

Court No. - 18

Case :- WRIT - A No. - 3301 of 2007

Petitioner :- Ram Sanahi Yadav & another

Respondent :- District Inspector Of Schools A.Nagar And Anr.

Counsel for Petitioner :- Mahendra Singh Rathore, Anshuman Singh Rathore, Mrs. Anju Raghuvansh, Sanjay Misra, Sudeep Kumar

Counsel for Respondent :- C.Sc., Ajay Pratap Singh, Ramesh Srivastava

Hon'ble Manish Mathur, J.

(Application No. 14 of 2022)

Application for condonation of delay has been filed seeking substitution of petitioner No.2 who is said to have passed away on 7.10.2020. No objections to the application has been filed till date. Cause shown in the affidavit filed in support of application is sufficient and as such delay in filing substitution application is condoned.

(Application Nos. 15 and 16 of 2022)

Applications have been filed seeking substitution of petitioner No.2 along with setting aside abatement in view of the fact that petitioner No.2 has passed away on 7.10.2020. Delay in filing the applications has already been condoned. No objections to the applications have been filed till date. In the affidavit filed in support of applications, it has been stated that applicants are the only heirs of the deceased and cause to sue survives with them. In view thereof, the application for substitution is allowed. Consequential amendment in the memorandum of petition shall be incorporated during the course of day.

Order Date :- 3.7.2024

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Judgment and order in the matter

1. Heard Mr. Anshuman Singh Rathore, learned counsel for petitioners, learned State Counsel appearing on behalf of

opposite party no.1 and Mr. Pradeep Kumar Singh, Advocate holding brief on behalf of Mr. Ajay Pratap Singh, learned counsel for opposite party no.2.

2. Petition has been filed challenging orders dated 18.04.2007 and 11.05.2007 whereby application for financial approval to petitioners' appointment on Class-IV post in the institution concerned has been rejected. A further prayer for a direction to opposite parties to permit petitioners to work and for payment of salary including arrears of salary on aforesaid post ever since the date of joining on 01.04.2007 has also been sought.

3. Initially, vide interim order dated 18.10.2008, directions for payment of regular monthly salary to petitioner with effect from 11.05.2007 till 07.11.2008 had been issued and in pursuance thereof, the District Inspector of Schools vide order dated 17.12.2009 had granted conditional financial approval subject to outcome of the present writ petition.

4. Although an application for amendment of petition to incorporate challenge to order dated 24.02.2007 has been made but on the basis of instructions, learned counsel for petitioner does not press the said application.

5. It has been submitted that initially two Class-IV posts fell vacant in the Intermediate College due to superannuation of Bhawani Prasad on 31.05.2006 and Hardeen on 31.12.2006. It is submitted that there are ten sanctioned Class-IV posts in the institution concerned upon which reservation quota is applicable and since the aforesaid two posts fell vacant within the reserved category of Scheduled Caste and O.B.C., the Principal of the Institution gave a requisition to the District Inspector of Schools for initiation of recruitment process for the aforesaid two posts. Permission was thereafter accorded vide order dated 21.11.2006 whereafter advertisement was issued in

two local newspapers on 25th and 26th November, 2006 whereafter petitioners applied and in pursuance of recommendations of the Selection Committee, appointment letters were issued in favour of petitioners on 31.12.2006 whereafter they joined their duties on 03.01.2007.

6. Learned counsel submits that however, by means of impugned orders, financial approval has been rejected by District Inspector of Schools on ground that there were grave irregularities and deficiencies in the recruitment process as also the fact that the permission accorded earlier on 21.11.2006 was thereafter withdrawn vide order dated 24.02.2007.

7. It is submitted that once prior approval had already been accorded by authority concerned on 21.11.2006, the subsequent order dated 24.02.2007 was without jurisdiction since there is no power conferred upon the District Inspector of Schools for recalling or reviewing the order passed by him. It is submitted that even otherwise the selection process had already been completed in pursuance of prior approval dated 21.11.2006 and therefore also the order dated 24.02.2007 was inconsequential.

8. Learned counsel has drawn attention to order dated 18.04.2007 to submit that only minor irregularities in the recruitment process have been indicated while other discrepancies are against the material on record. Learned counsel submits that in rejection order dated 18.04.2007, District Inspector of Schools has stated that approval order dated 21.11.2006 was obtained by misrepresentation since at the time of requisition, only one Class-IV post was vacant and not two as had been submitted by the Institution since one Sanjay Singh had been claiming appointment on one post for which his Writ Petitions bearing numbers 2804 (S/S) of 1998 and 10524 (S/S) of 2007 were pending consideration, a fact

which was allegedly concealed by the Management.

