

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:16224

Reserved

Court No. - 30

Case :- WRIT - A No. - 4914 of 2022

Petitioner :- C/M Rahat Janta Inter College Thru Manager Arshad Khan And Anr.

Respondent :- State Of U.P. Thru Prin Secy Deptt Of Secondary Education Lko And 3 Others

Counsel for Petitioner :- Ramesh Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Om Prakash Shukla, J.

A. Introduction

(1) This writ petition under Article 226 of the Constitution of India has been filed by the petitioners with the following main reliefs :-

- i. Issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 14-03-2022 passed by the opposite party no.2 to the extent of cancelling the appointment of two post of Clerk after summoning the original from the opposite parties.
- ii. Issue a writ, order or direction in the nature of certiorari, quashing the impugned order/letter dated 30-03-2022 to the extent of cancelling the appointment on the post of Class-III post which is contained in as **Annexure no.1** to the writ petition.
- iii. Issue a writ, order or direction in nature of mandamus, commanding the opposite parties to approved the two appointment of Clerk made by the petitioner's Institution on the basis of submitting the papers regarding the appointment of Class-III post by letter

dated 22-10-2021 which is contained as Annexure no.15 to the writ petition.”

B. Factual Matrix

- (2) The facts, in nutshell, are that Anjuman Talim Dargah is a Society registered under the Societies Registration Act, 1860. It is a minority organization and has established and is presently running private college, namely, Rahat Janta Inter College situated at Nanpara, District Bahraich (hereinafter referred to as ‘**the Institution**’). The Institution is managed by a 'Committee of Management (petitioner no.1)' (for short '**the Management**') as per the Scheme of Administration. The institution is an aided private minority institution and is governed by the provisions of Uttar Pradesh Intermediate Education Act, 1921. Petitioner No.2-Arshad Khan is said to be the Manager of the Institution.
- (3) It is the case of the petitioners that in the Institution, there is one sanctioned post of Principal, 6 sanctioned posts of Lecturer, 15 sanctioned posts of Assistant Teacher L.T. Grade, 10 sanctioned posts of Assistant Teacher C.T. Grade, 3 sanctioned post of Routine Grade Clerk and 12 sanctioned posts of Peons. According to the petitioners, the State Government had issued a Government Order dated 15.02.2007, providing that in case of minority institution, no prior permission from any authority is required before publication of advertisement for filling up of vacancies of the approved/sanctioned post of teachers/lecturers. Again, the State Government had issued another Government

Order dated 21.08.2014 in relation to one Smt. Shaista Ali on the post of Assistant Clerk, wherein the State Government had relied upon the earlier Government Order dated 12.02.2007, which specifically stated that in respect of minority Institution, Section 18 (Cha-Cha) of Intermediate Education Act, 1921 is applicable and further there is no provisions for taking prior permission or restriction for minority Institution for making appointment on Class-III posts.

(4) It has been stated by the petitioners that after the Government Order dated 21.08.2014, the Director of Education has issued a letter on 29.10.2014, directing all the District Inspector of Schools saying that the Government Order dated 21.08.2014 is related to minority institution of *Ashashkiya Sahayata Prapt* for appointment on Class-III post and the Director of Education has further directed all the District Inspector of Schools to proceed on the basis of the Government Order dated 21.08.2014.

(5) Further case of the petitioner is that on the basis of Government Orders dated 15.02.2007, 21.08.2014 and 29.10.2014, petitioners' institution had advertised three posts of Class-III (Clerk) and three Class-IV posts on 04.09.2021 in two newspapers, namely, Rashtriya Sahara and Daily Shahafat (in Urdu Language). In pursuance of the said advertisement, number of eligible candidates have submitted requisite applications for the aforesaid posts. The Manager of the

Institute (petitioner no.2), vide letter dated 21.09.2021, had informed the District Inspector of Schools regarding the vacancy, advertisement and other relevant facts.

