

Court No. - 34

Case :- WRIT - A No. - 27467 of 1999

Petitioner :- Suman Lata Chauhan

Respondent :- State Of U.P. & Others

Counsel for Petitioner :- Dr. H.N. Tripathi

Counsel for Respondent :- C.S.C.,Dr.Daya.Shankar,K.N.Singh

Hon'ble Sudhir Agarwal,J.

1. Heard Dr. H.N. Tripathi, learned counsel for petitioner, learned A.G.A for State and perused the record.

2. The facts as stated in this writ petition are that petitioner was appointed as Assistant Teacher on short term vacancy in Govind Ballav Pant Kanya Higher Secondary School, Baheri (hereinafter referred to as 'Institution'). Thereafter, papers were sent to District Inspector of Schools / Director of Education for granting approval to appointment of petitioner on 25.01.1997. Aforesaid appointment of petitioner was made against short term vacancy caused by one Maya Devi proceeding on leave. Subsequently, appointment of petitioner was further extended and financial approval was granted by respondent no. 2. It is stated by petitioner that since she has continuously been working as Assistant Teacher in L.T. Grade in said Institution, she has not been paid salary from 15.5.1997 onwards. Petitioner thereafter made representation dated 01.05.1998 but no order has been passed by respondents thereon.

3. It is not in dispute that Institution in question was governed as per provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921") and U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "Act, 1982"). Payment of salary to teachers is governed by provisions of U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as "Act,

1971"). Regarding appointment of Assistant Teacher on short term vacancy as per provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as "Second Order") are applicable

4. As stated above, for short term vacancy, procedure which ought to have been followed in the case in hand in July 1996 is prescribed in Second Order read with U.P. Secondary Education Service Selection Board Act, 1982 (hereinafter referred to as "Act, 1982"). The procedure prescribed under para 2 of Second Order had to be observed. It reads as under:

"2. Procedure for filling up short-term vacancies.-(1) *If short-term vacancy in the post of a teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the Institution by promotion of the permanent senior-most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted.*

(2) Where any vacancy referred to in Clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in Clause (3).

(3) (i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the Manager of the Institution along with the particulars given in Appendix "B" to this Order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-1993/XV-7(79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of Institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to

*them shall be forwarded by the Manager to the District Inspector of Schools for **his prior approval**.*

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

Explanation-For the purpose of this Paragraph-

- (I) the expression "senior-most teacher" means the teacher having longest continuous service in the institution in the Lecturer's grade or the Trained graduate (L.T.) grade or Trained under-graduate (C.T.) grade or J.T.C. or B.T.C. grade as the case may be;*
- (ii) in relation to institution imparting instructions to women, the expression "District Inspector of Schools" shall mean the Regional Inspectress of Girls' Schools;*
- (iii) short-term vacancy which is not substantive and is of a limited duration."*

5. A bare perusal of the aforesaid procedure prescribed in Second Order as also the steps taken, as stated in writ petition, makes it clear that the said procedure has not been followed and appointment of petitioner has been made in utter disregard of the aforesaid procedure. This aspect has been considered in a catena of decisions of this Court as well as Apex Court. This Court does not intend to add bulk of judgments by referring to all such decisions but suffice is to mention that a detailed judgment was rendered by a Full Bench in **Radha Raizada Vs. Committee of Management, 1994 (2) ESC 345 (FB)** and confirming the above Full Bench judgment, Apex Court in **Prabhat Kumar Sharma and others Vs. State of U.P. and others, (1996) 10 SCC 62** held that procedure laid down in Removal of Difficulties Order is mandatory and has to be observed in words and

spirit. An appointment made, inconsistent with the said procedure, is void ab-initio and will not confer either any right upon the incumbent to hold the post or to continue in service or to claim salary from State exchequer. The relevant observations made by Court in **Prabhat Kumar Sharma (supra)** read as under:

"Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees."

6. Again in para 11 of the judgment the Court held as under:

"Any appointment in violation thereof is void. As seen prior to the Amendment Act of 1982 the First 1981 Order envisages recruitment as per the procedure prescribed in para 5 thereof. It is an in-built procedure to avoid manipulation and nepotism in selection and appointment of the teachers by the Management to any posts in aided institution."

7. This decision has been followed and reiterated in **Shesh Mani Shukla Vs. District Inspector of Schools Deoria and others J.T. 2009 (10) SC 309** wherein Court has held as under:

"It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State."

8. In the circumstances, it cannot be said that appointment of petitioner validly made and hence petitioner was entitled for payment of salary. I, therefore, find no reason to pass any order enabling petitioner to claim salary from State Exchequer.

9. The writ petition, therefore, lacks merit and is dismissed. No costs.

Order Date :- 27.10.2017/Rameez