

Court No. - 35

Case :- WRIT - A No. - 18309 of 2023

Petitioner :- Manish Kumar Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Alok Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Sri Alok Kumar Singh, learned counsel for the writ petitioner and Sri Santosh Kumar, learned Standing Counsel, who appears for the first and the second respondents.

Questioning the order dated 04.01.2003, passed by the District Inspector of Schools, Azamgarh negating to grant approval to the appointment of the writ petitioner, the writ petitioner preferred Civil Misc. Writ Petition No.4917 of 2003, Manish Kumar Singh Vs. District Inspector of Schools, which came to be dismissed on 20.03.2006. Thereafter, the writ petitioner claims to have preferred **Special Appeal No.504 of 2009, Manish Kumar Singh Vs. District Inspector of Schools**, in which on 11.05.2017, the following orders were passed:

"This Special Appeal arises out of the judgment and order dated 20 March 2006 of a learned Judge of this Court by which Writ Petition No. 4917 of 2003 filed by the appellant for quashing the order dated 4 January 2003 passed by the District Inspector of Schools, Azamgarh refusing to grant financial approval to the appointment of the appellant as an Assistant Clerk in an Intermediate College, was dismissed.

Sri Subhash Intermediate College, Karkhiya Rustam Sarai, District Azamgarh1 is a recognized and aided Intermediate College. It is stated that there were three posts of Assistant Clerks in the College and on the promotion of Jaswant Singh, an Assistant Clerk in the College, on the post of Head clerk, a vacancy arose on the post of Assistant Clerk. The Management wrote to the District Inspector of Schools to grant permission for taking steps for appointment of a clerk as contemplated under Chapter III of the U.P. Intermediate Education Act, 1921 but as permission was not granted, the Committee of Management on its own initiated proceedings for filling up the post of Assistant Clerk by direct recruitment. The Committee of Management forwarded the papers relating to the appointment of the writ petitioner to the District Inspector of Schools for according financial approval. The District Inspector of Schools by order dated 4 January 2003 declined to grant financial approval to the appointment of the petitioner on the ground that (1) no prior permission was granted for initiating the process, (2) the post of Assistant Clerk was a promotional post and could not have been filled up by direct recruitment, (3) even if there was no person who could be promoted,

then too the post should have been filled up by a Scheduled Caste candidate by direct recruitment and (4) the Management had not followed the relevant procedure for making appointment contemplated under the relevant Rules.

The learned Judge held that the District Inspector of Schools was justified as it was incumbent on the Committee of Management to have sought prior permission and in any case the reservation policy had also not been followed.

Sri Ram Gopal Tripathi, learned counsel for the appellant submitted that in the facts and circumstances of the case, when the Committee of Management had written to the District Inspector of Schools to grant permission for making the selection and the District Inspector of Schools kept silent, the Committee of Management cannot be faulted for not seeking prior permission. It is also his submission that when since no candidate was eligible to be promoted on the post of Assistant Clerk, the Committee of Management was justified in filling up the post by direct recruitment.

Learned Standing Counsel appearing for the respondents, however, submitted that not only prior permission of the District Inspector of Schools was not taken but even otherwise the post of Assistant Clerk was required to be filled up by promotion but it has been filled up by direct recruitment. Learned Standing Counsel further submitted that the procedure contemplated for appointment has not been followed.

We have considered the submissions advanced by learned counsel for the parties.

In paragraph 18 of the writ petition it has been stated that the vacancy was required to be filled up by promotion from the Class IV employees of the College. In such circumstances, it was incumbent upon the Committee of Management of the College to have sought prior permission from the District Inspector of Schools if it intended to fill up the post of Assistant Clerk by direct recruitment. No resolution of the Committee of Management has been enclosed that may indicate that a conscious decision had been taken by the Committee of Management to appoint the Assistant Clerk by direct recruitment since no Class IV employee was available to be promoted on the post of Assistant Clerk. In the absence of any evidence to suggest that there was no Class IV employee in the College eligible to be promoted, the procedure adopted by the Committee of Management to fill up the post by direct recruitment cannot be sustained. In such circumstances, the absence of prior permission from the District Inspector of Schools would vitiate the selection process. There is, therefore, no error in the order dated 20 March 2006 passed by the District Inspector of Schools refusing to grant financial approval to the appointment of the appellant. The writ petition was dismissed on 20 March 2006. According to the learned counsel for the appellant, there was no interim order operating in the writ petition and even in the Special Appeal, no interim order was passed.

The impugned judgment and order, in such circumstances, does not call for any interference. The Special Appeal is, accordingly, dismissed."

A specific query was raised to the learned counsel for the writ

petitioner as to whether the order passed on 11.05.2017 in Special Appeal No. 504 of 2009, Manish Kumar Singh Vs. District Inspector of Schools, has been subject matter of challenge or not, according to him, the said order has attained finality.

The grievance of the writ petitioner is that he is working on the post in question and with the passage of time, he is vested with certain rights.

Prayer in the present petition is for a direction to the District Inspector of Schools, Azamgarh to accord promotion/ approval for appointment of the writ petitioner as an Assistant Clerk against the post, which has fallen vacant due to promotion of Sri Arvind Kumar Singh on 31.01.2016 (wrongly typed as 31.01.2006 in the relief claimed).

Sri Santosh Kumar, learned Standing Counsel submits that once the challenge to the order dated 04.01.2003 of the District Inspector of Schools, Azamgarh, resulting in dismissal of the writ petition and the intra-court appeal, thus the writ petitioner is not entitled to any relief and mere continuance does not confer any legal right to the writ petitioner.

Considering the submission of the rival parties, this Court is of the opinion that once the order dated 04.01.2003 of the District Inspector of Schools, Azamgarh has attained finality, thus the relief, which has been couched in the present writ petition cannot be acceded to.

Accordingly, the writ petition is **dismissed**.

Order Date :- 1.11.2023

N.S.Rathour