

(2007) 09 AHC CK 0192**Allahabad High Court****Case No:** None

Munna Lal

APPELLANT

Vs

Devendra Bahadur Singh
Chandel and Others

RESPONDENT

Date of Decision: Sept. 20, 2007**Citation:** (2007) 4 AWC 4180 : (2007) 3 UPLBEC 2728**Hon'ble Judges:** B.S. Chauhan, J; Arun Tandon, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

B.S. Chauhan and Arun Tandon, JJ.

This Special Appeal is directed against the judgment and order of the Hon"ble Single Judge dated 29.8.2007 passed in Civil Misc. Writ Petition No. 31509 of 2002. The facts giving rise to the present Special Appeal are:

Baghpur Inter College, Baghpur, District Kanpur Dehat is an institution aided and recognized under the provisions of the Intermediate Education Act. A vacancy of a Class-3 post was caused in the institution due to death of the father of Devendra Bahadur Singh Chandel (the petitioner). In accordance with the Regulation 101 to 107 of Chapter III of the regulations framed under the Intermediate Education Act, the petitioner made an application for compassionate appointment. The application was processed and was ultimately allowed on 06.12.2001. The petitioner was appointed as Class-3 employee in the institution. Since the petitioner was not paid his salary w.e.f. January, 2002, he approached this Court by means of Writ Petition No. 20787 of 2002. The writ petition was disposed of vide order dated 17.5.2007 requiring the District Inspector of Schools to examine the matter and to pass appropriate orders, in accordance with law.

2. The District Inspector of Schools by means of his order dated 16.7.2002 refused payment of salary to the petitioner only on the ground that the compassionate

appointment of the petitioner has not been approved by the Regional Level Committee constituted under the Government Order dated 19.12.2000. This order of the District Inspector of Schools was challenged by means of Writ Petition No. 31509 of 2002. In the writ petition an impleadment application was filed by the present Appellant namely Munna Lal claiming a right to be promoted against the said vacancy which was caused due to death of the petitioner's father. The Hon'ble Single Judge by means of the judgment and order under challenge, has held that since there is only one sanctioned Class 3 post in the institution, the same has to be filled by direct recruitment and, therefore, the compassionate appointment offered to the petitioner is legal. The present Appellant has no right to claim promotion against the said vacancy. With regards to non payment of salary to the petitioner, the Hon'ble Single Judge has held that no approval is required from the Regional Level Committee under statutory regulations and since the vacancy cannot be filled up by way of promotion under the 50% quota in terms of the Chapter III, the petitioner was legally entitled for payment of salary. The order of District Inspector of Schools with-holding the salary has, therefore, been quashed.

3. Shri P.N.Saxena, Senior Advocate assisted by Shri Alok Dwivedi, Advocate on behalf of the Appellant Munna Lal submits that the issue as to whether a single post of Class III created in a recognized Intermediate College is to be filled by promotion in terms of Regulation 2(2) of Chapter III or by direct recruitment has been considered by a Divisional Bench of this Court in the case of [Jai Bhagwan Singh Vs. District Inspector of Schools, Committee of Management, Maharana Khumbha Higher Secondary School and Devendra Singh Gehlot](#). The Division Bench of this Court has held that one single post of Class III is to be filled by promotion at the first instance and in case suitable candidate for promotion is not available direct recruitment cannot be resorted to. He, therefore, submits that the Hon'ble Single Judge has failed to take note of the said Division Bench judgment. The Appellant has a right to claim promotion against one single post of Class III. He further points out that compassionate appointment can only be offered against a vacancy which is within the quota for direct recruitment and, therefore, appointment offered to the petitioner on compassionate ground against one single Class III post is legally not justified.

4. Faced with the aforesaid contentions, Shri Ashok Khare, Senior Advocate assisted by Shri P.N.Ojha submits that the Appellant Munna Lal is not eligible for promotion on the said Class III post. Therefore, the Appeal is misconceived. The legal position qua the issue of manner of appointment on one single Class III post as explained by the Division Bench of this Court in the case of Jai Bhagwan Singh (Supra), i.e. the one single post of Class III has to be filled at the first instance by way of promotion and if the suitable candidate is not available, direct recruitment can be resorted has not been disputed. He however submits that the petitioner has been appointed under Regulation 101 to 107 and even if there is no vacancy in the said institution, he is entitled to be adjusted elsewhere and, therefore, payment of salary could not be

stopped, more so, when the petitioner is continuously working in the institution.

5. We have heard learned Counsel for the parties and have gone through the records of the present case.

6. The legal position with regards to the mode and manner of appointment against a single post of Class III in a recognized Intermediate College has been considered in the case of Jai Bhagwan Singh (Supra) and it has been held that the vacancy has to be filled by way of promotion at the first instance. Devendra Bahadur Singh has been offered appointed on compassionate ground against a Class III post which was the only post duly created in the institution in question. Such compassionate appointment could have been offered to Devendra Bahadur Singh only if no eligible candidate entitled to be considered for promotion was available in the institution.

7. In our opinion the learned Single Judge has not taken into consideration of the aforesaid aspect of the matter as explained by the Division Bench, therefore, the finding of the Hon"ble Single Judge to the extent he held that the post is to be filled by direct recruitment is hereby set aside. Since Regulation 103 of Chapter III provides that if there is no vacancy in the Institution where the employee has expired, the dependent of the deceased employee is entitled to be adjusted in another institution where the vacancy with reference to the qualifications of the dependent is available failing which superannuary post may be created. The right to appoint the petitioner is not in issue, only issue is as to against which vacancy he is to be appointed. In the aforesaid legal background appointment has to be offered to the petitioner and it would be in the interest of substantial justice if Devendra Bahadur Singh, who has been appointed on compassionate ground and is working regularly in the institution is directed to be paid his salary even after the Court has come to the conclusion that the vacancy was to be filled by way of promotion at the first instance. Following directions would serve the purpose to settle the dispute equitably between the contesting parties:

(a) Devendra Bahadur Singh shall continue in the institution for a period of one month and shall be paid his salary till the date of his actual working.

(b) The District Inspector of Schools shall call for the records and within a period of one month he shall examine as to whether the Appellant is qualified for being promoted against the vacancy which has become available due to death of father of Devendra Bahadur Singh i.e. Class III post as per the law applicable or not.

(c) If the District Inspector of Schools comes to conclusion that the Appellant is entitled to such promotion, he shall pass appropriate orders accordingly.

(d) In such a situation the District Inspector of Schools shall simultaneously issue an order adjusting Devendra Bahadur Singh against any other vacancy on Class III post which may be available in any other aided institution of the District and in absence thereof, order for superannuary post being created shall be issued for the institution

itself. It goes without saying that we have not examined is issue as to whether Munna Lal is qualified for the post or not. It shall be examined by the District Inspector of Schools. It is provided that Munna Lal may file a certified copy of this order within one month from today before the District Inspector of Schools along with self attested copy of the certificates pertaining to the Educational qualification possessed by him.

8. In case the present appellant Munna Lal is not found suitable, for such promotion, the District Inspector of Schools may issue order for continuance of Devendra Bahadur Singh, in the institution, strictly in accordance with law. The District Inspector of Schools shall pass a reasoned speaking order.

9. Special Appeal is allowed subject to the observations made herein