

Court No. - 10

Case :- WRIT - A No. - 14895 of 1999

Petitioner :- Rakesh Kumar Sharma

Respondent :- D.I.O.S. And Others

Counsel for Petitioner :- Ashok Khare, P. N. Ojha, R. Pandey, R.K.Singh, Rakesh Pandey

Counsel for Respondent :- C.S.C., S.K. Srivastava

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Rajesh Kumar Singh, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Sri Om Prakash Ojha, learned counsel for the respondent-Committee of Management.
2. Counter affidavit filed by the respondent no.3-Committee of Management is taken on record.
3. Learned counsel for the petitioner states that he does not propose to file rejoinder affidavit as the Committee is supporting his cause.
4. By means of the present writ petition, the order impugned dated 15.03.1999 has been by challenged by which the District Inspector of Schools, Varanasi has cancelled the appointment of the petitioner on the ground that the short term vacancy was not intimated to his office nor was any permission obtained from him nor was the selection done in accordance with the judgment of this Court in the case of **Km Radha Raizada and another Vs. Committee of Management and others.**
5. The case of the petitioner is that one Seva Ram Singh was posted as Lecturer in History and he retired after attaining the age of superannuation on 30.06.1997 and on the said post, one Keshav Prasad Singh, who was seniormost L.T. Grade Teacher was promoted on his place, as a result whereof, a short term vacancy arose in the institution and the Management intimated the said vacancy to the District Inspector of Schools on 15.07.1997. Thereafter, an advertisement was published on 22.09.1997 in two daily newspapers, namely, 'Aaj' and 'Janwarta' and the selection committee was constituted which held the proceedings on 03.10.1997 and after following due process of law, the petitioner was appointed. The appointment letter dated 05.10.1997 was

issued by the Committee of Management. Thereafter, papers were submitted before the District Inspector of Schools and then the order impugned has been issued.

6. The submission of learned counsel for the petitioner is that the short term vacancies are filled up as per the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and Clause 2 of the same has been placed before this Court. The same is quoted herein below:-

"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' of 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-4993/XV - 7-1(79)-1981, dated July 31, 1982, 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."

7. It is contended that though the post has to be filled up by direct recruitment and only requirement is to notify the vacancy on the

notice board of the institution, the Full Bench of this Court in the case of **Km Radha Raizada and another Vs. Committee of Management and others: 1995 (25) AllLR 383 (FB)** has laid down that even the said post shall be filled up after publication of advertisement in newspapers. Regarding necessity to obtain prior approval, the judgment says that there is no such necessity.

8. In view of the above, it has been argued that there being no flaw either factual or legal in the appointment of the petitioner, the order impugned cannot sustain.

9. A counter affidavit has been filed on behalf of the State-respondents in which it has been stated that when the order of Keshav Prasad Singh was issued on 20th February, 1998, it contained a stipulation that the short term vacancy would not be filled up without prior approval of the District Inspector of Schools. It is, therefore, contended by the learned Standing Counsel that before filling up of the vacancy, no prior approval was obtained from the District Inspector of Schools and, hence, the appointment was illegal. It has further been argued with reference paragraph no.21 of the counter affidavit that on the date of advertisement short term vacancy was not in existence and, hence, no question could arise to fill up the same.

10. Having heard the learned counsel for the parties, I find that though after 30.06.1997, in place of Seva Ram Singh, Sri Keshav Prasad Singh was accorded promotion, however, formal letter was issued in 1998, it cannot be said that the short term vacancy did not arise on 15.07.1997, rather there is a clear admission in the letter dated 20.02.1998 itself, that the said short term vacancy had, in fact, arisen on the very same date i.e. 15.07.1997. The only question to be examined by this Court is as to whether the Committee of Management rightly or wrongly filled up the same vacancy by offering appointment to the petitioner.

11. As already discussed, the post was duly advertised, selection proceedings were held and papers were forwarded later on to the District Inspector of Schools.

12. In view of the Full Bench judgment of this Court in the case of **Km Radha Raizada (supra)**, there being no requirement of prior approval, the condition imposed in the letter dated 20.02.1998 (Annexure No.C.A.1 to the counter affidavit) is contrary to law.

13. In the present case, an interim order was passed on 23.09.1999 whereby the respondents were directed to continue the petitioner in

service and pay his salary forthwith.

14. Though, the writ was, later on, dismissed for want of prosecution on 05.05.2017 but while restoring the same on 06.07.2022, taking note of interim order and continuity in service of the petitioner, the interim order was revived on the same terms, subject to the condition that no regularly selected candidate had been appointed in the meantime.

15. The Committee of Management has come up with a clear stand that no person was appointed on the post and the petitioner continued to serve the institution and salary was also paid to him.

16. At this stage, the petitioner is 55 years of age and has remained in service at the strength of the interim order for the last more than 24 years. Even otherwise, for the reasons recorded herein above, the order impugned is found contrary to the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and the judgment of Full Bench of this Court in the case of **Km Radha Raizada (supra)**.

17. The writ petition is **allowed**.

18. The order impugned dated 15.03.1999 passed by the District Inspector of Schools, Varanasi is **quashed**.

19. The petitioner's claim for regularization in terms of Section 33-G of U.P. Secondary Education (Services Selection Board) Act, 1982 shall be considered by the Competent Authority within a period of **four months** from the date a certified copy of this order is produced before the said authority.

20. The petitioner shall be allowed to continue in service and shall be paid his regular salary month to month.

21. In so far as certain alleged arrears of salary are concerned, the petitioner may move an appropriate application before the District Inspector of Schools, Varanasi who shall examine the same after obtaining information from the Committee of Management and shall pass appropriate orders thereafter.

Order Date :- 19.10.2023

AKShukla/-