellant has assailed the Judgment and order of the Hon"ble Single Judge on the ground that the Hon"ble Single Judge has wrongly applied the provisions of 5th Removal of Difficulties order, 1976 as the same was not applicable in the present case. The petitioner-respondent was an untrained teacher at the time of her initial appointment. Secondly, the Hon"ble single judge has failed to appreciate that the petitioner-respondent did not obtain the training certificate at any point of time and her engagement in the Institution was in the nature of stop gap arrangement as per exigencies prevailing in the institution. Her services had automatically come to an end after the Stipulated period indicated in the appointment orders.

5. Shri Ashok Khare, learned Senior Counsel appearing for the petitioner-respondent has opposed the appeal and reiterated his submissions made in the body of the writ petition, counter affidavit and other documents. As per the learned Counsel for the respondents six clear permanent posts of teachers fell vacant in the Institution. Shrimati Urmila Singh, who was possessing minimum prescribed qualifications meant for an Art teacher, had applied against one of the posts. She was appointed by the Management of the Institution and the Regional Inspectress of Girls Schools Gorakhpur Region, Gorakhpur had accorded approval of her appointment. Initially the approval was granted on temporary basis for the academic session 1974-75 vide letter dated; 1.10.1974 issued by the Regional Inspectress of Girls Schools, Gorakhpur Region, Gorakhpur. Approval was further granted on the request of the Management which had continued to retain the petitioner-respondent in service in the academic sessions 1975-76 also. Shri Ashok Khare, learned Senior Counsel has drawn attention of the Court to various provisions contained in the Second, Third, Fourth, Fifth, Sixth and Seventh Removal of Difficulties Orders, which were issued between 18.8.1975 to 16.8.1977. According to him, the case of respondent No. 1 was entirely covered by the 5th Removal of Difficulties Order, 1976 and 7th Removal of Difficulties Order issued on 16.8.1977. The petitioner-respondent No. 1 was undergoing training and she had acquired the requisite training in 1976-77 batch of the teachers and after the introduction of 7th Removal of Difficulties Order she

should have been deemed to have been regularized. He has drawn attention of the Court to para 4 of the Seventh Removal of Difficulties Order issued on 16.8.1977. Respondent No. 1 has been continuously teaching Art subject to the students studying in classes 6th to 10th in the Institution. She was possessing the special qualification having completed Bombay Art Course with technical art subject. Presently, she is a graduate and has also undergone training as a teacher of 1976-77 batch. Her conduct and performance as an Art teacher has always remained satisfactory. She was prevented to work in the middle of academic session i.e. 17.11.1976 giving cause of action to the petitioner-respondent to approach the appropriate authorities and the Court for redressal of her grievances. The Hon"ble Single Judge took into account all the facts and has rightly allowed the writ petition.

6. After hearing the learned Counsel for the parties at length, we find force in the submissions made by Sri Ashok Khare, learned Senior Counsel appearing for the petitioner-respondent No. 1. Respondent No. 1, Shrimati Urmila Singh was appointed as an Art teacher on 8.10.1974. The Regional Inspectress of Girls Schools Gorakhpur Region, Gorakhpur had approved her appointment and subsequent extension of her services in the Institution as an Art teacher. Respondent No. 1 was holding the requisite qualification at the time of for initial appointment which is evident from the approval accorded by the Regional Inspectress of Girls Schools, Gorakhpur Region, Gorakhpur and as per the observations of the Hon"ble Single Judge in the impugned judgement. The case of the petitioner-respondent is also covered by the relevant Removal of Difficulties Orders as stated above. This Court has also taken note of the fact that the petitioner during her continuance in the Institution had undergone the requisite training. She successfully completed her training and had also obtained B.A. Degree. She was already possessing Bombay Art Course Certificate at the time of her initial appointment. It is no one's case neither of the Management of the Institution nor the District. Inspectress of Girls Schools that her work and performance as an Art teacher was not satisfactory. It is noteworthy that the respondent No. 1 Shrimati Urmila Singh, the teacher has been continuously working as Art Teacher in the Institution for the last more than 32 years. She has been imparting instructions in Art subject to the students from class 6 to 10th. This Court has granted indulgence at the time of the admission of the writ petition in the year 1981 and had declined to vacate the interim order despite serious attempt by the appellant. The interim order has now merged in the final order allowing the writ petition of Shrimati Urmila Singh, respondent. 1. The Hon"ble Single Judge has carefully appreciated the relevant facts and the various provisions of Removal of Difficulties Order contained in the Education Manual. The order of the Hon"ble Single judge, in our opinion, does not suffer from any illegality or infirmity.

7. We, therefore, do not find any reason to differ with the view taken by the Hon"ble Single Judge. The appeal, being without merit, is dismissed summarily.