



2026:AHC:55362-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 222 of 2008

Ram Niwas Singh

.....Appellant(s)

Versus

State of U.P. and Others

.....Respondent(s)

Counsel for Appellant(s)	: Ajay Mishra, S.K. Mishra, Shri Krishna Mishra, Vinod Sinha
Counsel for Respondent(s)	: Anil Kumar Shukla, C.S.C., H.N. Singh

Court No. - 1

HON'BLE AJIT KUMAR, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Sri S.K. Mishra, learned Senior Advocate assisted by Sri Sachin Chauhan, learned counsel for the petitioner as well as Ms. Shruti Malviya, learned brief holder appearing for the State respondents.
2. This intra court appeal is directed against the order of learned Single Judge dated 18.01.2008 dismissing the writ petition of the petitioner on merits against the order dated 15.06.2006 passed by the District Inspector of Schools, Ghaziabad.
3. The epi centre of the controversy is, as to the legality and validity of the appointment of the petitioner as Assistant Clerk in a Higher Secondary School allegedly made in the year 1979 on an existing or non existent post. A finding has come to be recorded by the District Inspector of Schools in the order impugned that there existed no such vacancy upon which the appointment of Sri Ram Niwas Singh namely the petitioner/ appellant

could have been made and hence the appointment was void ab initio and any salary paid to the petitioner was recoverable. After affording reasonable opportunity of hearing in the matter so as to enable the petitioner to file his objections, in compliance of the order of the learned Single Judge of this Court dated 28.11.2005 in Writ Petition No. 7485 of 2005, the District Inspector of Schools has come to pass a final order returning a finding as referred to herein above.

4. Assailing the order before the learned Single Judge, the anchor sheet argument advanced by learned counsel for the petitioner/ appellant was that once the action of the Committee of Management to terminate the services of the petitioner as Assistant Clerk came to be held as illegal and bad by the Deputy Director of Education vide its order dated 04.05.1983 in a statutory appeal filed against the order of District Inspector of Schools, the controversy regarding validity of the appointment of petitioner remained no more *res integra* and hence the District Inspector of Schools could not have reopened the issue. He further submitted that if the order of Deputy Director of Education, 1st Region, Meerut is taken to be final order returning a finding as to the validity of the appointment of the petitioner, the only question remained as to the action of the respondent education authority in pursuing the recovery treating the petitioner's appointment as void. He further submits that the appointment was never in issue in previous writ petition

in which order of remand was passed as the challenge was laid only to the recovery orders passed by Deputy Director of Education and the consequential order passed by District Inspector of Schools. The arguments were advanced before the learned Single Judge for recovery to be in violation of principles of natural justice and since the order of recovery resulted in adverse civil consequences, the matter was remitted to District Inspector of Schools on a sole point of non compliance of principles of natural justice.

5. Thus, according to him, the only issue that required examination by the District Inspector of Schools was as to the correctness of the order passed by the education authority in pursuing recovery against the petitioner who had continued under a valid appointment order which stood approved in appeal by the Deputy Director of Education and the action taken by the Committee of Management was held to be null and void.

6. In support of his submissions learned Senior Advocate appearing for the petitioner has taken the Court to the order of Deputy Director of Education wherein certain issues were framed as to the validity of the appointment order of the petitioner and the question of prior approval in matters of appointment of Assistant Clerk in recognized Higher Secondary School. According to him four issues were framed and a composite finding came to be returned holding that the Committee of

Management could not have permitted a post to be lapsed and hence it was taken to be a post well in existence by way of the findings returned against the action of Committee of Management. As far as the prior approval part is concerned, the Deputy Director of Education very well held that no prior approval as on that date was required as per Chapter III of the Regulations framed under the Intermediate Education Act, 1921.

7. Mr. Mishra, learned Senior Advocate has also stressed upon a point that Committee of Management has proceeded against petitioner earlier holding the appointment of the petitioner to be bad in a suit which ultimately got dismissed. Mr. Mishra stressed further upon another point, whether the letter containing a line regarding validity of the appointment is taken to be correct or not since the appointment was subsequent in a point of time that would hardly be relevant. It is thus sought to be contended that the learned Single Judge manifestly erred in affirming the order passed by the District Inspector of Schools, which according to him bears finding contrary to the documents on record.

8. Meeting the submissions so advanced by learned Senior Advocate, Ms. Shruti Malviya, learned brief holder vehemently urged that in so far as the order of Deputy Director of Education is concerned it has placed heavy reliance upon the letter issued in respect of Assistant Teacher referring to regulations 59, 60 and 61

of the Regulations framed under the Intermediate Education Act dated 11.06.1979 which itself renders the appended lines/ sentence to be doubtful in nature for the reason that these regulations do not relate in any manner to the appointment of Assistant Clerk or any adjustment or transfer of an Assistant Clerk. It is argued that these letters simplicitor relate to the matter of transfer of Assistant Teacher and the very insertion of lines in question become indicative of alleged fraud at the end of the petitioner. It is contended by Ms. Malviya that the petitioner would be the ultimate beneficiary of the lines so appended, the findings returned by the learned Single Judge that it would go against the petitioner, is absolutely correct. Ms. Malviya further submitted that there is nothing on record to establish that there existed ever any vacancy of Assistant Clerk in the Institution as on date when the appointment of the petitioner took place in the year 1979.

