

Court No. - 34

Case :- WRIT - A No. - 6145 of 2021

Petitioner :- Rajendra Singh

Respondent :- The State Of U P And 5 Others

Counsel for Petitioner :- Shri Ram Pandey, Kapil Kumar, Kuldeep Saxena, Pradeep Kumar Pandey, Vijit Saxena, Yogendra Singh Bohra

Counsel for Respondent :- C.S.C., Pradeep Kumar Pandey

Hon'ble Ajit Kumar, J.

1. Heard Sri Y.S. Bohra, learned counsel for the petitioner, Sri Pradeep Kumar Pandey, learned counsel for respondent No.4 and learned Standing Counsel for the State-respondents.

2. Petitioner before this Court is aggrieved by the order dated 31.12.2020 whereby the Regional Joint Director of Education recalled the earlier regularisation order granted to the petitioner on 12.12.1995 under Section 33-B of the UP Secondary Education Service Commission Act, 1982 (for short, "Commission Act, 1982").

3. Twin arguments have been advanced by the learned counsel for the petitioner: (a) once the regional selection Committee had accorded regularisation to the petitioner under its resolution /decision dated 12.12.1995, the Regional Joint Director of Education (I) Region Meerut himself was not authorised to recall such regularisation order and cancel the same. Thus, according to learned counsel for the petitioner, the order impugned is bad for *coram non judice*; and (b) the order had been passed recalling the order of regularisation without giving any notice much less a show cause notice to the petitioner even though the order impugned was to have adverse civil consequences.

4. It is submitted by learned counsel for the petitioner that he was initially appointed on ad-hoc basis under Section 18 of Commission Act, 1982 on 09.07.1985 on account of then incumbent Pawan Verma, Lecturer in the subject of Mathematics proceeding on leave without pay. The approval of appointment of the petitioner on ad-hoc basis was granted by the District Inspector of Schools (DIOS) on 02.09.1985. Petitioner continued as such, according to him, until the vacancy fell substantively vacant on

account of resignation of said Ram Singh on 19.06.1987. Resultantly, the committee of management proceeded to continue him by means of an order dated 12.07.1987. This according to him, was a kind of fresh appointment but it was in continuation of his earlier appointment as he was initially appointed in the year 1985 filling up the place of said Ram Singh who had earlier proceeded on leave but ultimately came to resign at later point of time. The approval of appointment of petitioner to the substantive vacancy came to be granted on 16.01.1990.

5. It is argued on behalf of the petitioner that petitioner's marriage with the daughter of the then principal of the institution took place on 01.03.1987, so it was much after the initial appointment of the petitioner in the institution against a short term vacancy which later on became a substantive vacancy. It is submitted that petitioner has now attained the age of superannuation on 31st March, 2023.

6. *Per contra*, argument advanced on behalf of the State-respondents is that the appointment of petitioner made on 12.07.1987 is to be taken as a fresh appointment and admittedly on that date, petitioner had already been married to the daughter of then sitting principal of the institution. However, he could not deny the fact that petitioner had been initially appointed in the year 1985 against a short term vacancy on account of the said Lecturer Ram Singh proceeding on leave without pay. This has been so specifically stated in para 5, 6 & 8 of the counter affidavit.

7. On the legal question being raised on behalf of the petitioner, learned Standing Counsel could not dispute that decision impugned in the writ petition dated 31.12.2020 was exclusively taken by the Regional Joint Director of Education without there being any approval in that regard by the Regional Selection Committee. He also could not dispute that there is no averment in the entire counter affidavit that any notice much less a show cause notice was given to the petitioner before the order impugned came to be passed.

8. Having heard learned counsel for the respective parties, having perused the record and the arguments advanced on behalf of respective parties, two points emerge for consideration before this Court: (i) whether the order of Regional Joint Director of Education dated 31.12.2020 is bad for want of non compliance of principles of natural justice; and (ii) whether the order passed by the Regional Joint Director of Education dated 31.12.2020 is sustainable for want of lawful authority.

9. Coming to the first point, I find that the entire order dated 31.12.2020 is couched in a language as if the petitioner misled the authority in obtaining regularisation in the year 1995. In such circumstances, therefore, it could have been said that petitioner misled or misrepresented the matter in connivance with the committee of management but there is no averment of fraud as such discernible except the fact that the petitioner happened to be son in law of the then sitting principal of the institution. The petitioner in this petition has filed Lagan Patrika relating to marriage with the daughter of the sitting principal of the institution and had he been given proper opportunity of hearing before the Regional Joint Director of Education, he would have led all these evidence before the authority.

10. Legal principle is well stated in law that nobody can be condemned unheard. Such order that cannot be sustained on the touchstone of the principle of maxim of *audi alteram partem* cannot be sustained in law and authority which passes order has to assess and evaluate whether order which it is going to pass would have any adverse civil consequences upon the person against whom the order is being passed and if such civil consequences are perceivable, then such authority is liable to give at last notice to the concerned person so as to get his/her reply. In the present case admittedly petitioner was discharging his duties as Lecturer in the subject of Mathematics with the approval of the DIOS and his services had been regularised on 12.12.1995 taking aid to section 33-B of the UP Secondary Education Services Selection Board Act, 1982. In such circumstances, the order recalling the order dated 31.12.2020, would certainly be resulting into denial of petitioner's right to draw salary and his continuance in the institution also gets prejudiced. This, as matter of fact and also in law has to be taken to have resulted in adverse civil consequences.

11. In the circumstances, therefore, the Regional Joint Director of Education was bound in law to give at least a notice to the petitioner which I do not see to be reflected from any of the recitals made in the order impugned. Counter affidavit is also silent regarding opportunity of hearing being ever afforded to the petitioner before passing the order impugned in the present petition.

