

Neutral Citation No. - 2025:AHC:58941

Court No. - 49

Reserved
A.F.R.

Case :- WRIT - A No. - 15480 of 2015

Petitioner :- Mohd. Fahim Jamal

Respondent :- State of U.P. and others

Counsel for Petitioner :- Mansoor Ahmad

Counsel for Respondent :- Anand Prakash Pandey, Ashish
Tripathi, C.S.C., Ch. N.A. Khan

Hon'ble J.J. Munir, J.

1. This writ petition is directed against the order of the Registrar, Arbi and Farsi Education Board, U.P., Lucknow dated 02.12.2014, revoking the approval granted to the petitioner's appointment as an Assistant Teacher (*Tahtania*).

2. The facts briefly said are that the Al-Jamaiatul Islamia Mambaul Maarif, Village Sumbhi, Post Gambheerban, District Azamgarh is a Society registered under the Societies Registration Act, 1860, bearing Registration No.929/1992-93. It was registered with the Registrar of Societies on 12.12.1993. Hereinafter, it shall be referred to as 'the Society'. The Society has its bylaws, also registered. In keeping with the objects of the Society, to promote learning of Arabic and Persian language and also Islamic religious ethics, it established an institution, known as Madarsa Al-Jamaiatul Islamia Mambaul Maarif, Village Sumbhi, Post Gambheerban, District Azamgarh (for short, 'the Institution'). The Institution was recognized by the competent Authority way back in the year 1996. A maintenance grant was extended to it in the year 2005 by the Government. The affairs of the Institution are managed by a Committee of Management of the Society/ Institution. According to the bylaws of the Society, this Committee of Management comprises a President, called a *Sadar*, a Vice President (*Naib Sadar*), one

Manager, one Deputy Manager, a Cashier and an Auditor. These are all office bearers of the Society as well as its maintained Institution.

3. The time to which this matter relates, the recognition of Madarsa as well as appointment of its teachers were governed by the Manyata Evam Sewa Niyamavali, Arbi Tatha Farsi Madarse, U.P. (for short, 'the Regulations'). These Regulations were approved and circulated by the State Government *vide* Government Order dated 22.08.1987. These were amended from time to time. Regulation 20 of the Regulations provides that the Management would constitute a selection committee, a month before commencement of the academic session, in order that suitable candidates are selected and appointed against vacancies of teachers. In cases where a mid-session vacancy occurred, the Management of the Institution would be entitled to appoint on *ad hoc* basis for two months, a suitable teacher. In the matter of selection of assistant teachers, the Principal/ Headmaster would also be a member of the selection committee.

4. Regulation 22 of the Regulations provides that in order to fill up a vacancy in the Madarsa, whether newly created, temporary or permanent, it would be necessary to advertise it in at least two daily newspapers, one of which should have regional circulation and the other a State level newspaper. The advertisement would indicate the qualifications, age limit, the pay-scale etc. The Regulations mandate that no appointment shall be made against a post, which is not approved by the Department of Minority Welfare of the State Government.

5. There were five sanctioned posts of Assistant Teachers (*Tahtania*) with the Institution. The *Tahtania* Section is

equivalent to Primary Section of an institution, imparting conventional education. One post of an Assistant Teacher (*Tahtania*) fell vacant on account of the death of one Mohd. Raees, an Assistant Teacher, on 23.08.2009. The Committee of Management of the Institution, after securing permission from the competent Authority, advertised the post in two daily newspapers, to wit, *Awaze Mulk*, issue dated 17.04.2012 and *Devbrat*, issue dated 20.04.2012. The petitioner applied in response to the advertisement and was called for an interview by the Selection Committee constituted for the purpose. The Selection Committee found the petitioner most suitable for appointment out of a total of six candidates, who appeared. The recommendations of the Selection Committee were placed before the Committee of Management of the Institution in a meeting held on 28.10.2012.

6. The President of the Society and the President of the Committee of Management, *a fortiori*, did not seem to take interest in the societal affairs. He was abstaining from participating in the meetings of the Committee of Management. In his absence, the meeting was presided over by the Vice President of the Society and by means of a unanimous resolution, the Manager was authorized to issue an appointment letter to the petitioner and take steps for securing financial approval. The petitioner was issued with an appointment letter dated 28.10.2012 by the Manager of the Institution. He joined service submitting his report to the Principal on 03.11.2012. According to the petitioner, he is discharging his duties ever since to the entire satisfaction of his superiors. The petitioner says that he was appointed strictly in accordance with Rules as prescribed under the Regulations. The Manager of the Institution forwarded the papers relating to

his appointment to the Registrar/ Inspector, Arbi, Farsi Madarsa Education Board, U.P., Lucknow, seeking approval for the petitioner's appointment.

