

Reserved on 22.6.2022
Delivered on 26.9.2022
A.F.R.

Court No. 39

Case :- SPECIAL APPEAL No. - 1056 of 2018

Appellant :- Chandra Prakash Singh

Respondent :- District Inspector Of Schools And 2 Others

Counsel for Appellant :- Ramesh Chandra Dwivedi, Dinesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Vikram D. Chauhan, J.

1. Heard Sri Dinesh Kumar Singh learned counsel for the appellant and Sri Ram Ratan Dev Vanshi learned Standing Counsel for the State-respondent.

2. The present special appeal is preferred challenging the judgment and order dated 10th August, 2018 passed by the learned Single Judge in Writ-A No. 30395 of 2001 (Chandra Prakash Singh Vs. District Inspector of Schools And others).

3. The said order dated 10th August, 2018 was passed in the absence of the counsel for the Appellant-Petitioner in the writ proceedings and the learned Single Judge after going through the pleadings and the relief sought has simply recorded a finding that the Appellant-Petitioner has not been able to make out a case so as to justify interference of this Court by granting relief. No finding, however, has been returned on the merits of the claim of the petitioner/appellant herein.

4. The primary challenge to the order dated 10th August, 2018 is to the effect that the order has been passed *ex parte* and the conclusion drawn by the learned Single Judge is

unsustainable in law. It is also submitted by the learned counsel for the Appellant-Petitioner that the Appellant was validly appointed on the post of Assistant Teacher in L.T. Grade in the institution in question and has been denied the payment of salary on account of illegal order passed by the respondent authority which was subject matter of challenge in the Writ Petition No. 30395 of 2001 against which the present special appeal has been preferred. The learned Single Judge has not adjudicated the claim of the petitioner.

5. The present special appeal is an intra-court appeal from a Single Bench of this Court to a Division Bench of this Court and the purpose of providing special appeal against an order of learned Single Judge is to provide another tier of screening by the Division Bench and the same would not mean that the learned Single Judge is subordinate to the Division Bench although the learned Single Judge under law of precedent and principle of finality attached to the orders of Appellate Court, is bound by the order passed by the Appellate Court. While considering the powers of a Division Bench while deciding intra-court appeal, the Hon'ble Apex Court in **Roma Sonkar Vs. Madhya Pradesh State Public Service Commission and another**¹ has held that in the matter of intra-court appeal arising out of writ proceedings, the Division Bench needs to consider the appeal on merits by deciding the correctness of the judgment of the learned Single Judge instead of remitting the matter to the learned Single Judge. In this reference, paragraph no. 3 of the judgment of the Apex Court as aforesaid of the Apex Court is quoted hereinbelow :-

¹ 2018 (17) SCC 106

“3. We have very serious reservations whether the Division Bench in an intra-court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned Single Judge as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court but that does not mean that the Single Judge is subordinate to the Division Bench. Being a writ proceeding, the Division Bench was called upon, in the intra-court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge. Hence, in our view, the Division Bench needs to consider the appeal(s) on merits by deciding on the correctness of the judgment of the learned Single Judge, instead of remitting the matter to the learned Single Judge.”

6. Learned counsel for the Appellant as well as learned Standing Counsel for the Respondents have consented to advance arguments on the merits of the dispute as the writ petition as well as the counter affidavit have been filed along with the memo of appeal and, according to the learned counsel for the parties, all the pleadings are on record and the matter can be adjudged on the merits itself. It is to be noted that the dispute in the present case started in the year 1997 and, thereafter, the matter has been relegated to the respondent authorities for decision afresh on more than one occasion. However, the dispute has not been settled and under the circumstances when the litigant has travelled for more than two decades without the controversy being set at rest by judicial determination, it would be appropriate that the matter be considered on the merits of the dispute, specifically when both the parties have advanced argument on the merits.

