

Bhola Vs The District Inspector of Schools, Prabandh Sanchalak, Tulsi Das Inter College and Sri Om Prakash Dwivedi, District Inspector of Schools

Court: Allahabad High Court

Date of Decision: Sept. 6, 2005

Acts Referred: Uttar Pradesh Intermediate Education Regulations, 1921 &" Regulation 2(2)

Citation: (2005) 6 AWC 5881

Hon'ble Judges: Vikram Nath, J

Bench: Single Bench

Advocate: Vinod Sinha, Ashok Khare, Ranjit Saxena, S.P. Singh and V.K. Singh, for the Appellant;

Judgement

Vikram Nath, J.

Both the writ petitions have been filed by different persons challenging the same order of the District Inspector of Schools

dated 16.01.2003, whereby selection of Bhola (petitioner in Writ Petition No. 4913 of 2003) on the post of Clerk has been denied approval and

Santosh Kumar Mishra (petitioner in Writ Petition No. 5818 of 2003) has been directed to be absorbed in another institution as a Clerk. Santosh

Kumar Mishra in his Writ Petition No. 5818 of 2003 has further challenged another order of the District Inspector of Schools of the same date

16.01.2003, whereby he has been given appointment in another Institution.

2. The controversy in the two writ petitions relates to appointment on the post of clerk in recognized and aided Intermediate Education Institution

namely Tulsidas Inter College, Anei, district Varanasi. The parties are into litigation from 1996, It is not in dispute that there are total 4 posts of

clerk in the institution, which includes one post of Head Clerk. On the death of Sri Brahmdev Mishra, the head clerk of the institution on

03.12.1994 the senior most clerk Sailendra Kumar Singh was promoted as head clerk and as a result a vacancy arose for the post of clerk. The

other two posts of the clerk were occupied by Durga Prasad Singh and Shivdhari Singh. It is also not in dispute that all the clerks working in the

institution were of unreserved category (general category). Initially the management appointed one Indra Bahadur Singh against the vacant post and

forwarded the papers to the District Inspector of Schools for grant of financial approval. But" the same was disapproved on the ground that the

vacant post should be filled up by reserved category candidates of Scheduled Castes;

3. Thereafter an advertisement was issued in newspaper dated 29.05.1996 inviting applications for filling the post of Assistant Clerk from

Scheduled Caste candidates. The petitioner Bhola was selected for the said post on 10.07.1996 and the papers regarding selection were

forwarded to the District Inspector of Schools for granting of financial approval. In the meantime the District Inspector of Schools vide order dated

12.07.1996 directed the manager of the Institution to give appointment to Santosh Kumar Mishra on compassionate basis (being son of deceased

head clerk Brahma Dev Mishra).

4. The order of the District Inspector of Schools was challenged by the petitioner by means of Writ Petition No. 4910 of 1997 with the further

prayer to the respondents to approve the selection of the petitioner held on 10.07.1996. It would be relevant to mention that Indra Bahadur Singh

had also filed a petition bearing Writ Petition No. 20398 of 1995. Both the writ petitions were decided by this Court vide judgment dated

29.04.1999 with the direction to the District Inspector of Schools to first decide the question whether the vacant post was of reserved category or

not and in case it was of reserve category then the selection of the petitioner requires to be approved, however if it was held that it was not a

reserved category post, in that event the contention of Indra Bahadur Singh and Santosh Kumar Mishra would be considered.

5. The District Inspector of Schools vide order dated 30.06.2000 without complying with the direction of this Court contained in the order dated

29.04.1999 granted approval to the appointment of Santosh Kumar Mishra holding vacant post was to be filled up by compassionate

appointment. This order of the District Inspector of Schools was again challenged before this Court by the petitioner Bhola by means of Writ

Petition No. 19271 of 2000, which was allowed vide judgment dated 14.05.2005 with the direction to the District Inspector of Schools to take

fresh decision, keeping in mind specific direction as given by this Court in its judgment dated 29.04.1999.

6. Pursuant to aforesaid direction the District Inspector of Schools vide order dated 24.08.2002 specifically held that the vacant post was to be

filled up by the reserved category candidate. It was also held that the selection of Bhola could not be given approval for the reason that letter of

appointment had not been issued to him and he had not assumed the charge. It further mentioned that in case Bhola had been issued appointment

letter and had taken charge no vacant post would be left to be filled up and therefore any appointment on compassionate basis would have been

adjusted in another institution but as Santosh Kumar Mishra has already joined and is already working he may continue as such. The case of Indra

Bahadur Singh being neither of reserved category nor of compassionate basis was rejected.

7. This order of the District Inspector of Schools dated 24.08.2002 was again challenged by Bhola by way of Writ Petition No. 50004 of 2003.

The said petition was allowed and the order dated 28.04.2002 was set aside holding that the petitioner Bhola could not have been denied

approval on the technical ground for which he was not at fault. This Court directed the District Inspector of Schools to reconsider the matter

regarding grant of approval to the selection of the petitioner Bhola and further recommended that Sri Santosh Kumar Mishra may be adjusted in

some other institution or on some other post. Against the aforesaid judgment dated 03.11.2002 Santosh Kumar Mishra has filed Special Appeal

No. 26 of 2003. The appeal is pending and there is no interim order in the said appeal.