- (6) Apparently, on receipt of the aforesaid letter dated 21.09.2021, the District Inspector of Schools, vide letter dated 23.09.2021, informed the Manager of the Institution (petitioner no.2) that no prior permission under Regulation 101 of U.P. Intermediate Education Act, 1921 has been taken and further in respect of Class-IV posts, there is a process of outsourcing. In this regard, the District Inspector of Schools had stopped the interview which was fixed for 24.09.2021.
- (7) It is stated by the petitioner that as per Government Orders dated 05.02.2007, 21.08.2014 and 29.10.2014, there is no procedure prescribed for taking prior permission for appointment from the District Inspector of Schools for appointments on Class-III posts and as such, the Institution had proceeded with the interview and the Selection Committee took interview of the eligible candidates and the procedure for appointment was done for two Class-III posts only on 24.09.2021, whereby one Geeta Srivastava, who got 62.40 marks and one Dilbagh has got 55.91 marks, were selected. Thereafter, the Manager of the Institution (petitioner), in response to the letter of the D.I.O.S. dated 23.09.2021, has sent a reply letter dated 13.10.2021, placing reliance upon the

Government Order dated 29.10.2014 and 21.08.2014 stating inter-alia that the Institution is a minority institution and provision of Regulation 101 of Chapter-3 of the Intermediate Education Act is not applicable and as such prayed that interview, which was held on 24.09.2021, be legally recognized and the letter dated 23.09.2021 be declared as in-effective. Subsequently, vide letter dated 22.10.2021, the Manager of the Institution (petitioner no.2) has forwarded the necessary papers regarding the appointment of Class-III posts to the D.I.O.S. for its approval. Thereafter, the D.I.O.S. had sent the aforesaid letter of the petitioner no.2 to the Director of Education (Secondary), Lucknow vide letter dated 25.02.2022. In furtherance thereof, the Director of Education (Secondary), Lucknow, vide letter dated 14.03.2022, had raised two objection viz. (i) in the advertisement in question, there is no detailed description of pay-scale etc. of the Junior Clerk and post of Class-IV together with post of Junior Clerk were advertised, which is contrary to the established arrangement/order; (ii) there is ban on making appointment of *Ashashkiya Sahayat Prapt Madhyamik Vidyalaya* and the State Government has also introduced the new procedure for appointment, hence appointment was found to be irregular and was liable to be cancelled.

- (8)** Noting the aforesaid two objections, the D.I.O.S., vide letter/order dated 30.03.2022, cancelled the appointment made by the Institution on the post of two Class-III posts and required the petitioners to show cause as to why action under Sections 16 (d) (8) of Intermediate Education Act, 1921 for disruption of the Management be not taken and the same be not sent to the State in term of Section 16 (d) (v) of the Intermediate Education Act, 1921.
- (9)** In response to the aforesaid show cause notice, the petitioner no.2 had sent a letter dated 20.05.2022 to the D.I.O.S., stating that insofar as point no.1 relating to non-mentioning of the pay-scale for Class-III employee in advertisement is concerned, in the advertisement dated 04.09.2021, it was noted that after joining, the incumbent will get the pay-scale fixed by the State Government and further qualification will be according to the qualification prescribed under the Intermediate Education Act, 1921 and the joint advertisement of Class-III and Class-IV post was made only in order to save the Government money. It was contended that even the Public Service Commission and other agencies are also advertising the joint post of various category and in so far as point no.2, the petitioner no.2 had mentioned that there is no mention of any Government Order regarding the ban for appointment in minority institution and further no specific rule and regulation has been mentioned in respect of

introducing new system by the Government regarding the appointment for Class-III posts. Thereafter, the petitioner no.2 had forwarded the original file of appointment of two posts of Clerk vide letter dated 22.10.2021.

- (10) Feeling aggrieved by aforesaid two letters/orders dated 14.03.2022 and 30.03.2022, the petitioners have filed the instant writ petition.

C. Contention of the Parties

- (11) Heard Shri Ramesh Kumar Srivastava, learned Counsel representing the petitioner and Shri Vivek Shukla, learned Standing Counsel representing the State/respondents.