7. Learned counsel for the Appellant-Petitioner submits that there is an education institution in the name of Mahatama

Gandhi Inter College, Sakhawania, Kushinagar (for brevity hereinafter referred to as 'institution') which is recognised under the provisions of U.P. Intermediate Education Act, 1921 and the provisions of U.P. Act No. 24 of 1971 are applicable to the said institution being an aided institution. On 1st December, 1996, a short term vacancy of teacher arose in the aforesaid institution on account of *ad hoc* promotion of Sri Shambhu Sharan Singh to the next higher post in the L.T. Grade. The intimation about the vacancy was sent to the District Inspector of Schools and the vacancy was also notified on the notice board of the institution. The vacancy was later advertised in the newspaper 'Aaj' on 11th December, 1996 and in another local newspaper 'Watchkara'. It is further submitted that in pursuance to the abovementioned advertisement, the Appellant-Petitioner being qualified applied against the advertised vacancy. The selection committee was constituted under the provisions of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as "the Order, 1981"). Interview was conducted and the Appellant-Petitioner having obtained highest quality point marks amongst the candidates who had applied against the aforesaid vacancy, had been recommended by the selection committee for appointment as Assistant Teacher in L.T. Grade on ad-hoc basis. On the basis of the recommendation made by the aforesaid selection committee, the Committee of Management in its meeting held on 30th December, 1996 had resolved to appoint the Appellant-Petitioner as Assistant Teacher in L.T. Grade on ad-hoc basis.

8. The papers with regard to the appointment of the Appellant-Petitioner along with the resolution of the Committee of Management were forwarded by the Manager of the institution to the District Inspector of Schools for his prior approval/financial sanction. When no response was received, the Committee of Management of the institution issued a formal letter of appointment on 15th January, 1997 to the Appellant-Petitioner and the Appellant-Petitioner in pursuance to the aforesaid letter of appointment joined his duty as Assistant Teacher in L.T. Grade in the institution on 16th January, 1997. The District Inspector of Schools vide order dated 28th July, 1997 refused to grant the financial approval to the appointment of the Appellant-Petitioner. The aforesaid refusal to grant approval to the appointment of the Appellant-Petitioner by the District Inspector of Schools was on account of the fact that the Committee of Management was not having power of appointment at that point of time and as such, the appointment, as per the District Inspector of Schools, was illegal.

9. The Appellant-Petitioner being aggrieved by the abovementioned order dated 28th July, 1997 preferred Writ Petition No. 32449 of 1997 before this Court. The aforesaid writ petition was finally disposed of by the judgment and order dated 26th September, 1997 with the direction to the respondent - District Inspector of Schools to examine the matter whether there was any short term vacancy as it was not clear whether the post on which the Appellant-Petitioner was working was converted from C.T. Grade to L.T. Grade or it was a vacancy on the post which had fallen vacant or it was a short term vacancy. It was further directed that the District Inspector of Schools

shall examine whether the Committee of Management had followed the procedure prescribed for the appointment.

10. Thereafter, the Appellant-Petitioner made a representation to the District Inspector of Schools along with the certified copy of the judgment and order dated 26th September, 1997 passed by this Court. The District Inspector of Schools in pursuance to the abovementioned order dated 26th September, 1997 has proceeded to pass the order dated 2nd October, 2000 granting financial approval to the appointment of the Appellant-Petitioner as Assistant Teacher in L.T. Grade. A perusal of the above-mentioned order dated 2nd October, 2000 passed by the District Inspector of Schools would show that the aforesaid approval had been granted in compliance of the order dated 26th September, 1997 passed by this Court.

11. It is submitted that the said officer who was posted as District Inspector of Schools, Kushinagar was transferred in October, 2000 and, thereafter, the new incumbent had taken charge of the post of District Inspector of Schools, Kushinagar. The new District Inspector of Schools, Kushinagar by the order dated 9th November, 2000 had stopped the salary of the Appellant-Petitioner and further directed the Manager of the institution to show cause as to why action be not taken under the provisions of U.P. Intermediate Education Act, 1921. A bare perusal of the order dated 9th November, 2000 of the District Inspector of Schools would demonstrate that the aforesaid order had been passed on the basis of the report of the enquiry committee constituted by the District Magistrate, Kushinagar wherein appointment of five Assistant Teachers in the institution had been found to be irregular and the name of the

Appellant-Petitioner figured in the said list of teachers irregularly appointed.