7. The Registrar/ Inspector, Arbi, Farsi Madarsa Education Board, U.P., Lucknow (for short, 'the Inspector') granted approval to the petitioner's appointment *vide* his letter dated 27.06.2013. Notwithstanding grant of approval to the petitioner's appointment by the Inspector and the petitioner continuously rendering services, he was not paid his salary. He submitted a detailed representation dated 26.10.2013 to the Manager of the Institution. The petitioner, through a letter of the Manager dated 15.02.2014, came to know that an *ex parte* order dated 19.11.2013 had been passed by this Court in Writ-A No.60862 of 2013 filed by respondent No.6, the President of the Committee of Management, purporting to act for the Committee, challenging the petitioner's appointment. In consequence of the orders of this Court dated 19.11.2013, whatever these were, which the petitioner says he was given to understand by the Management, were interim orders, the petitioner's salary was withheld.

8. The Manager further informed the petitioner that the Director, Minority Welfare, U.P. had passed an order dated 26.12.2013, forbidding payment of the petitioner's salary. The Manager also informed the petitioner that against the order dated 19.11.2013, the Committee of Management had filed Special Appeal Defective No.84 of 2014, which was disposed of *vide* order dated 29.01.2014, leaving it open to the aggrieved person, to wit, the petitioner, to challenge the order dated 26.12.2013 passed by the Director, Minority Welfare, U.P. The petitioner also says that according to Bylaw No.14 of the registered bylaws of the Society, it is the Manager of the

Society, who alone is competent to institute or defend proceedings in Court with regard to the affairs of the Society. It is the petitioner's case that Writ-A No.60862 of 2013 filed by the President of the Society, without a resolution by the Committee of Management, was not maintainable. He also says that by a resolution of the Committee of Management dated 25.12.2012, the President was removed from office. He had absolutely no *locus standi* to challenge the order dated 27.06.2013 passed by the Inspector, granting approval to the petitioner's appointment. Nevertheless, since the petitioner was not afforded any opportunity, to place his version, the correct facts could not be brought to the notice of the learned Judge, who heard the writ petition and passed the order dated 19.11.2013.

9. It is also the petitioner's case that under the provisions of the Regulations, it is the Inspector alone, who is vested with the power to take a decision in regard to approval of a teacher or employee's appointment in an institution. Therefore, the order passed by the Director, Minority Welfare dated 26.12.2013, holding the petitioner's appointment to be illegal and stopping payment of his salary, was itself without jurisdiction and illegal. It is also pointed out that the Director, notwithstanding the lack of jurisdiction, ought have heard the petitioner before passing the order dated 26.12.2013, which he did not do. This order again was passed without opportunity to the petitioner and in violation of the principles of natural justice. The petitioner challenged the order dated 26.12.2013 before this Court by instituting Writ-A No.20572 of 2014, which this Court decided in terms of the following order:

“Accordingly, the observation and finding recorded by the Director, Minority Welfare in the impugned order which are adverse to the petitioner are expunged and the Registrar / Inspector, U.P. Madarsa Education Board is directed to take an appropriate

decision strictly in accordance to law totally uninfluenced by any observation or finding made by the Director in the order dated 26.12.2013.

Writ petition stands disposed of as above.”

10. In compliance with the aforesaid judgment and order dated 15.04.2014, the petitioner submitted a representation dated 06.05.2014 before the Inspector with a certified copy of this Court's order. A reminder had to be sent on 27.05.2014, when no action was taken. The petitioner was asked to appear before the Inspector by a letter dated 11.06.2014 on 25.06.2014 along with all original documents, for orders to be made in compliance with the judgment and order dated 15.04.2014 passed by this Court in Writ-A No.20572 of 2014. The petitioner appeared before the Inspector on 25.06.2014 along with all relevant documents.

11. The petitioner says that he was shocked to find that an antedated order had been passed on 03.01.2014, again behind his back, showing him to be absent on that day. The order passed by the Inspector recalled the order dated 27.06.2013, granting approval to his appointment. The case of the petitioner is that the order dated 03.01.2014 was neither communicated to the Director, Minority Welfare or the Manager of the Institution. It was an antedated order. If it was an order made in the exercise of jurisdiction validly, there was nothing to be done by the Inspector. However, when a copy of the order dated 15.04.2014 passed in Writ-A No.20572 of 2014 was lodged before the Inspector, he commenced proceedings to examine the validity of approval granted to the petitioner's appointment on 27.06.2013. It was during the hearing, that was done again, that the antedated order passed behind his back on 03.01.2014 came to the petitioner's notice. The petitioner also says that the said order was ignored and proceedings re-commenced, that

culminated in the impugned order dated 02.12.2014. Therefore, there is not much to the order dated 03.01.2014, which is no longer in issue.