- (12) Learned Counsel representing the petitioners has submitted that impugned letters/orders dated 14.03.2022 and 30.03.2022 to the extent of cancelling the appointment on two posts of Junior Clerk in the Institution is erroneous *inter alia* on the ground that petitioner no.2 has already mentioned in the advertisement dated 04.09.2021 that after joining by the selected candidates, the selected candidates will get pay-scale and allowances fixed by the state Government and further there is no violation of any regulation of the Act making joint advertisement of Class-III and Class IV posts. Moreso, there is no ban on appointment on Class-III posts in the minority Institution and no new

notification for making appointment on Class-III posts has been made by the State Government.

(13) Elaborating his submission, learned Counsel for the petitioners has submitted that there is no provision relating to providing for prior permission from the D.I.O.S. to fill the post of Junior Clerk (Class-III) in minority Institution such as petitioners. In the advertisement published by the Management in two newspapers all information were there and no one has challenged the selection proceedings. According to the learned Counsel, a minority institution enjoys certain privileges in terms of Article 30 of the Constitution of India and enjoys unfettered right of choice, hence it is not open for the D.I.O.S. to question the right of the Management for appointment of the selected candidates on the post of Junior Clerk. It is submitted that the provisions under Chapter II, Regulation 101 of the Intermediate Education Act do not apply to the minority institutions mandatorily as held by this Court in the case of **Mohd. Faizan and others Vs. State of U.P. and others** reported in 2013 (5) ADJ 471.

(14) Learned Counsel for the petitioners has further submitted that the District Inspector of Schools has very limited role to play in functioning of minority institution, which is evident from perusal of Section 16 (FF) and the provision of Chapter II Regulation 17 of U.P. Intermediate Education Act, 1921, which

clearly states that District Inspector of School can question the appointment in the minority institution only on the ground of lack of qualification by the candidate and not on any other ground. However, in the present case, there is no such objection. He has placed reliance upon the judgment of Division Bench of this Court rendered in **State of U.P. Vs. Manager, Committee of Management Islamia Inter College** 2022 (4) ADJ 531.

(15) *Per contra*, learned Standing Counsel has submitted that in view of Article 30 of the Constitution of India, the State-respondents may not interfere in the administration of the minority institution but the petitioners being an aided institution, the State-respondents, who not only sanctioned the strength of teaching and non-teaching staff but has to also pay salary to them from the State Exchequer. Thus, according to him, the Government has every right to regulate the things and to see that after due sanction and approval, the appointments are made in accordance with law, which shall ultimately help the institution in achieving the object for which it is established and ultimate beneficiary would be the students, who are builder of the nation.

(16) Learned Standing Counsel has further submitted that the matter of selection/appointment of two Clerks in the Institution in question submitted by the petitioners/institution to the D.I.O.S.,

has been referred to the Director of Education (Secondary), Lucknow for providing guidelines. In pursuance thereof, the Director of Education (Secondary), Lucknow, after examining the records, vide letter dated 14.03.2022, has provided the guidelines mentioning that in the advertisement published by the Management, there is no mention about the pay-scale and selection/appointment on the posts of non-teaching employee (Group-C) in non-governmental aided secondary colleges has been banned by the State Government till a transparent standardized process for filling up the said posts is made. Thus, there is no illegality in cancelling the appointment of the selected candidates by means of the impugned orders.

D. Analysis

- (17) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available before this Court, this Court deems it appropriate to mention that in the case of Mohd. Faizan and others (supra), a Co-ordinate Bench of this Court has clearly held that there is no specific provisions for applying Regulation 101, Chapter III of the Intermediate Education Act to the minority institution and as a corollary mere non-obtaining of permission from the DIOS would not be fatal. Even assuming that it is regulatory in nature, it does not mean prior approval as explained by the Division Bench of this Court in the case of **Jagdish Singh vs. State of**

U.P. and others, (2006) 2 UPLBEC 1851. Thus, apparently it seems to this Court that prior permission for conducting the selection process in the minority institution was not required in terms of Regulation 101, Chapter III of the Intermediate Education Act.