12. The Appellant-Petitioner being aggrieved by the abovementioned order dated 9th November, 2000 passed by the District Inspector of Schools preferred Civil Misc. Writ Petition No. 5925 of 2001 before this Court. The aforesaid writ petition was finally decided by the judgment dated 16th February, 2001 and the order dated 9th November, 2000 in so far it relates to the Appellant-Petitioner was set aside and it was directed by this Court that the copy of the enquiry report conducted by the District Magistrate shall be supplied to the Appellant-Petitioner and, thereafter, a fresh reasoned and speaking order shall be passed after giving opportunity of hearing to the Appellant-Petitioner and the Committee of Management of the institution.

13. In pursuance of the order dated 9.11.2000 passed by this Court, the District Inspector of Schools on 13th July, 2001 had passed an order recalling the earlier order dated 2nd October, 2000 according financial approval to the appointment of the Appellant-Petitioner and holding that the appointment of the Appellant-Petitioner was without any post and as such was irregular and illegal. The finding recorded by the District Inspector of Schools in the order dated 13th July, 2001 is to the effect that the Appellant-Petitioner was appointed on account of the vacancy created by ad-hoc promotion of one Sri Shambhu Sharan Singh on the post of L.T. Grade whereas the promotion of Sri Shambhu Sharan Singh was not accorded financial approval by the District Inspector of Schools and as such no vacancy was created. The order dated 13th July, 2001 further records that the vacancy in question was not advertised in

widely circulated newspaper as per the Full Bench decision of this Court in the case of **Radha Raizada and others Vs. Committee of Management, Vidyawati Darbari Girl's Inter College and others**².

14. The Appellant-Petitioner being aggrieved by the order dated 13th July, 2001 preferred Writ-A No. 30395 of 2001 before this Court. The aforesaid writ petition was finally dismissed by means of the judgment and order dated 10th August, 2018, which is subject matter of challenge in the instant Special Appeal.

15. It is submitted on behalf of the counsel for the Appellant-Petitioner that while passing the order dated 13th July, 2001, the District Inspector of schools has incorrectly recorded that the financial approval to the promotion of Shambu Sharan Singh had not been granted and, therefore, no post of Assistant Teacher fell vacant. The counsel for the Appellant submits that by the order dated 10th September, 1999, financial approval was granted to the promotion of Shambu Sharan Singh and after the promotion of Shambu Sharan Singh on the post of Assistant Teacher, the post of Assistant Teacher in L.T. Grade fell vacant.

16. Learned standing Counsel appearing on behalf of the respondents submits that the District Inspector of Schools has rightly rejected the claim of the Appellant-Petitioner. It is submitted that the then District Inspector of Schools, Kushinagar Shri Kripa Lal Vishwakarma committed gross irregularity in making appointment during his tenure and complaints with regard to illegal appointment of teachers were received by the Government and the District Magistrate. As a

² 1994 (3) UPLBEC 1551

result of those complaints, the charge of the office of the District Inspector of Schools was handed over to Shri Gyan Prakash Singh and the aforesaid incumbent to the office of District Inspector of Schools had informed the District Magistrate about the irregularities committed by the earlier District Inspector of Schools.

On the aforesaid basis, by the order dated 13th October, 2000 the District Magistrate, Kushinagar constituted a committee for enquiry into the allegations of irregularity in the appointment of teachers by Shri Kripa Lal Vishwakarma. The aforesaid enquiry committee on the basis of the records available prima facie came to the conclusion that Shri Kripa Lal Vishwakarma, the erstwhile District Inspector of schools, made illegal/irregular appointments in 29 institutions during his tenure. The aforesaid enquiry committee also found that the appointment of the Appellant-Petitioner was also not in accordance with Law. The list of irregular appointments made by Shri Kripa Lal Vishwakarma while he was the District Inspector of Schools, Kushinagar was also forwarded by the District Inspector of Schools to the District Magistrate by his Communication dated 8th November, 2000.