12. Aggrieved by the order dated 02.12.2014 passed by the Inspector, the petitioner has instituted the present writ petition.

13. Notice of motion was issued on 24.03.2015 and in course of time, parties exchanged affidavits. By an order dated 10.01.2013, the entire record relating to the petitioner's appointment was summoned by this Court from the custody of respondent Nos.3 and 4. This order was not complied with and when the matter came up on 07.10.2023, this Court ordered the District Minority Welfare, Azamgarh, respondent No.4, to pay costs in the sum of Rs.5000/-, which were deposited. The costs being deposited, was a fact noticed by this Court in the order dated 15.10.2023. When the petition came up on 02.11.2023, it was admitted to hearing, heard forthwith and judgment reserved. Later on, while dictating judgment, it was noticed that records were still missing, though costs had been deposited. The matter was, therefore, posted for further hearing and orders passed on 24.04.2024 to produce records. Some records were produced before the Court on 30.04.2024 and directed to be placed in a sealed cover in the safe custody of the Registrar General. The minute-book of the meeting of the Committee of Management written in Urdu was, therefore, directed to be transliterated to Hindi *vide* order dated 02.05.2024.

14. Heard Mr. Mansoor Ahmad, learned Counsel for the petitioner, Mr. Roopesh Tiwari, learned Standing Counsel appearing on behalf of respondent Nos. 1 to 4, Mr. Ashish Tripathi, learned Counsel for respondent No. 5 and Mr. Anand

Prakash Pandey, learned Counsel appearing for respondent No. 6.

15. Upon hearing learned Counsel for the parties and perusing the record, including the impugned order, what this Court finds is that there is no quarrel about the fact that there are five posts of Assistant Teachers in the *Tahtania* Section of the Institution, duly sanctioned by the Government and the petitioner was appointed against a vacancy in relation to a sanctioned post. There is no cavil either that this vacancy arose on account of the demise of the incumbent teacher. The Inspector in the order impugned has also not criticized the procedure of advertisement for holding the selection, but has gone by the fact that the authority to make an appointment vested with the President under bylaw No.10 (a) (3) of the bylaws of the Society/ Institution and that the Vice President gets authority to act as the President and exercise his powers under bylaw No.10(b) in the absence of the President. The Inspector has recorded a finding that the Manager of the Institution has not produced any document or evidence to show that the meeting of the managing committee was called or the selection committee constituted after presentation of a proposal to the President and after his approval.

16. It is then remarked that this fact affirms the position that the President of the Society/ Institution was not unavailable to chair the meetings of the managing committee. It is again remarked by the Inspector that the Vice President gets powers to discharge the functions of the President or exercise his authority, if the former is absent. The conclusion drawn is that the meeting of the Committee of Management and the selection committee are both *prima facie* suspect. The expression employed is '*karyavahi pratham drishtaya sandigdha hai*'. The

further remark, that is there, is to the effect that the Manager, Zafar Ahmad Siddiqui, in order to fulfill his objects, trenching upon the lawful authority of the President, held selections according to his wish, which is contrary to law. There is then a repetition of the fact that in the presence of the President, the Vice President could not have held a meeting of the Committee of Management, which is contrary to the bylaws.

17. The finding of the Inspector is apparently based upon an affidavit dated 17.10.2013 submitted by the President, Sayyad Abdulla, before the District Minority Welfare Officer, Azamgarh. In this affidavit, as would appear from a perusal of the order impugned, the President had said that the appointment made on the post of the Assistant Teacher (*Tahtania*) was done in a meeting that was not held with him presiding. He also said that if the resolution, accepting the appointment, bore the President's signatures, the same are absolutely false and forged. According to the bylaws of the Institution, it was said in the affidavit, the power to dismiss or appoint, vests in the President and, therefore, the appointment made in his absence is flawed and illegal. As already remarked, the appointment is against a sanctioned post and the Inspector has not recalled the approval on the ground that the post was not validly advertised or that the petitioner did not hold the essential qualifications, entitling him to be appointed; or, that the selection committee was not competent etc. The process has been held vitiated because the Committee of Management, which resolved, apparently to initiate the selection process and then appoint, did not do so under the stewardship of the President. The Inspector has inferred that it was not the case that the President was not available and, therefore, under the bylaws, the Vice President could act in his stead.

