

Court No. - 29

Case :- SPECIAL APPEAL No. - 569 of 2024

Appellant :- Smt. Madhubala Srivastava

Respondent :- State Of Up And 3 Others

Counsel for Appellant :- Bhaiya Lal Yadav

Counsel for Respondent :- C.S.C., Madhu Kumar Ram

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the appellant-petitioner, Mr. Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondents and perused the material brought on the record.

2. The instant intra-Court appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 is being preferred questioning the legality and validity of the order dated 02.04.2024 passed by the learned Single Judge in **WRIT - A No. - 11605 of 2019 (*Sushil Kumar Yadav and 5 Others Vs. State of U.P. and 3 Others*)**, wherein, the learned Single Judge has rejected the claim of the appellant-petitioner precisely on the ground that the impugned order which was subject matter of challenge in the petition reflects that number of sanctioned posts were only four on which four Assistant Teachers were already working and any appointment beyond the sanctioned strength could not be approved for purpose of granting their salary for grant-in-aid. Learned Single Judge has also considered that while making the alleged appointment, due process of selection was not adhered *inasmuch* as no prior permission of Basic Shiksha Adhikari was obtained and even his nominee was also not made a part of selection process. Consequently, the writ petition was dismissed with detailed observations. For ready reference, the entirety of the order is reproduced herein under:-

“1. Heard Shri Bhaiya Lal Yadav, learned counsel for petitioners and Shri L.M. Singh, learned Standing Counsel for State respondents.

2. This is a second round of litigation.

3. Earlier, Committee of Management of the concerned school has approached this Court by way of filing a Writ-A No.34327 of 2017, with a prayer to commence

recruitment process of six posts of Assistant Teachers, which became vacant due to retirement of incumbents between 1992 to 2008.

4. Above referred writ petition was disposed of vide order dated 3.8.2017 with a direction to concerned respondent to pass appropriate order in accordance with law. Aforesaid order is reproduced in its entirety.

"The petitioner is a Junior High School. It has preferred this writ petition through its Manager for a direction upon the District Basic Education Officer i.e. the second respondent to take appropriate decision on the papers submitted by it in respect of approval for the posts of Assistant Teachers.

The grievance of the petitioner is that in the Institution six posts of Assistant Teachers fell vacant due to retirement of regular incumbents between 1992 to 2008. The Institution has issued an advertisement in two newspapers and a request was made to the second respondent to send his nominee but no action has been taken as yet.

I have heard learned counsel for the petitioner, learned Standing Counsel and Sri Mrigraj Singh, learned Counsel for the second respondent.

Taking into consideration the facts and circumstances of the case, I am of the view that the ends of justice would be met by issuing a direction upon the second respondent to consider the proposal of the petitioner and pass appropriate order in accordance with law expeditiously, preferably within two months from the date of communication of this order.

Needless to say that this Court has not expressed its opinion on the merits of the case. The second respondent shall pass the order independently and in accordance with law.

The writ petition is, accordingly, disposed of.

No order as to costs."

5. In the aforesaid circumstances, grievance of the Committee of Management of concerned primary school was considered however; by impugned order dated 22.5.2019, appointment of Assistant Teacher on said alleged vacant posts, made during pendency of representation without a nominee of Basic Shiksha Adhikari was rejected on a ground that only four posts were sanctioned for appointment of Assistant Teacher in concerned school, whereas four Assistant Teachers are already working. Relevant part of impugned order is mentioned hereinafter:

"शिक्षा निदेशक (बे०) उ०प्र० लखनऊ के पत्रांक सामान्य (बे०)/2801-2976/2014-15 दिनांक 31.03.2015 के द्वारा शासनादेश संख्या 2435/79-6-2014 दिनांक 30.12.2014 के क्रम में प्रदेश के सहायता प्राप्त जू०हा० स्कूलों में न्यूनतम मानक के अन्तर्गत रिक्त प्रधानाध्यापक के 800 पदों, स०अ० के 1444 पदों तथा लिपिक के 528 पदों पर भर्ती के सम्बन्ध में विस्तृत निर्देश प्रदान करते हुए अन्तिम तिथि 30.06.2015 निर्धारित की गयी, जिसमें गौरी शंकर जू०हा०स्कूल, ठाठर गोपालपुर, जौनपुर में निम्नांकित विवरणानुसार शिक्षक/शिक्षणेत्तर क्रमचारी कार्यरत थे-

क्र० सं०	विद्यालय का नाम	विद्यालय में कुल सृजित पदों की संख्या				विद्यालय में सृजित पदों के सापेक्ष नियुक्त/कार्यरत की संख्या				रिक्ति का विवरण			
		प्र० अ०	स० अ०	लि०	परि०	प्र० अ०	स० अ०	लि०	परि०	प्र० अ०	स० अ०	लि०	परि०
1	<u>गौरी शंकर महादेव पू०मा०वि० ठाठर गोपालपुर</u>	01	04	01	01	01	06	01	01	00	-2	00	00