- (18) The Constitutional Bench of the Apex Court in the case of **T.M.A. Pal Foundation Vs. State of Karnataka**, reported in 2002 (8) SCC 481 and another constitution Bench Judgement in the case of **P.A. Inamdar Vs. State of Maharashtra**, reported in 2005 (6) SCC 537 has laid down certain guidelines with regard to the functioning of a minority institution. A perusal of the aforesaid pronouncement of the Hon'ble Apex Court would indicate the fact, that, *inter alia* it has explicitly been held that the State Government is not empowered to interfere with the functioning of the minority institution in the matters relating to appointment of teaching staff as well as non-teaching staff. The State Authority cannot under the garb of adopting regulatory measure destroy the administrative autonomy of a minority educational institution or start interfering with the administration and the management of the institution so as to render the right of administration of the institution concerned nugatory or illusory. The State Government cannot regulate the method or procedure for appointment of teachers and non-teaching staff of a minority educational institution. Once the

teacher or non-teaching staff, as the case may be, possessing the requisite qualification prescribed by the State or the University has been selected by the Management of the minority education institution by adopting the procedure of selection, the State Government or the University, as the case may be, would have no right to vitiate the selection of such teacher.

(19) Even the U.P. Secondary Education Service Section Board Act, 1982 is also not applicable upon a minority institution in terms of Section 30 of the U.P. Intermediate Education Act.

(20) A perusal of Section 16-FF of the U.P. Intermediate Act, which is a provision meant for appointment of teaching staff in a minority institution, would show that the said provision provides the District Inspector of Schools with limited power of examining the qualification of the candidates who have been selected in a minority institution. The power of the District Inspector of Schools in so far as the appointment of teaching and non-teaching staff in a minority institution is concerned, is quite limited and the power is only to the extent that whether the candidates who have been selected by a minority selection committee possessed requisite qualification or not.

(21) In any case, there is no gainsaying that the position of law is clear, in as much as, if there is a doubt as to whether any order or statutory provision would apply to a particular set of

institution or not, the law says that there ought to be a specific mention in the Statute itself that it shall apply upon a minority institution and that a provision *ipso facto* shall not be deemed to apply upon a minority institution in terms of Article 29 and 30 of the Constitution. The learned counsel for the State was unable to show any order or provision of law from the records, which would entail the Director of Education (Secondary) or the DIOS in taking a stand that the advertisement for appointment of Junior Clerks or Class-IV post is in any manner contrary to the established arrangement/order. Apparently, nothing has come on record to show as to what was the established arrangement/order as has been mentioned by the Director of Education (Secondary) in its impugned letter dated 14.03.2022.

- (22) Further, it is not in dispute that the petitioners/Institution is a minority institution and was included in the list of grant-in-aid. The institution had advertised three posts of Junior Clerk (Class-III) and three posts of Peon in two newspaper on 04.09.2021. Thereafter, on 21.09.2021, the petitioner no.2 wrote a letter to the D.I.O.S. regarding the aforesaid recruitment in the Institution. On receipt of the aforesaid letter dated 21.09.2021, the D.I.O.S. wrote letter to the petitioner no.2 saying that no prior permission had been taken by the Institution regarding the aforesaid process of selection. In

response, the petitioner No.2, vide letter 13.10.2021, informed the D.I.O.S. that on the basis of the Government Order dated 05.02.2007, 21.08.2014 and 29.10.2021, no prior permission for Class-III posts for appointment in the Institution was required as the Institution is a minority institution. Thereafter, the Institution had completed the selected procedure and appointed two eligible Junior Clerk and vide letter dated 21.10.2021, the petitioner No.2 forwarded the papers regarding the appointment of the said two Junior Clerks to D.I.O.S. for its approval along with the relevant documents. On receipt of the aforesaid letter dated 21.10.2021, the D.I.O.S. has forwarded the same to the Director of Education (Secondary), Lucknow, seeking guidelines for proceeding further. Thereafter, on reference, the Director of Education (Secondary), Lucknow issued letter dated 14.03.2022 to the D.I.O.S. for cancelling the aforesaid appointment of two posts of Junior Clerk in the Institution and informed as under :-

