

Court No. - 5

Case :- WRIT - A No. - 2512 of 2008

Petitioner :- Jitendra Kumar Awasthi And 2 Ors.

Respondent :- State Of U.P. Thru Secy. Sec. Education And 5 Ors.

Counsel for Petitioner :- H.G.S. Parihar, Meenakshi Singh, Shashank Shekhar Parihar

Counsel for Respondent :- C.S.C., Jai Pratap Singh

Hon'ble Irshad Ali, J.

1. Heard Sri Prashant Kumar Singh, learned counsel for the petitioners, learned Standing Counsel for respondent-State and Sri J.P. Singh, learned counsel for respondent Nos.5 and 6.

2. The petitioners have filed the present writ petition on the following prayer :-

"(i) issue a writ, order or direction in the nature of Mandamus commanding the opposite parties particularly opposite party No.4 to make payment of salary to the petitioners regularly each and every month including the arrears of salary from the date of their joining on Class IV posts, i.e., since 24.8.2007, 24.8.2004 and 27.8.2007 respectively.

(ii) issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the functioning of the petitioners on class IV posts in any manner whatsoever.

(iii) Issue any other such order or direction which this Hon'ble Court may deem fit and just in the circumstances of the case in favour of the petitioners and

(iv) allow the cost of the petition in favour of the petitioners."

3. Factual matrix of the case is that there is an institution under the name of Nav Jiwan Inter College, Mohanlal Ganj, Lucknow, recognized under U.P. Intermediate Education Act, 1921 and receiving grant in aid from the State Government, therefore, the provisions of U.P. Act No.24 of 1971 are applicable inasmuch as provisions of U.P. Secondary

Education Services Selection Board Act, 1982 are applicable to the said institution.

4. In the institution in question there are 13 posts of Class-IV employees, which are duly sanctioned, out of them, six posts have been filled up by direct recruitment from open market and four posts have been filled up by appointment of dependents of deceased employees under Dying in Harness Rules. Three posts are lying vacant due to retirement of Sri Shyam Lal, Farrash on 30.7.1999, Sri Ambika Prasad Sharma, Mali on 30.11.1999 and Sri Ram Swaroop, Waterman on 31.7.2002.

5. The appointing authority of Class-IV employees under Regulation 100 is the Principal of the institution and as per the provisions contained under Regulation 101 of Chapter III of Regulations framed under U.P. Intermediate Education Act, 1921, without prior permission of the District Inspector of Schools, no Class-IV or Class-III posts are filled up, therefore, the Principal of the institution wrote a letter dated 7.11.2005 to the District Inspector of Schools, seeking his permission to fill up the vacancy and alongwith said letter, detail of the post lying vacant was submitted.

6. The District Inspector of Schools wrote a letter on 29.6.2006 to the Principal of the institution to submit his comment regarding non filling up of the vacancies and in response to the letter dated 29.6.2006, the Principal of the institution wrote a letter on 27.9.2006 explaining the position.

7. Since no action was taken, as such on 6.1.2007, the Principal of the institution in question again wrote a letter to the District Inspector of Schools requesting to grant permission to fill up the vacancy on Class-IV post. Thereafter, some report of the Accounts Officer was also called by the District Inspector of Schools and vide letter dated 5.6.2007, the District Inspector of Schools granted approval to make appointment.

8. Three Class-IV posts were advertised in daily newspaper '*Rashtriya Swaroop*' on 19.6.2007 and '*Swatantra Chetna*' dated 20.6.2007 and after constituting selection committee, the petitioners were selected and thereafter, the Principal of the institution again sent the papers to the District Inspector of Schools vide letter dated 9.7.2007 for its approval, which was duly received in the office of the District Inspector of Schools on 10.7.2007. Since no action was taken, as such again the Principal of the institution sent reminder letter dated 8.8.2007 to the District Inspector of Schools requesting him to grant approval for

the proposed appointments which was duly received in his office on 10.8.2007.

9. Since for a considerable period of about one and a half month no action was taken, as such the Principal of the institution issued appointment letter on 23.8.2007, appointing the petitioners on Class-IV post and in pursuance to the order of appointment, the petitioners joined their posts on 24.8.2007, 24.8.2007 and 27.8.2007 respectively and since then, they are working on their respective posts.

10. In paragraph 20 of the writ petition, the petitioners have come out with a case that after submission of papers to the District Inspector of Schools for the grant of approval, he did not pass any order, either approving or disapproving the selection of the petitioners, as such the selection of the petitioners is deemed to be approved by efflux of time in view of the judgment rendered in the case of **Rajendra Yadav Vs. The Deputy Director of Education & Others [1999 (2) ESC 1506 (All.)]**. Reply to the said paragraph has been given in paragraph 11 of the counter affidavit, wherein there is no denial of the provisions contained of deeming clause under the Rules inasmuch as in regard to the judgment referred above. Despite reminder letters, when no action was taken, the petitioners preferred this writ petition, wherein on 16.5.2008, interim order was passed, operative portion is being quoted below :-

"Accordingly, till further orders of the Court, the opposite parties are directed to ensure payment of salary to the petitioners, which shall be subject to further orders passed by this Court. Let the salary be paid with effect from May, 2008. Question relating to payment of arrears of salary shall be considered at the time of final hearing".

11. In view of the interim order granted by this Court, the petitioners are continuously discharging their duties and have been paid salary w.e.f. May, 2008 and in regard to arrears of salary, the question is pending consideration before this Court.