प्रबन्धक गौरीशंकर पू०मा०वि०, ठाठर गोपालपुर, जौनपुर द्वारा विद्यालय में सक्षम अधिकारी द्वारा पदसृजित न होने के बावजूद भी नवीन नियुक्ति अपने स्तर से की गयी। उ०प्र० मान्यता बेसिक स्कूल (जू०हा० स्कूल) (अध्यापकों की भर्ती एवं सेवा की शर्तें) नियमावली 1978 में प्राविधानित नियम 9 का अनुपालन नहीं किया गया है, जैसा कि शासनादेश में निम्नवत् व्यवस्था प्राविधानित है-

चयन समिति अल्पसंख्यक संस्थाओं से भिन्न संस्थाओं में अल्पसंख्यक संस्थाओं में प्रधानाध्यापक और सहायक अध्यापक की नियुक्ति के लिए प्रबन्धाधिकरण निम्नलिखित प्रकार से एक चयन समिति का गठन करेगा-

(क) अल्पसंख्यक संस्थाओं से भिन्न संस्थाएँ-

1. प्रधानाध्यापक पद के लिए

1. प्रबन्धक
2. जिला बेसिक शिक्षा अधिकारी द्वारा नाम निर्दिष्ट एक व्यक्ति।
3. प्रबन्धाधिकरण द्वारा नाम निर्दिष्ट एक व्यक्ति।

2. सहायक अध्यापक पद के लिए-

1. प्रबन्धक
2. उस मान्यता प्राप्त स्कूल जिसमें नियुक्ति की जानी हो, प्रधानाध्यापक।
3. जिला बेसिक शिक्षा अधिकारी द्वारा नाम निर्दिष्ट एक व्यक्ति।

विद्यालय में सक्षम अधिकारी द्वारा सहायक अध्यापक के 04 पद ही सृजित पाये गये, जिसके सापेक्ष सहायक अध्यापक कार्यरत है। विद्यालय प्रबन्ध तंत्र द्वारा जिन सहायक अध्यापकों की नियुक्ति अपने स्तर से की गयी है तथा नियमावली में प्राविधानित का अनुपालन नहीं किया गया है, को राजकोष से वेतनादि का भुगतान किया जाना विभागीय नियमों/निर्देशों के सर्वथा विपरीत/प्रतिकूल है।

6. Above referred impugned order was not challenged at the instance of Committee of Management and it was challenged at the instance of petitioners by way of filing present writ petition contending that they were selected by a due selection process undertaken by Committee of Management of concerned school and their names were sent for approval by Committee of Management on 23.12.2016 however, by impugned order their approval was rejected.

7. Learned counsel for the petitioners submitted that recruitment process was initiated by Committee of Management against vacant posts due to retirement of earlier incumbents, therefore, posts were already sanctioned and as such reasons assigned in the impugned order are not legal.

8. Per contra, learned Standing Counsel submitted that details mentioned in regard to sanctioned posts has not been seriously disputed and there is no material that

sanctioned posts were much more. According to impugned order, there are only four sanctioned posts of Assistant Teacher and on which Assistant Teachers were working, when recruitment process was initiated.

9. Heard learned counsel for parties and perused the records.

10. As referred above, Committee of Management of concerned school had approached this Court earlier with a prayer that process for appointment of six Assistant Teachers was commenced and request to the Basic Shiksha Adhikari to send its nominee was pending.

11. Aforesaid facts were specifically recorded in the order dated 3.8.2017 passed by this Court, therefore, according to stand of Committee of Management, recruitment process was not concluded at least till 3.8.2017, therefore, it is wrong to state on behalf of petitioners that they were appointed in pursuance of recruitment process initiated by Committee of Management even in absence of nominee of Basic Shiksha Adhikari, and a letter dated 23.12.2016 of the Management of Committee was sent to Basic Shiksha Adhikari, Jaunpur for approval, therefore, entire case of petitioners put before this Court is on incorrect factual premises. A photo copy of letter dated 23.12.2016 is annexed along with present writ petition and is marked as Annexure No.8. The contents thereof refers that selection process was concluded on 22.12.2018 (a future date) for appointment of petitioners (6 in numbers). The letter on face of it appears to be a manufactured document.

12. As referred above, Committee of Management has not approached this Court and this writ petition is being filed by petitioners claiming that they have been selected by a due recruitment process, but as referred above they have only applied in pursuance of advertisement published by Committee of Management and as referred above, permission to send nominee was not allowed by the Basic Shiksha Adhikari, therefore, in absence of nominee of Basic Shiksha Adhikari, the entire exercise if actually undertaken is illegal.

13. In the entire writ petition, there is no document that concerned Basic Shiksha Adhikari has granted permission for interview as well as in absence of his nominee, if an exercise was undertaken by Committee of Management to appoint petitioners would have no legal basis.