8. The District Inspector of Schools vide order dated 16.01.2003 impugned in both the writ petition has again declined to grant approval to the

selection of Bhola on the ground that appointment letter was not issued to him and has further directed for absorption of Santosh Kumar Mishra in

another institution and directed the management to fill up the vacant post by candidate of Scheduled Castes category. By another order of the

same date i.e. 16.01.2003, the District Inspector of Schools has directed for absorption of Santosh Kumar Mishra in Hathi Barni Inter College,

Varanasi on a vacant post of Assistant Clerk. These orders have been challenged in the writ petition by the petitioners.

9. I have heard Sri Vinod Sinha and Sri Ranjit Saxena, learned counsels appearing for Bhola and Sri Ashok Khare, learned senior Counsel,

assisted by Sri V.K. Singh, Advocate for the petitioner Santosh Kumar Mishra and learned Standing Counsel representing the State respondents

in both the petitions.

10. The question as to whether the vacant post was to be filled up by reserve category candidate is settled right from 1996 when the management

pursuant to the order of the District Inspector of Schools disapproved the appointment of Indra Bahadur Singh I directed the management to fill up

the post by candidate of Scheduled Caste category. Subsequent order of the District Inspector of Schools dated 24.08.2002 (which was not

challenged by Sri Santosh Kumar Mishra) also clearly held that the vacant post was to be filled up by reserve category candidate.

11. Sri Ashok Khare, learned senior counsel representing Sri Santosh Kumar Mishra has contended that as there were three posts of clerk

(excluding post of head clerk) only one post remains for direct appointment in view of Regulation 2(2) of Chapter 3 of Regulations framed under

the U.P. Intermediate Education Act 192 and two posts fell in the promotion quota. In the circumstances a single post could not be reserved and

had to be filled up by a general category candidate, This contention cannot be accepted in view of the fact that the post of clerk and the head clerk

fall in the same cadre and, therefore, all the 4 posts, 3 clerk and 1 head clerk is to be taken as one cadre resulting into 2 posts falling in promotion

quota and 2 posts for direct recruitment. There being 2 posts to be filled up by direct recruitment reservation will apply. This view also finds

support from the following decision of this Court in the case of Kedar Nath Maurya v. District Inspector of Schools AWC1995 (744).

12. The other contention raised by Sri Ashok Khare that Sri Santosh Kumar Mishra had already worked for several years in the institution and in

case he is transferred to some other Institution he will lose his seniority and emoluments would be adversely affected also can not be accepted in

view of the fact that Santosh Kumar Mishra could not have been validly appointed in as much as there was no vacant post available in the

Institution for appointment of general category candidate and Sri Santosh Kumar Mishra could not have been appointed against reserved category

post. Further in view of the selection of Bhola no vacant post remained in the Institution and the District Inspector Of Schools rightly held in his

order dated 24.08.2002 and 16.01.2003 that Santosh Kumar Mishra at best could be adjusted in another Institution.

13. Sri Santosh Kumar Mishra even otherwise having been given compassionate appointment is being provided service in another Institution. He is

not being deprived of his services. Compassionate appointment being exception to the general rule Sri Santosh Kumark Mishra cannot insist for

continuing in a particular institution and should feel content having been continued in other institution where he has been directed to be absorbed.

14. Next coming to the question whether selection of Bhola has been rightly made or not. It is more than clear that the District Inspector of

Schools has overlooked the judgment dated 11.04.2002 of this Court in which it was specifically held that the ground for disapproving his

appointment was too technical and that also for no fault of Bhola. The District Inspector of Schools again by the impugned order has disapproved

the selection of Bhola on the same ground that no letter of appointment has been issued to him without taking into consideration the judgment of

this Court dated 24.11.2002 whereby the earlier order of the District Inspector of Schools dated 24.08.2002 has been set aside. In view of the

judgment of this Court dated 21.11.2002 selection of the Bhola deserves to be accorded approval and should be allowed to join and start

working as clerk in the.... Institution. Necessary orders may be passed by the DIOS in this regard.

15. Learned counsel appearing for Santosh Kumar Mishra has contended that as he has filed special appeal against the order dated 21.11.2002

being Special Appeal No. 26 of 2003 the hearing of the petition should be adjourned. This contention cannot be sustained firstly for the reason that

in paragraph 38 of the Writ Petition No. 5818 of 2003 filed by Santosh Kumar Mishra it has been stated that stay application in the appeal has

already been rejected. Further the hearing of the writ petition cannot be deferred for the reason that delay in hearing of the writ petition gives undue

advantage /benefit to Santosh Kumar Mishra who is enjoying to continue in the Institution under interim order of this Court whereas Bhola despite

valid selection in his favour and despite three orders having been passed by this Court has still not been given appointment and is not getting any

salary. It would be unjust to delay the final disposal of writ petition. Santosh Kumar Mishra is already at liberty to join the new Institution where he

is being absorbed vide order of the District Inspector of Schools and will therefore not suffer any hardship and in any case much less hardship than

Bhola who is not working, nor getting any salary.

16. In view of the above the Writ Petition No. 5818 of 2003, Santosh Kumar Mishra v. District Inspector of Schools, is dismissed and Writ

Petition No. 4913 of 2003 Bhola v. District Inspector of Schools, is allowed. The order of the District Inspector of Schools dated 16.01.2003 is

set aside.

17. No order as to costs.