9. With regard to said objection, learned counsel for petitioners submits that the same clearly indicates non-application of mind inasmuch as the said Sanjay Singh was claiming appointment ever since 1998 whereas the two posts, requisition for which was sought became vacant only in year 2006. It is further submitted that even otherwise the said Sanjay Singh was claiming appointment on General category posts and not on reserved category and therefore also two reserved posts clearly were vacant as on the date of requisition. He has also adverted to fact that educational qualifications had been clearly indicated in the advertisement itself and observations to contrary in impugned order are against the material on record.

10. It is submitted that during pendency of petition, opposite party no.2 passed away whereafter his son, Prem Deep has been appointed in the institution concerned on compassionate basis and for whom financial approval has also been granted by the District Inspector of Schools vide order dated 23.01.2021 and has been brought on record as Annexure no.SA-1 to supplementary rejoinder affidavit dated 08.12.2022.

11. Learned State Counsel appearing on behalf of opposite party no.1 has refuted the submissions advanced by learned counsel for petitioners with submission that once the approval order dated 21.11.2006 stood cancelled vide subsequent order dated 24.02.2007, there was no occasion for the institution concerned to have proceeded with the recruitment process without taking fresh approval from the District Inspector of Schools as envisaged under Regulation 101 of the Regulations framed under the U.P. Intermediate Education Act, 1921(hereinafter referred to as the Act of 1921). It is submitted that it was in view of fact that recruitment was not made by the

institution concerned till 24.02.2007 when the U.P. General Election Rules, 2007 came into force, the aforesaid permission was withdrawn and documents pertaining to selection process have been prepared by forgery and back-dating due to which impugned orders have been passed also indicating major discrepancies in the recruitment process. It is submitted that provisional financial approvals to petitioners was granted in view of interim order dated 18.10.2008 and filing of Contempt Petitions thereafter but such financial approval was conditional subject to final outcome of the present petition.

12. It is further submitted that the impugned order indicates that advertisement was not issued in two widely circulated dailies and was in fact issued only in weeklies. It is submitted that the selection process also indicated that at least six applications were made from outside the District which was against the norms and even otherwise were required to be submitted only through registered post, which was not ensured. He has also submitted that the order dated 21.11.2006 was also obtained by concealing the fact that as on the date of requisition, only one Class-IV post was lying vacant in the institution whereas requisition and prior approval was sought for two posts. He has relied on the averments made in the impugned order to the effect that since petitions of one Sanjay Singh were pending consideration before this Court, it clearly indicated that there was only one Class-IV vacant post available. It is therefore submitted that impugned orders have been passed taking into account grave irregularities in the selection process and therefore do not merit any interference.

13. Learned counsel appearing on behalf of opposite party no.3-Institution, on the basis of counter affidavit, has refuted the submissions advanced by learned State Counsel and has in fact reiterated the submissions advanced by learned counsel for

petitioners. It is submitted that once prior approval for recruitment was made vide order dated 21.11.2006, the posts were advertised in pursuance thereof in the newspapers, namely Maurya Samrat and Nirala Sahitya and was also additionally pasted on the notice board of the College and in pursuance thereof, ten candidates applied before a selection committee of three-members and after completion of recruitment process, petitioners were recommended for appointment whereafter their appointment letters and joining were also issued. It is submitted that appointment of petitioners has been made after taking prior permission of District Inspector of Schools in terms of Regulations 100 & 101 of Chapter III of the Regulations framed under the Act of 1921.

14. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is admitted that the Class-IV posts in question belong to the reserved category and fell vacant on 31.05.2006 and 31.12.2006 whereafter the College in question sought prior approval in terms of Regulations 100 & 101 of the Regulations framed under the Act of 1921. Permission was thereafter accorded by the District Inspector of Schools on 21.11.2006. However, admittedly the District Inspector of Schools vide order dated 24.02.2007 cancelled the said approval on ground that the recruitment process has not been completed as on that date and therefore the College was instructed to seek subsequent approval after completion of the election process. It is also admitted between the parties that financial approval was thereafter rejected by means of impugned order.