14. At this stage, it would also be relevant to mention that a categorical reason has been assigned in the impugned order that number of sanctioned posts were only four on which four Assistant Teachers are already working and any appointment beyond sanctioned strength cannot be approved for purpose of granting their salary for grant-in-aid.

15. In the aforesaid circumstances considering that petitioners have not come up with any material that reason assigned in the impugned order in regard to sanctioned strength of Assistant Teachers was wrong and that their appointment were not legal as it was beyond sanctioned strength as well as due process was also not followed, i.e. no prior permission of Basic Shiksha Adhikari was granted and his nominee was also not send, therefore, there is no reason to interfere with the impugned order.

16. Writ petition is accordingly dismissed."

3. Learned counsel for the appellant-petitioner submits that a selection committee for appointment of Assistant Teacher in Gauri Shankar Purv Madhyamik Vidhyalaya Thathar, Gopalapur, Jaunpur (hereinafter referred to as the "Institution") was constituted on 22.12.2016 and accordingly

name of the petitioner-appellant was recommended to District Basic Education Officer, Jaunpur for approval on 23.12.2016. However, the District Basic Education Officer, Jaunpur had refused to accord the financial approval vide his order dated 22.05.2019. In support of his submissions, learned counsel for the appellant-petitioner has placed reliance upon the order dated 03.09.1987 passed by the Assistant Director of Education Basic Varansi Mandal, Varanasi, on the ground that earlier the Institution was having the strength of 331 students and accordingly, 12 posts of Assistant Teachers were sanctioned. He submits that at relevant point of time there was 06 vacancies in the Institution as 04 Assistant Teachers namely, Sri Chhatradhari Singh, Sri Rajmani Singh, Sri Anirudh Singh and Sri Rajmani Yadav were superannuated in the year 2008 and 02 Assistant teachers namely, Sri Vinay Singh and Sri Arvind Kumar Dubey had tendered their resignation in the year 1992. In this backdrop, learned counsel for the petitioner-appellant vehemently submits that learned Single Judge has erred in law while passing the order impugned and failed to appreciate case of the petitioner in the light of the sanctioned strength accorded by the Additional Director of Education, Basic Varanasi Mandal, Varanasi vide his order dated 03.09.1987. As such, the order passed by the learned Single Judge is liable to be set aside by this Court and the matter be relegated to the Authority concerned to pass appropriate order.

4. Per contra, Mr. Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondents has resisted the instant intra-court appeal and heavily placed reliance upon Rules 9 and 10 of The Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers) Rules, 1978 (hereinafter referred to as the "Rules, 1978"), wherein, detailed scheme has been prescribed which provides the selections in Non Government Aided Junior High School. The relevant provisions is reproduced hereinunder:-

"[9. Selection Committee. - [For appointment of Headmaster and Assistant Teacher in institution other than minority institutions and in the minority institution, the Management shall constitute a Selection Committee as Follows -

(A) - Institution other than Minority Institutions :

(i) For post of Headmaster;

- (1) Manager;
- (2) A nominee of District Basic Education Officer;
- (3) A nominee of the Management;

(ii) For the post of Assistant Teacher;

- (1) Manager;
- (2) Headmaster of the recognized School in which the appointment is to be made;
- (3) A nominee of the District Basic Education Officer."

B - Minority Institutions:

(i) For the post of Headmaster'

- (1) Manager;
- (2) Two nominees of Management;

(ii) For the post of Assistant Teacher:

- (1) Manager;
- (2) Headmaster of the recognised School in which the appointment is to be made;
- (3) A specialist in the subject nominee by the District Basic Education Officer."

"[10. Procedure for selection. - (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that -

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed

to have accorded approval to the recommendations made by the Selection Committee."

5. Learned Additional Chief Standing Counsel further submits that in the present matter the District Basic Education Officer has rightly passed the order dated 22.05.2019, wherein, he had categorically mentioned that Rule 9 of the Rules, 1978 had not been complied with while recommending name of the appellant-petitioner. The alleged appointment was made by Management of the Institution on its own accord without there being any sanctioned post.

6. Heard the rival submissions and perused the record. We find that the bone of contention in the present case is the procedure which were adhered by the Management while recommending the alleged appointment. Once the detailed and exhaustive procedure is provided therein under Rules, 1978, and admittedly, no serious challenge have been set up to justify the alleged selection before the learned Single Judge, hence the entire purported exercise of selection and appointment de-hors the Rule 9 and 10 of the Rules, 1978.

7. In an Intra-Court Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the judgment passed by learned Single Judge. In the instant case, on a plain reading of the judgment passed by learned Single Judge, we do not find any palpable infirmity or perversity which may warrant interference in the appeal. As such, we are not inclined to interfere with the impugned judgment and order.

8. In view of above, the special appeal sans merit and is, accordingly, ***dismissed***.

9. There shall be no order ***as to costs***.

Order Date :- 23.7.2024/Sachin