It is further submitted that on account of the Government Order dated 24th June, 1993, the Committee of Management was not authorised to make appointment. It is submitted that the order of financial approval dated 10th September, 1999 (as claimed by Appellant-Petitioner) in respect of Shambhu Sharan Singh has not been brought on record by the Appellant-Petitioner and that no financial approval was granted to Shri Sambhu Sharan Singh.

He further submits that the advertisement in respect of the post in question was said to have been made on 11th December, 1996 in respect of a short term vacancy that arose on 1st December, 1996 on *ad hoc* promotion of Shri Shambhu Sharan Singh to the next higher post in L.T. Grade and according to the Appellant-Petitioner, the promotion of Shri Shambhu Sharan Singh to next higher grade was approved on 10th September, 1999 and as such there was no occasion to conduct selection proceedings and issue advertisement in the year 1996 when there was no short-term vacancy.

17. Having heard learned counsels for the parties and perused the record. We may note that the claim of the petitioner/appellant in the writ petition is that he was appointed against a short term vacancy which arose on 1.12.1996 on account of *ad hoc* promotion of the incumbent Shri Shambhu Sharan Singh to LT Grade. The contention is that the said vacancy was notified to the District Inspector of Schools and was also notified on the Notice Board of the institution. The vacancy was also advertised in two daily newspapers of wide circulation and on the interview taken by the Selection Committee constituted under the provisions of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, the petitioner was recommended against the post having attained highest quality point marks amongst other candidates. The Committee of Management in its meeting held on 30.12.1996, accepting the recommendation of the Selection Committee, resolved to appoint the petitioner as Assistant Teacher in L.T. Grade on *ad hoc* basis. The papers relating to appointment of the

petitioner alongwith the resolution of the Committee of Management were forwarded to the District Inspector of Schools by the Manager of the institution on 31.12.1996 and were received in the office of the District Inspector of Schools on 3.1.1997. The Manager of the institution requested the District Inspector of Schools to accord financial approval of the adhoc appointment made by the Committee of Management. However, the District Inspector of Schools did not communicate its decision regarding disapproval or approval of the appointment made by the Committee within the stipulated period. As no communication was received from the office of the District Inspector of Schools, taking it to be a case of deemed approval, formal letter of appointment was issued to the petitioner on 15.1.1997 and he had joined his duty on 16.1.1997 as Assistant Teacher in L.T. Grade.

18. In this factual background, we may take note of the communication dated 10.9.1999 appended as Annexure '11' of the writ petition (page '86' of the paper book). The said letter was issued from the office of the District Inspector of Schools, Kushinagar and is addressed to the Manager of the institution concerned. The said letter is in relation to the approval of promotion of Shri Shambhu Sharan Singh from C.T. Grade to L.T. Grade. This letter shows that Shri Shambhu Sharan Singh was working in C.T. Grade and the proposal for his promotion to L.T. Grade against 50% quota for promotion was made by the Committee of Management on 2.12.1996.

19. This approval letter has been appended with the writ petition and is relied by the petitioner to assert that the observation in the order impugned that the approval was not

granted to the promotion of Shri Shambhu Sharan Singh was incorrect. The order impugned is dated 30.7.2001 which records that the appointment of the petitioner had been made in L.T. Grade against the vacancy on account of promotion of Shri Shambhu Sharan Singh in L.T. Grade on 1.12.1996, whereas no approval of the promotion of Shri Shambhu Sharan Singh was granted by the District Inspector of Schools. Resultantly, no post became vacant.

20. In view of these facts, at the outset, it may be noted that the petitioner claims that he was appointed in L.T. Grade after promotion of Shri Shambhu Sharan Singh from C.T. Grade to L.T. Grade.