18. In the counter affidavit filed on behalf of respondent Nos.1, 2, 3 and 4, the order is preponderantly defended on the ground indicated in the order to the effect that the petitioner's appointment was made in proceedings conducted that were not presided over by the President of the Society/ Institution. There is another plea urged in paragraph No.2(a) to the effect that after the petitioner was appointed by the Committee of Management on 28.10.2012, the Committee of Management sent the papers directly to the Inspector and without the recommendation of the District Minority Welfare Officer. The first ground has to be tested for its worth, but the ground that the recommendations by the Committee of Management to appoint the petitioner were not routed through the District Minority Welfare Officer, is no longer open to the respondents to urge, inasmuch as, that is not at all a ground, on the foot of which the impugned order has been passed.

19. It is a well recognized principle of the law that an order under challenge or the order impugned cannot be supported on a ground extraneous to what has been said in the order. In other words, the impugned order cannot be supplemented by additional grounds to buttress it through an affidavit. So far as the question of absence of the President from the meetings of the Committee of Management, entitling the Vice President to act in his stead under bylaw No.10(b) is concerned, the counter affidavit filed by respondent No.6, Abdulla, the President, is most relevant. In paragraph No.9 of the aforesaid counter affidavit, it is averred:

"9. That the contents of paragraph no.16 of the writ petition are not admitted, hence denied. The correct act are that the deponent had refused to participate in the proceedings of Committee of Management of the institution and in this regard he had also sent a letter dated 21.04.2011 and

the meeting of the Committee of Management was presided over by the Vice President of the Committee of Management of the Institution, but the deponent refused to sign on the notice/agenda circulated by the Committee of Management of the institution and in all the meetings he had voluntarily refused to participate in the proceeding of Committee of Management of the Institution on the ground that the selection process was illegal hence advertisement, interview and entire selection process conducted in the absence of the deponent is illegal and unjustified in the eye of law."

(emphasis by Court)

20. A perusal of the transliterated copy of a book, called the *Suchana Register*, shows that the President of the Society/ Institution last signed it taking notice of a meeting, scheduled to be held on 21.04.2011, but not thereafter. He did not sign it for the meeting held on 18.05.2011. His signatures do not occur after page 3 on the Notice Register. These are absent on pages 5, 6, 9 and 11. The next document in the records, which has been transliterated is the other book, called the Register of Proceedings or the *Karyavahi Register*. The proceedings held on 21.04.2011 show that these were presided over by the Vice President, Vajiuddin, and not the President, Abdulla, respondent No.6.

21. The next resolution at page No.7 of the Register of Proceedings dated 18.05.2011 shows that the meeting was once again presided over by the Vice President and not respondent No.6. The next Register of Proceedings is dated 25.12.2011. This too shows that the meeting of the Committee of Management was presided over by the Vice President and not respondent No.6. In all these meetings, apparently there was no agenda item regarding appointment of the Assistant Teacher in the *Tahtania* Section. A meeting of the Committee of Management was then held on 01.05.2012, where the item

relating to appointment of Assistant Teacher (*Tahtania*) in the Institution was discussed and the post resolved to be advertised. This meeting too, like the earlier ones, was presided over by the Vice President. The next meeting, where the choice of the selection committee was discussed and resolved was held on 12.04.2012, again not presided over by the President, but the Vice President. The next resolution, that was passed, related to accepting the recommendations of the selection committee that selected the petitioner for the post after an interview. This meeting of the Committee of Management was held on 28.10.2012. This meeting too was not president over by the President, but the Vice President.

22. In this scheme of things, if the stand taken by respondent No.6 is seen, it is apparent that the President had refused to participate in the proceedings of the Committee of Management, and admittedly, sent a letter too in this regard dated 21.04.2011. It is not indicated in paragraph No.9 of the counter affidavit by the sixth respondent, to whom the letter was addressed, but what is clear is that respondent No.6 refused to sign on the notice/ agenda circulated for meetings of the Committee of Management and he has specifically averred that in all meetings, he had voluntarily refused to participate on ground that the selection process was illegal, including the advertisement and the interview, apparently bearing reference to the petitioner's selection, interview, advertisement and appointment.

23. We have noticed above that the President was not attending the meetings, even before the agenda item relating to the selection and appointment of the teacher in the *Tahtania* Section was discussed. Even if he had started absenting from the day when the matter of filling up the vacant post was

discussed by the Committee of Management, the fact remains that the President admits that he was voluntarily abstaining sitting on meetings of the Committee of Management, of which he had notice. A committee of management of the society or the institution has important business to undertake and if the head of the committee of management voluntarily abstains, in our considered opinion, it would be a case where bylaw 10(b) of the bylaws of the Society/ Institution would come into play, authorizing the Vice President to take over and discharge the duties of the President. The word 'absence' mentioned in the bylaws does not always mean 'absence from station' or one 'due to illness', or like matters. It would include a case of deliberate abstention by the President.