15. A perusal of impugned order dated 18.04.2007 indicates the factors on the basis of which financial approval to petitioners has been rejected. The reasons are as follows:-

(a) advertisement was issued only in weeklies and not daily newspapers indicating only one post to be reserved without indication of the category of second post and that too without indicating educational qualifications nor even date of advertisement. Only eight days' time was granted for submission of Applications which is against the norms. Applications were also not sought through registered post.

(b) Selection table has been prepared fraudulently only to accord benefit to choice candidates of the Management since interview list does not contain signatures of any of the candidates.

(c) The order dated 21.11.2006 was obtained concealing the fact that only one Class-IV post was vacant whereas requisition was sought for two.

(d) Recruitment process was completed ignoring the order dated 24.02.2007 cancelling the earlier order dated 21.11.2006.

(e) Educational Qualifications required for the post are Class-V passed whereas the selection chart indicates High School due to which eligible candidates were deprived of participation.

(f) Out of ten candidates only four candidates belong to District Ambedkar Nagar which is against the norms.

16. With regard to aforesaid objections, it is evident that the District Inspector of Schools has not taken into account nor has indicated any material for recording his satisfaction that the advertisement was not issued in daily newspapers despite assertion to contrary by the Management. The order impugned appears to having been passed only on the basis of assumptions and surmises. Although the order indicates that the advertisement does not indicate the educational qualifications required but a perusal of the advertisement brought on record clearly indicates the educational qualifications of Class-V passed being indicated therein. The assertions made in writ petition and the documents annexed as advertisement have not been denied in the counter affidavit. With regard to objections that only eight days' time had been granted and that six

applicants were from outside the District, the order does not indicate infringement of any of the provisions of the Act of 1921 or any Rules or Regulations.

17. The objections that the order dated 21.11.2006 was obtained concealing the fact that there was only one vacant Class-IV post also does not appear to merit consideration in view of fact that admittedly the said Sanjay Singh was claiming appointment in the year 1998 whereas the aforesaid two posts fell vacant only in year 2006. There is also no denial of fact that the said person was never granted approval by authorities and therefore also his claim was irrelevant.

18. So far as the objection that recruitment process was completed ignoring the cancellation order dated 24.02.2007, the impugned order does not indicate the aspect as to whether the District Inspector of Schools at any time sought information from the College concerned as to whether the recruitment process had been completed as on that date or not. There does not appear to be any cogent material on record on the basis of which the District Inspector of Schools has reached such a conclusion. Even otherwise the impugned order itself indicates that recommendations regarding petitioners' appointment had been received in his Office on 09.03.2007 although it is indicated that the same was back dated but again without any evidence or consideration to substantiate such an allegation.

19. It is also relevant that the order dated 24.02.2007 has been passed only on the consideration that the recruitment process has not been completed within the time stipulated in order dated 21.11.2006 whereas a perusal of order dated 21.11.2006 does not indicate any time limit for recruitment on the said post. Even in counter affidavit, there is no provision of law indicated for completion of recruitment process within a stipulated time

frame whereafter prior approval so granted could be withdrawn. It is thus evident that the order dated 24.02.2007 itself has been passed dehors the provisions of the Act of 1921 since approval once granted could not have been withdrawn in the manner it has been done and for the reasoning indicated.

20. The impugned order admits the fact that in pursuance of approval dated 21.11.2006, selection process had commenced by issuance of advertisement prior to 24.02.2007, therefore cancellation of order dated 21.11.2006 appears quite unreasonable and arbitrary.

21. It has also been admitted that during pendency of this petition, conditional financial approval was granted to petitioners who have been receiving their salary in pursuance thereof. It is also evident that petitioner no.2 has subsequently passed away with his son being provided appointment on compassionate basis and financial approval for which has also been accorded on 23.01.2021.

22. In view of discussions made herein above, the impugned orders dated 18.04.2007 and 11.05.2007 being unsustainable are hereby quashed by issuance of a writ in the nature of Certiorari. A further writ in nature of Mandamus is issued directing the opposite parties to accord approval to the appointment of petitioners on the reserved Class-IV post of the institution concerned and for payment of arrears of salary, if any, to petitioners after its determination, within a period of three months from the date a certified copy of this order is produced before the opposite party no.1.

23. Consequently, the petition succeeds and is **allowed**. Parties to bear their own costs.

Order Date :- 3.7.2024

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