21. Admittedly, C.T. Grade was a lower grade and in case, it is accepted for a moment that the promotion of Shri Shambhu Sharan Singh from C.T. Grade to L.T. Grade was approved by the order dated 10.9.1999, which is appended as Annexure '11' to the writ petition, vacancy, if any, would have arisen in C.T. Grade and not in L.T. Grade. The appointment of the petitioner could not be made in L.T. grade on account of promotion of the said incumbent in L.T. grade.

Further, C.T. Grade was declared a dying cadre in pursuance of the recommendations made by the Pay Revision Committee, 1989 by the Government Order No. 3299/15.7.1989-1(136)/89 dated 11.8.1989 for the private higher secondary schools. Further clarifications were issued on 4.9.1990 and by the Government Order dated 19.2.1991, C.T. Grade was declared a dying cadre in government higher secondary schools and Intermediate colleges. It was directed

that in future, no post in C.T. Grade shall be created, as the C.T. Grade had been declared a dying cadre and further recruitment in that grade was banned. By the Government Order dated 9.1.1992, it was declared that consequent to the C.T. Grade being declared as dying cadre, all such C.T. Grade teachers, who have completed ten years of satisfactory service and subject to their being trained graduates, shall be merged as L.T. Grade teachers. Meaning thereby that if a C.T. Grade teacher had already completed ten years of satisfactory service, he would be merged as L.T. Grade, and the cut-off date fixed was 1.1.1986. For those who did not complete ten years of satisfactory service on 1.1.1986, it was directed that they would be merged as Assistant Teacher (L.T. Grade) as soon as they complete ten years of satisfactory service.

22. It seems from the order of the District Inspector of Schools dated 10.9.1999 that the incumbent working in C.T. Grade namely Shri Shambhu Sharan Singh was merged in L.T. Grade against the post available in promotion quota. A further perusal of the order impugned dated 3.7.2001 indicates that the said proposal of promotion/merger of Shri Shambhu Sharan Singh was approved.

23. Be that as it may, whether the promotion or merger of Shri Shambhu Sharan Singh in L.T. Grade was approved or disapproved, in both eventuality, no post in L.T. Grade became vacant.

24. Meaning thereby that in case the promotion/merger of Shri Shambhu Sharan Singh in L.T. Grade was not approved, he

would continue as C.T. Grade teacher till he would have fulfilled the requirement of merger/promotion in L.T. Grade.

25. On the other side, in case his promotion/merger in C.T. Grade was approved, there would occur no vacancy, the reason being that the C.T. Grade was a dying cadre and further recruitment in the said grade was banned. An incumbent working in C.T. Grade at the time of the issuance of the Government Order dated 19.2.1991 was entitled to be merged in L.T. Grade on completion of two conditions, i.e. ten years of satisfactory service on 1.1.1986 and possessing the qualification of being a trained graduates. Those who did not complete ten years of satisfactory service as on 1.1.1986 were merged later as Assistant Teacher in L.T. Grade as soon as they completed ten years of service and there occur vacancy in L.T. Grade in promotion quota.

26. In view of the above, the statement in the order impugned dated 3.7.2001 that there was no vacancy on account of promotion of Shri Shambhu Sharan Singh is found to be correct. Though the said order is not happily worded but the crux of the matter is that there occur no vacancy in L.T. Grade, against which the petitioner could have been appointed, terming it as appointment against a short term vacancy.

27. In view of the above discussion, on the merits of the case, the contention of the learned counsel for the petitioner that the petitioner was appointed against a short term vacancy of L.T. Grade after following due procedure under the Act is found misconceived. As there was no vacancy, there was no occasion for the Committee of Management to notify the same or to

make selection. The entire process of selection of the petitioner/appellant as Assistant Teacher, L.T. Grade adopted by the Committee of Management of the institution is absolutely illegal. The appointment of the petitioner is held to be *void ab initio*.

The writ petition is, accordingly, **dismissed** being devoid of merits.

In the result, the appeal stands **dismissed**.

(Vikram D. Chauhan,J.) (Sunita Agarwal,J.)

Order date :- 26.9.2022
VMA/Brijesh