24. If a deliberate abstention is not regarded as 'absence' contemplated under bylaw 10(b) of the bylaws of the Institution, a recalcitrant President, who refuses to sit on the meeting, could hold the Institution to ransom. In the scheme of things, for the discharge of institutional functions of corporate bodies, like societies, that have some affairs to manage – an educational institution in this case – a provision in the scheme or bylaws, governing the society, is made for an absenting office bearer to be filled in, in his role by another. Clauses, such as these in the bylaws, are contemplated to keep the wheels of whatever work the Society undertakes moving. It is a device to overcome individual recalcitrance, waywardness or the disruptive behaviour of a particular office-bearer or office-bearers. In paragraph No.9 of the counter affidavit, the justification offered by the President to abstain from meetings of the Committee of Management is the illegal selection etc. to the post of *Tahtania*, pursuant to which the petitioner was appointed. If the sixth respondent thought that the process was illegal, he was the

Chairman of the Committee of Management and had control over its affairs. He had at least one vote, which he could have exercised to dissent. He could not have dissented by abstention as he did. Once the sixth respondent admittedly abstained from participating in the scheduled meetings of the Committee of Management, there is nothing illegal about the Vice President moving in to discharge his role and duties. Apparently, the Inspector has not at all looked into the matter from this vantage or examined the record in passing the order impugned and recalling the earlier approval to the petitioner's appointment granted *vide* order dated 27.06.2013.

25. We would have thought of remanding the matter to the Inspector, who is admittedly the competent Authority to consider the matter of approval of appointment for the petitioner, but that does not seem to be a valid course in this case. The reason is that the respondents do not take a stand that the petitioner was appointed against a post that was not sanctioned or that the proceedings of selection and interview, including advertisement were in any way vitiated. The petitioner's appointment was approved by the Inspector by a well considered order regarding the existence of the post and how the vacancy arose. The conditions, subject to which the approval was granted, said that the District Minority Welfare Officer will ensure that the appointment made should be one that is against a sanctioned post and not beyond the approved strength for the Institution. There is no such case that the respondents have come up with, as already noticed. The other condition is about verification of the petitioner's eligibility educational qualifications. No fault has been found on that count too. Also, there is a provision that the District Minority Welfare Officer would verify, if the post against which salary is to be paid, is free from dispute and no case is

pending in Court. There is also a provision that the District Minority Welfare Officer would ensure that the appointee is not related to anyone on the Management as prescribed under the Regulations, as amended in the year 1998, 2000 and 2004. None of the conditions mentioned in notes 1 to 4 mentioned in the approval order are indicated to be violated in case of the petitioner's appointment. There is a residual condition in note 5 of the approval order passed by the Inspector on 27.06.2013, saying that if any fact has been found to be suppressed or information wrong, this approval would stand automatically revoked. It is by virtue of this residual clause that the impugned order has been passed, but specifically based on the sole ground that the President did not preside over the meetings of the Committee of Management, where the resolutions to advertise the post and appoint the petitioner were adopted. The action of the Committee in acting under the Vice-President has been found to be perfectly justified by us for reasons that we have elaborately indicated hereinabove.

26. In these circumstances, there was absolutely no reason for the Inspector to have revoked his order dated 27.06.2013, granting approval to the petitioner's appointment, which, in our opinion, must be restored.

27. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 02.12.2014 passed by the Inspector is hereby **quashed** and the order dated 27.06.2013, granting approval to the petitioner's appointment, restored. The petitioner shall be entitled to salary together with arrears and other consequential benefits, which the respondents shall ensure within the time period of two months of the date of receipt of a copy of this order.

28. There shall be no order as to costs.

29. Let the original record be handed over to Mr. Ashish Tripathi, learned Counsel appearing on behalf of the Management of the Institution forthwith for its onward and safe transmission to respondent No. 5.

30. Let a copy of this order be communicated to the Registrar/ Inspector, Arbi, Farsi Madarsa Education Board, U.P., Lucknow, the District Minority Welfare Officer, Azamgarh and the Manager, Madarsa Al-Jamaiatul Islamia Mambaul Maarif, Village Sumbhi, Post Gambheerban, District Azamgarh by the Registrar (Compliance).

Order Date :- 21.4.2025
Anoop

(J.J. Munir)
Judge