

Court No. - 10

Case :- WRIT - A No. - 23813 of 2004

Petitioner :- Gaya Prasad Alld.

Respondent :- District Inspector Of Schools Alld. And Others.

Counsel for Petitioner :- Ashok Mehta, Gyan Prakash Verma

Counsel for Respondent :- C.S.C., Vimal Chandra Mishra

Hon'ble Kshitij Shailendra, J.

1. Counter affidavit filed by the respondent no.2 and two rejoinder affidavits filed by the petitioner are taken on record.
2. Since affidavits between the parties have been exchanged, the Court proceeds to finally decide the writ petition.
3. Heard Sri Gyan Prakash Verma, learned counsel for the petitioner, Sri Deepak Chauhan, learned Additional Chief Standing Counsel for the respondents no.1 and 3, and Sri Vimal Chandra Mishra for the respondent no.2, i.e. the Principal of the Institution.
4. The petitioner has assailed the order impugned dated 29.04.2004 whereby the District Inspector of Schools, Allahabad has disposed of his matter in compliance of the directions issued by this Court in a Writ Petition No.49425 of 2002 holding the entire selection process as contrary to law.
5. The facts of the case are that the petitioner, according to his pleadings, was already working as a Sweeper in Mangla Prasad Inter College, Bampur, Allahabad and when the process for regular selection was initiated, pursuant to publication of advertisement in a daily newspaper, namely, Nayayadhis, the selection proceedings were held and, thereafter, the petitioner along with various other persons was appointed.
6. It is contended that whereas other persons were appointed on different posts, the petitioner's appointment on the post of Sweeper was according to law but when the Principal stopped paying salary to him, he approached the writ court and, at one stage, an order was passed by the District Inspector of Schools on 24.10.2002 reiterating the requirement of publication of advertisement in two daily newspapers but the said order was set aside by this Court by order dated 16.01.2004 passed in Writ Petition No.49425 of 2002 and the District Inspector of Schools was directed to consider the case for grant of approval to the petitioner's appointment on

merits. The submission is that this time again, the District Inspector of Schools passed an identical order and, therefore, the same is unsustainable.

7. Learned counsel for the respondent no.2 submits that the petitioner was already continuing in the institution and the requirement of publication of advertisement in a single newspaper is sufficient as already held by this Court. He, in fact, supports the case of the petitioner by referring to Regulation 101 of the Regulations contained under Chapter III of the U.P. Intermediate Education Act, 1921 and submits that there is no requirement of obtaining prior approval from the District Inspector of Schools before proceeding to fill up the vacant post. Learned counsel for the respondent no.2 has referred to decision of the Division Bench of this Court in the case of **Jagdish Singh Vs. State of U.P. and others: 2006 (4) ADJ 162 (All) (DB)** in this regard.

8. Sri Deepak Chauhan, learned Additional Chief Standing Counsel while referring to the counter affidavit filed by the District Inspector of Schools, Allahabad submits that the petitioner secured backdoor appointment in the institution and the District Inspector of Schools has rightly found the appointment as contrary to Regulation 101. He submits that on the findings recorded to the effect that the newspaper "Nayayadhish" is not published at the district level and the advertisement was lacking necessary details, such as, age, educational qualification and grade pay etc, and, further, no selection proceedings were held in the matter, the order impugned cannot be interfered with.

9. Having heard the learned counsel for the parties, the Court finds that the only substantial ground taken in the writ petition is that the requirement of obtaining prior approval from the District Inspector of Schools not being a statutory requirement, the order impugned cannot sustain. Learned counsel, however, further submits that identical decision was already quashed by this Court earlier and, therefore, the order impugned cannot sustain by pointing out alleged deficiencies in publication of advertisement.

10. The Court has examined the entire record of writ petition as well as counter and rejoinder affidavits. Neither the advertisement or any document pertaining to selection proceedings has been brought before this Court.

11. In so far as decision of Division Bench of this Court in the case of **Jagdish Singh (supra)** is concerned, in paragraph no.21, it was held that prior approval under Regulation 101 is not required to be

taken before issuing advertisement for filling up vacancy, however, in the same paragraph, it has been held that prior approval is required from the District Inspector of Schools after completion of process of selection. I have also perused the Regulation 101 which speaks of statutory requirement of prior approval to the selection.

12. The order impugned records specific finding to the effect that neither any selection committee was constituted nor any proceedings were notified nor was prior approval granted to the selection. In fact, the District Inspector of Schools has not stuck to his stand of requirement of publication of advertisement in two newspapers, he has certainly examined the validity and legality of the advertisement published in a single newspaper, namely, Nyayadhish and has found it to be short of requirements.

13. Another important observation made in the order impugned is that though appointment letter has been issued on 13.12.2004 to the petitioner and other candidates, their joining was effected one year prior to the same, i.e. on 16.12.2003 and the papers for approval were forwarded on 18.12.2003.

14. From the perusal of the order impugned and the stand taken in the affidavits, this Court is not inclined to attach any sanctity to the selection/ appointment of the petitioner as it is found to be lacking and contrary to the Regulations.

15. The findings based upon the material available with the District Inspector of Schools have not been found to be perverse with the assistance of any material before this Court and, therefore, this Court is not inclined to grant any relief to the petitioner.

16. The writ petition fails and is, accordingly, **dismissed**.

Order Date :- 6.12.2023

AKShukla/-