

Birendra Singh Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Feb. 18, 2013

Acts Referred: Constitution of India, 1950 " Article 14

Citation: (2013) 4 AWC 3718

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Advocate: Ashok Khare and Siddharth Khare, for the Appellant;

Final Decision: Dismissed

Judgement

Amreshwar Pratap Sahi, J.

Heard Sri Ashok Khare learned senior counsel, for the petitioner and the learned standing counsel for the

respondent No. 1 to 4. The petitioner claims to have been appointed by the then Authorized Controller/Prabandh Sanchalak of the Institution in

the year 1987 in the clerical cadre of the Institution known as Vadik Inter College, Somai, District Jalaun. His services are now sought to be

dispensed with after the present Management was put to a show cause notice by the District Inspector of Schools with regard to the disputed

status of employment of the petitioner.

2. The District Inspector of Schools by the impugned order dated 17th January, 2013 has found that the appointment of the petitioner on 11th

September, 1987 on the post of Assistant Clerk was made by the District Inspector of Schools for which no sanctional post was available in the

institution at that point of time. It has been further clarified that there were only two sanctioned posts of assistant clerk available which were already

occupied and, therefore, the appointment of the petitioner was against a non-existent post.

3. The said order is being challenged on three grounds and Sri Khare submits that this action is being taken after 26 years of service and as such

delay in action violates Article 14 of the Constitution of India. He further submits that according to the norms prescribed the petitioners

appointment according to the student strength fell within the said norms and therefore, the appointment may be irregular but the same cannot be

invalidated for want of post. The other fact for consideration is that as on date one of the Assistant Clerk has already died and, therefore, even

otherwise the petitioners continuance as on today falls within the sanctioned and approved strength of Class-III cadre in the institution. In short the

initial irregularity can be condoned as it stands cured by passage of time and subsequent events.

4. The learned standing counsel on the other hand contends that so far as the petitioner is concerned, it is not disputed that he had not been

appointed against a sanctioned and approved post. The claim of regularization or curing of any irregularity, therefore, does not arise, the

appointment being void. The finding recorded by the District Inspector of Schools, therefore, cannot be disturbed. Learned standing counsel

further contends that in the absence of any appropriate sanction from the Director of Education, as per the provisions of the U.P. Act No. 24 of

1971, the claim of the petitioner to continue on the post and receive salary does not arise.

5. Having heard learned counsel for the parties, it is correct that the action has been taken after 26 years but that action, in my opinion, was

necessary in order to remove the perpetuation of an illegality and not a merely irregularity. Salary from State funds has to be paid against a

sanctioned post. The petitioner was admittedly not appointed against any sanctioned post, as is required for Section 9 of U.P. Act No. 24 of

1971. The petitioner was, therefore, appointed against a non-existent post and, as such, he was not entitled for payment of salary nor does he have

any right to claim continuance on such a non-existent post. The question of necessity of sanction of post has already been dealt with by this Court

in the case of Gopal Dubey v. District Inspector of Schools. Maharajganj, 1991 (1) UPLBEC 1 (FB).

6. This, therefore, does not violate Article 14 at all and the argument advanced does not advance the cause of the petitioner any further.

7. The question of the post falling within the norms is entirely different inasmuch as unless the post is sanctioned, as explained hereinabove, merely

because it is within the norms would not entitle the petitioner to claim continuance or salary as a matter of right. Even otherwise if the petitioner is

working within the sanctioned strength as on date, the same would not validate a patently illegal continuance on the post in question. None of the

pleas raised has any force. The writ petition lacks merit, accordingly, the same is dismissed.