12. In such circumstances, first point, (i) is decided in favor of petitioner and against the respondents and the order dated 31.12.2020 is held bad for non compliance of principles of natural justice.

13. Coming to the second point, (ii) with regard to the authority of the Regional Director of Education to pass order recalling the order cancelling the regularisation dated 12.12.1995 under his order dated 31.12.2020, I find it more appropriate to first look into the provisions as contained under Section 33-B of the Commission Act, 1982. Section 33-B (2) of the Commission Act refers to Regional Selection Committee for the purposes of consideration of regularisation of such ad-hoc teachers working against the substantive vacancy. The relevant provision is reproduced hereinunder:

"2) (a) For each region, there shall be a Selection Committee comprising—

(i) Regional Deputy Director of Education of that region, who shall be the Chairman,

(ii) One officer holding a Group 'A' post (specified as such by the State Government from time to time) in any department other than Education department, to be nominated by the State Government,

(iii) Regional Inspectors of Girls School of that region;

Provided that the Inspector of the district shall be co-opted as a member while considering the cases for regularization of that district.

(b) The Selection Committee constituted under clauses (a) shall consider the case of every such teacher and on being satisfied about his eligibility and suitability in view of the provisions of sub-section (1) shall, subject to the provisions of sub-section (3) recommend his name to the Management for appointment under sub-section (1) in a substantive vacancy."

14. From bare reading of the aforesaid provision, it is clear that it is the Regional Joint Director of Education who shall be the Chairman and officer holding a post as specified by the State Government, of any department other than the education department was to be a nominated member of the State Government and DIOS of the concerned district shall be co-opted member to such committee. Thus, selection committee would consist of four members, three regular members to be appointed and one co-opted member.

15. In the circumstances, therefore, the regularisation dated 12.12.1995 must have been accorded to the petitioner under a decision taken by such a duly constituted Regional Selection Committee. Once the Regional Selection Committee had acted in the manner regularising the services of the petitioner, it was not open for the Regional Joint Director of Education to have reopened the controversy after almost 15 years on his own without

even referring the matter to the Regional Selection Committee.

16. From the recitals made in the operative portion of the order, I do not find any whisper about any reference being even made to the Regional Selection Committee instead, all that had been was that, since petitioner fell within the category of prohibited degree of relation for the purposes of appointment under Section 16-GG(3) of the UP Intermediate Education Act, 1921, the appointment of the petitioner was held to be void *ab initio*.

17. In my considered view, once the regularisation of appointment has already taken place, such teacher becomes a permanent member of service and no such teacher's service can be dispensed with on the ground that there were some inherent lack of qualification at the time of initial appointment. The question could have been gone into by issuing a show cause notice holding an inquiry into the matter and so that option was open but this was not opted for. Therefore, in my considered view, the Regional Joint Director of Education was certainly not an authority as defined under Section 33-B (2) to have reopened the issue and reviewed the decision taken by the Regional Selection Committee. This power is not vested with the Regional Joint Director of Education. Therefore, on the second point also, the order dated 31.12.2020 passed by the Regional Joint Director of education is held unsustainable.

18. On the principle of *coram non judice* also the order passed by the Regional Joint Director of Education cannot be sustained. A court or an authority which is not vested with the power to deal with the matter if deals with such matter, then the resultant action is liable to be held as void *ab initio*. In the case of ***Pandurang & ors v. State of Maharashtra; 1986 (4) SCC 436***, the Court has in quite unequivocal terms held that "*even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity.*" Relying upon said judgement, Andhra Pradesh High Court in the matter ***D. Satyanarayana Rao v. Vasudev Asrani & anr; 2001 (3) ALD 510; 2001 SCC OnLine AP 325*** held that an authority or Court if does not have the jurisdiction then such order would be a nullity. It was held therein that a defect of jurisdiction, goes to the root and strikes at the very authority that passes such order. Further, in the case of ***Rama Tyagi v. Delhi Development Authority; 2000 (4) L.L.N. 1103***, the Delhi High Court set aside the order of removal from service for the reason that authority that had passed the order, was not empowered to do so.

19. Petitioner has already retired on 31.03.2023. In the circumstances, there is no point now in remitting the matter for any decision afresh by the Regional Selection Committee. In the case of **Chandra Singh v State of Rajasthan & anr JT 2003 (6) SC 20**, the Supreme Court thus:

"37.A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer the employee cannot be made to retire. There must exist specific provision in the pension rules in terms whereof, whole or a part of the pension can be withheld or withdrawn wherefor a proceeding has to be initiated. Furthermore, no rule has also been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. In absence of such a proceeding, the High Court or the State cannot contend that the departmental proceedings against the appellant Mata Deen Garg could continue."

20. It is well settled law that after a long gap of time, the old appointment orders cannot be reopened on the ground of initial lack of inherent qualification or eligibility. At least there is no such case here that petitioner was not eligible to be appointed except falling within a prohibited degree of relation and that too has been questioned by the petitioner because when initial appointment was made in the year 1985, he was not a married person.

21. I also find that petitioner has continued in employment since 1985 whereas marriage had taken place in the year 1987. In the circumstances, therefore, it cannot be said that petitioner while was given initial appointment, he was within the prohibited degree of relation so as to hold his appointment as void ab initio.

22. In view of the above, writ petition succeeds and is **allowed**. The order dated 31.12.2020 passed by the Regional Joint Director of Education is hereby quashed. Consequences to follow.

23. Petitioner shall be paid entire arrears of salary. He shall also be given benefit of all retirement dues within two months' time from the date of receipt of certified copy of this order.

Order Date :- 28.2.2024

P Kesari