12. Submission of learned counsel for the petitioners is that once under the deeming clause, the appointment of the petitioners has been deemed approved, then there is no justification on the part of the District Inspector of Schools to withhold the salary of the petitioners. Next submission is that the appointment of the petitioners has been made after granting of approval by the District Inspector of Schools to make appointment, therefore, the action of the District Inspector of Schools is not justifiable in law in holding the salary of the petitioners.

13. Last submission of learned counsel for the petitioners is that the act and action of the District Inspector of Schools in not making payment of salary to the petitioners is wholly unjustified and without any rational basis.

14. On the other hand, learned Standing Counsel submits that in paragraphs 4, 10 and 15 of the counter affidavit, it has been stated that the matter of reservation in respect of existing vacancies was not taken into consideration while making appointment, therefore, the appointments are bad in law.

15. A query was made to the learned Standing Counsel in regard to the deeming clause, he kept mum and is not able to answer the query made by this Court.

16. After having heard the rival contention of learned counsel for the parties, I perused the material on record.

17. On perusal, it is established that vide order dated 5.6.2007, the District Inspector of Schools granted approval to make appointment without any rider to proceed with the appointments in the institution and thereafter, vacancies were duly advertised in two newspapers, inviting applications from the eligible and qualified candidates and the selection committee selected the petitioners and papers in regard to the appointment were duly submitted before the District Inspector of Schools for the grant of approval. The District Inspector of Schools did not pass any order refusing to grant approval or granting approval. This question was duly considered by this Court in the case of **Rajendra Yadav** (Supra). In paragraph 9 thereof, following finding was recorded :-

"9. The question is as to what should the 'reasonable period' within which the District Inspector of Schools should either accord, or refuse to accord, approval under Regulation 101 of Chapter III of the Regulations. In Regulation 6 of Chapter II, provision has been made that if the District Inspector of Schools fails to communicate his decision on the proposal submitted by the Committee of Management for appointment of a teacher by promotion within three weeks from the date of receipt of the proposal, he shall be deemed to have given concurrence to the proposal of the management. There are other provisions, for example Section 16F (2) as it originally stood, where the Legislature has provided for 'deemed approval' in the event of failure on the part of the

competent authority to communicate his decision within two weeks. Similarly para 2 (3) (iii) of U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 also enjoins a duty upon the District Inspector of Schools to communicate its decision on the proposal for ad hoc appointment in short term vacancy within seven days from the date of receipt of the relevant papers failing which it shall be deemed that the District Inspector of Schools has given his approval. The District Inspector of School, as stated earlier in this judgment, did not communicate his decision in response to the letters dated 28.2.1995 and 13.1.1996 within reasonable time and it was by means of the letter dated 25.4.1996 (Annexure-10 to the writ petition) that he purports to have declined financial approval to the appointment of the petitioner. Applying the test of reasonableness as laid down by the Supreme Court in the case referred to above. I am of the considered view that two weeks from the date of receipt of the letter seeking approval would be 'reasonable period' within which the District Inspector of Schools must communicate his decision to the appointing authority failing which he shall be deemed to have accorded approval. In the circumstances of the case, therefore,, the District Inspector of Schools would be deemed to have accorded approval way back on or before February 1, 1996 and the petitioner is, therefore, entitled to his salary w.e.f. 1.2.1996."

18. Similar view was taken in the case of **Shri Ranjan & Others Vs. District Inspector of Schools & Others**, wherein in paragraph 13, following order was passed :-

"13. In the present case, the appointment of the petitioners were communicated on 1.11.1999. Since the District Inspector of Schools did not pass any order, the petitioners' appointment was deemed to have been approved by the District Inspector of Schools after the expiry of two weeks. In my opinion, the petitioners were, therefore, entitled for their salary w.e.f. 1.12.1999."

19. In the case of **Rahul Srivastava Vs. State of U.P. (Writ-A No.2824 of 2010)**, in paragraphs 15 and 17, this Court has observed as under :-

"15. In the judgment in the case of Rajendra Yadav (Supra), the Court has held that two weeks from the date of receipt of the letter seeking approval would be reasonable period within which the DIOS must communicate his decision to the appointing authority failing which he shall be deemed to have accorded approval, however, in the case of Jagdish Singh (Supra), it has been stated that the prior approval contemplated under Regulation 101 is prior approval by the DISO after completion of process of selection and before issuance of appointment letter to the selected candidate.

17. Meaning thereby, the DIOS has not accorded prior approval on the permission sought by the Principal for filling up of Class IV posts vide letters dated 22.11.2008, 29.01.2009 & 07.02.2009 and communication dated 13.07.2009, whereby papers were sent to grant approval. Even in pursuance to order of this Court dated 03.12.2009, whereby direction was issued to take decision regarding approval for selection within six weeks, no decision has been taken by the DIOS and when the Principal intimated on 20.02.2010 regarding joining of the petitioner, the impugned order dated 29.03.2010 has been passed, which is based on non existent ground as the permission is treated to have been accorded in view of judgment relied upon in the case of Rajendra Yadav (Supra)."

20. The contention on the point of deeming clause has not been denied in the counter affidavit. In view of the settled proposition of law that in case the District Inspector of Schools did not pass orders on the proposal of approval within two weeks from the date of receipt of the papers then the appointment is deemed to be approved.

21. In view of the reasons recorded above, this writ petition succeeds and is **allowed**.

22. The petitioners are permitted to continue to work on the Class-IV posts in the institution and payment of salary w.e.f. 24.8.2007, 24.8.2007 and 27.8.2007 respectively shall also be paid to them.

23. No order as to costs.

Order Date :- 11.10.2023

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