9. Having heard learned counsel for the parties, in our considered view the only issue that arises for consideration is, as to whether appellant was appointed on an existent or non existent post. If the appellant was appointed on non existent post, his mere continuance in service would not entitle him to have any legal right. The learned Single Judge while going into the question of right of the appellant in dealing with the matter wherein he had questioned the order of recovery returned a finding of fact to the effect that appellant failed to

demonstrate that there was in fact a sanctioned post of clerk upon which he was appointed, nor did the record reveal existence of of any such post.

10. In the circumstances, therefore, even if the appellant was made to continue and against his order of dismissal or removal from service, approved by the District Inspector of Schools (DIOS), appeal came to be allowed, he will not get any right to continue upon a discovery being made that he was continuing on a non existing post.

11. Here, in this case, in order to find the answer to point framed above, it is necessary to examine as to whether the appellate authority while setting aside the order of DIOS had addressed this issue or not. The order of the appellate authority namely the Deputy Director of Education only dealt with the issue of prior approval by the DIOS and further placed reliance upon a letter of approval of an Assistant Teacher regarding transfer under Regulation 59, 60 & 61 relined upon a line appended to the letter dated 11.06.1979 that the appointment of the Assistant Clerk was duly approved. Interestingly the appellant himself admits that he was appointed on 31.07.1979. In the circumstances, therefore, the document dated 11.06.1979 would not be worth reliance.

12. Yet another point was as to how the management could have treated the post to have lapsed itself, if there was a post. The Deputy Director of Education did not go

into the question as to how the post existed and as to under what order of education authority the post was sanctioned. The Deputy Director of Education held appellant to be eligible for the post in question.

13. In our considered view, there cannot be any quarrel for a candidate to have been appointed without approval, if there was no approval provided for under the Regulations, nor could there be any doubt as to qualification of candidate appointed if a candidate appointed was eligible to hold the post, but the question remains unanswered as to whether there existed any post or not. The matter was remitted to the DIOS under the orders of the Court and the order for recovery passed by the DIOS was not interfered with on merits rather remand was on the ground that the order was passed in violation of principles of natural justice. So, on a short point of opportunity of hearing the matter was remanded.

14. Thus, the Court did not go into the question of existence while remanding the matter. The Court also did not accept the argument that the DIOS had no authority to order for recovery once the appeal was got allowed at the end of Deputy Director of Education, 1st Region, Meerut under the regulations framed under the Intermediate Education Act, 1921. DIOS returned a finding that the appointment of the appellant was without there being any post available and therefore, the salary paid to the appellant for his appointment against a non

existent post was recoverable.

15. We repeatedly asked this question to learned Senior Advocate as to whether, he could demonstrate from any of the pleadings raised in the writ petition, in the affidavit filed in support of appeal or for any other document appended with the petition or appeal sanction of the post in question, learned Senior Advocate could not demonstrate.

16. In the circumstances, therefore, the finding returned by the learned Single Judge cannot be held to be perverse or otherwise suffering from any such manifest error of law or fact which may warrant interference in this intra court appeal.

17. The appellant could not set up any valid claim of appointment on a non existent post, however, we find that the appellant had worked by virtue of appointment made by Committee of Management and had even been paid salary and was further made to continue and paid salary in view of the order passed by Deputy Director or Education, 1st Region, Meerut and this order remained unquestioned at any forum either by the Committee of Management or by the education authorities. Thus, the order of Deputy Director or Education, 1st Region, Meerut dated 04.05.1983 remained intact. This order was further complied with by the DIOS by passing consequential orders on 16.05.1983 and 29.10.1986. We further notice that the first order for payment of salary to

the petitioner was passed by the DIOS himself on 12.09.1983 and the first order for withholding of salary of the appellant has been passed at the end of Special Secretary, State of U.P. on 28.09.2004 and the consequential action taken by the Deputy Director of Education on 23.11.2004 and the order of Finance and Accounts Officer, Ghaziabad is of 25.01.2005. Thus, right from 1980 till 2005 if the appellant was paid salary, he was paid salary only under the orders of education authorities and those orders including the order of Deputy Director of Education, 1st Region, Meerut dated 04.05.1983 were never recalled.

18. In the circumstances, therefore, if the appellant discharged his duties as a Clerk in the institution and was paid salary under the authority of the State through the State exchequer, such amount does not become recoverable only for the reason that subsequently authorities geared up upon some complaint being filed that appointment of the appellee was bad for want of sanctioned post. There is nothing on record to establish that as to what action the State Government has taken against the education authorities who were guilty for directing payment of salary to the petitioner.

19. In the circumstances, therefore, first the liability ought to have been fastened upon the authority concerned before directing for recovery. There is nothing in the counter affidavit to show that any enquiry was held

against the erring official and any offer was made to recall the orders of payment of salary, the same. Petitioner has already attained the age of superannuation.

20. Accordingly, while we are affirming the judgment in appeal, but we still hold that any recovery from the salary of the appellant would be made only after fixing the liability of concerned education authority/ official in directing for payment of salary and taking appropriate action against them.

21. Appeal stands disposed of consequently.

(Swarupama Chaturvedi,J.) (Ajit Kumar,J.)

March 18, 2026
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