

Court No. - 40

Case :- WRIT - A No. - 60271 of 2008

Petitioner :- Satyendra Singh

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Vashistha Tiwari, Aklank Jain

Counsel for Respondent :-

C.S.C., B.N. Singh, H.N. Singh

Hon'ble Chandra Dhari Singh, J.

The petitioner has filed the instant petition challenging the order dated 20.02.2008 passed by respondent no. 3 and also made a prayer for issuance of writ, order or direction in the nature of mandamus directing the respondents to ensure the payment of salary to the petitioner for Class-IV employee in pursuance of the impugned order dated 19.09.2007 passed by respondent no. 4.

The brief facts of the case is that Sri Krishna Adarsh Inter College, Muzaffarpur, Tiliyani, Firozabad is a recognised and aided institution governed under the provisions of U.P. Intermediate Education Act, 1921 and also under the Payment of Salary Act, 1971. The said institution is an intermediate college and is run by the private committee of the Government. There were one post of Daftari and 8 posts of Class-IV employee total 9 posts of Class-IV employee are sanctioned out of which one post of Daftari and 6 Class-IV employees are working. Two posts of Class-IV employee which include one sweeper was vacant for which permission for appointment was granted under Regulation 101 of Chapter 3 of the Regulation framed under the Intermediate Education Act by the District Inspector of Schools, Firozabad vide order dated 21.09.2006 with the condition that the provision of reservation will be followed.

In pursuance of the permission, an advertisement was to be published in daily newspaper 'Aaj' as widely circulated newspaper in the area. But, said advertisement was published in Brandaban Samsabad edition on 04.12.2006 and not in

Firozabad edition that is next edition. In the daily newspaper, there was one page in local news which is circulated in the area in the locality. In pursuance of the advertisement, the present petitioner applied for the post of peon (Class-IV employee) and other candidates also applied for the same post.

The selection committee of the college was constituted comprising of one Sri Radhey Shyam Yadav, Principal, of the said institution, Ram Niwas Gautam, Assistant Teacher, Narain Inter College, Firozabad (S.C. Member) and Sri Chandra Pal Chauhan, Lecturer, Dhatari Inter College, Dhatari, Firozabad. The said selection committee then called for the interview of all the candidates who had applied for the post as per the said advertisement. After the completion of the interview, the petitioner was found fit and was selected by the committee and he was appointed on the post of peon in the said institution. The appointment of the petitioner was approved by the Finance and Accounts Officer vide order dated 19.09.2007 and later on the said approval was cancelled by the Finance and Accounts Officer vide order dated 21.05.2008. The said cancellation of the financial sanction has been withdrawn vide order dated 23.08.2008 by the Finance and Accounts Officer.

After the withdrawal of the cancellation of the financial sanction, the petitioner was not paid salary, therefore he approached this Court by way of filing the writ petition bearing no. 16180 of 2008 which was disposed of vide order dated 03.04.2008 with a direction to approach the concerned authority. In pursuance of the order dated 03.04.2008, the petitioner had filed a representation dated 24.04.2008 before the respondent no. 3, D.I.O.S., Firozabad, who then decided the representation vide order dated 20.10.2018. The instant writ petition is filed before this Court.

Learned counsel for the petitioner submitted that the impugned order passed by the respondent no. 3, is not sustainable in the eye of law and has been passed on non-exist grounds. He further

submitted that respondent no. 3 while passing the impugned order did not consider the entire grounds and also not considered the facts in the right perspective. The impugned order passed mainly on the two grounds. First, the publication was not made as per the permission in the newspaper 'Aaj' which is widely circulated in the area and second, the affidavits have been given by the other candidates who applied for the said post. He therefore, submitted that so far the publication in the newspaper Dainik 'Aaj' and Dainik 'Sainik' are concerned, the newspaper in which the advertisement was published was also widely circulated newspaper in the said area.

The intention of the permission, in publication of the advertisement in any newspaper is only for wide advertisement of the said publication, if one newspaper which is also a widely circulated then there are no ground left to discard the publication of the notification in the said newspaper. Another ground is that for filing the affidavit of the candidates who allegedly appeared in the interview had no concerned with the said post, therefore, they had not been called for the interview for the said post on which the petitioner was appointed.

The counsel on behalf of the petitioner submitted that there are no illegality in appointments of petitioner on the said post as in his appointment every procedure was followed as prescribed in the rules and statute. The appointment of the petitioner was made in a transparent way and therefore, the impugned order passed by the respondent no. 3 is arbitrary and erratic manner.

Per contra, the learned Standing counsel appearing for the State vehemently opposed the submission made by the counsel for the petitioner and submitted that the power to grant approval to the Class-III and Class-IV employee of an intermediate college, vide Government order dated 19.12.2000, was delegated to the Regional Committee but in the present case no approval of the regional committee was ever obtained. It is also pointed out that annexure no. 2 of the writ petition i.e. the Government Order bearing no.

3446/15-13-2000-9(11)/94 dated 19.12.2000.

Learned Standing counsel further submitted that the impugned order has been passed on 20.10.2008, after hearing the petitioner as well as the Manager of the Committee and Principal of the College. The respondent no. 3, after considering the entire material facts on the record passed a detailed and reasoned order with a finding that the selection was not transparent and procedure of the appointment has not been followed.

The alleged appointment order dated 30.12.2006 of the petitioner, had been issued by the Manager of the Committee of Management whereas no such order was issued by the Manager and under Chapter 3 of the Regulation, the Principal of the said college is appointing authority of Class-IV employee and therefore no legal appointment order can be issued by the Manager. He submitted that therefore the appointment letter is itself bad in law and contrary to the statute.

I have heard learned counsel for the petitioner and learned Standing Counsel.

The advertisement in newspaper Dainik 'Aaj' is Brandaban Samsabad which is in district Mathura and Maha Maya Nagar. The said advertisement so published in edition of Dainik 'Aaj' which was circulated in district Firozabad, therefore, there was no legal publicity of the advertisement in the area of district Firozabad. Similarly, newspaper 'Sainik' was very small newspaper having no wide circulation that too in the city of Agra only and have no circulation in district Firozabad. The power of approval of the appointment is vested in the regional committee and on the recommendation of the regional committee, approval only is to be passed by D.I.O.S., but in present case, the alleged appointment of the petitioner was never approved by the regional committee.

I do not find any merit in this writ petition.

Accordingly, the writ petition is ***dismissed***.

Order Date :- 30.1.2019

P Kesari