“I. in the advertisement in question, there is no detailed description of pay-scale etc. of the Junior Clerk and post of Class-IV together with post of Junior Clerk were advertised, which is contrary to the established arrangement/order; and

(ii) there is ban on making appointment of *Ashashkiya Sahayat Prapt Madhyamik Vidyalaya* and the State Government has also introduced the new procedure for appointment, hence appointment are itself irregular and are liable to be cancelled.”

- (23)** Pursuant to the aforesaid, the D.I.O.S. has cancelled the appointment of two selected candidates made by the Institution on the post of Junior Clerk by the letter/order dated 30.03.2022 without affording any opportunity of hearing to the petitioners.
- (24)** So far as aforesaid first objection of the Director of Education (Secondary), Lucknow regarding no detailed description of pay-scale made in the advertisement and making advertisement for combined posts i.e. three posts of Junior Clerk and three posts of Peon, the contention of the petitioners is that in the advertisement dated 04.09.2021, it was mentioned that candidate(s) will also get the pay-scale as provided by the State Government. According to the learned Counsel, although common advertisement of Class-III and Class-IV was made but the Management had decided to make two Class-III appointments and after adopting due procedure of selection, two eligible candidates were given appointment on the post of Class-III, however, the Institution has not made any appointment in respect of Class-IV employee. Thus, the first objection raised against the Institution is erroneous. Another submission in this regard is that the letter dated 14.03.2022 has not been supplied to the Institution and the same has been issued without affording opportunity of hearing to the petitioner.

- (25) So far as second objection made in the letter dated 14.03.2022 regarding ban on making appointment of *Ashashkiya Sahayat Prapt Madhyamik Vidyalaya* and also introduction of the new procedure for appointment, the contention of the learned counsel for the petitioners is that there was no ban regarding the appointment Class-III post in the minority Institution. More so, in the letter dated 14.03.2022, neither date of ban is mentioned nor the detailed new system of appointment is mentioned and it has been simply mentioned that appointment was itself irregular and liable to be cancelled. Thus, the contention is that the letter dated 14.03.2022 itself and consequent letter dated 30.03.2022 are non-speaking and are erroneous and, therefore, the same are liable to be quashed.
- (26) The facts of the present case clearly indicate that it is not in dispute that the selected candidates has possessed requisite qualification for appointment on Class - III post on the date of occurrence of vacancies and that no such findings have been returned by the District Inspector of Schools or the Director Education (Secondary) with regard to the lack of requisite qualifications of the selected candidates. Thus, it can be concluded that the impugned letters have been passed without any application of mind and the Director of Education (Secondary) and the District Inspector of Schools has clearly ignored the distinction between a minority and non-minority

institution and has neglected the privileges which are enjoyed by the institution in question in terms of Articles 29 and 30 of the Constitution of India. Thus, the impugned orders/letters passed/issued by the Director of Education (Secondary) and the District Inspector of Schools cannot be sustained and are liable to be quashed.

E. Conclusion

(27) In view of the aforesaid, the writ petition is **allowed**. The impugned letters dated 14.03.2022 issued by the Director of Education (Secondary), Lucknow and consequent letter dated 30.03.2022 issued by the DIOS, Bahraich are hereby quashed. The District Inspector of Schools, Bahraich is directed to look into the matter afresh and pass appropriate order, in accordance with law, after affording opportunity of hearing to the petitioners, expeditiously, say, within a period of four weeks from the date of receipt of a certified copy of this order. The decision so taken shall be communicated to the petitioners forthwith.

(Om Prakash Shukla, J.)

Order Date :- 22nd February, 2024
Ajit