

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 12469 of 2010

Guru Charan Singh

..... Petitioner

Versus

State of U. P. & Ors.

..... Respondents

ORDER

A. K. PATNAIK, J.

This is a special leave petition under Article 136 of the Constitution against the impugned order dated 27.01.2010 of the Division Bench of the Allahabad High Court dismissing Special Appeal No.115 of 2010 of the petitioner against the order dated 21.12.2009 of the learned Single Judge in Civil Misc. Writ Petition No.11400 of 2005.

2. The relevant facts very briefly are that one Gajendra Singh Rathi was working as an Assistant Teacher in the Department of Hindi in L.T. Grade in Kisan Inter College, Mohiuddinpur, Meerut, in the State of Uttar

Pradesh (hereinafter referred to as 'the Institution'). In the Institution, a new section in Class XII of the Arts Faculty was opened in 1973 and in this new section of Class XII Gajendra Singh Rathi was appointed as a Lecturer in Hindi. The District Inspector of Schools, Meerut, however, cancelled the appointment of Gajendra Singh Rathi as a Lecturer in Hindi in Class XII of the Institution. Gajendra Singh Rathi filed Suit No.795 of 1969 and the Court of the Vth Additional Civil Judge, Meerut, decreed the suit declaring Gajendra Singh Rathi as a Lecturer in the Department of Hindi in the Institution by judgment and decree dated 03.01.1991. Consequently, there was a vacancy in the post of Hindi Teacher in L.T. Grade in the Institution. On 10.06.1993, the Principal/Manager of Institution notified several vacancies in the post of Assistant Teachers in the Institution on the Notice Board of the Institution inviting competent and qualified teachers possessing educational qualifications of BA/B.Ed./LT to appear in the interview in the office of the Institution on 27.06.1993

for appointment to the vacancies. The petitioner appeared in the interview and was selected as an Assistant Teacher in L.T. Grade by the Committee of the Institution on 27.06.1993. The Prabandh Sanchalak, who was managing the affairs of the Institution, sent the papers to the District Inspector of Schools, Meerut, along with a covering letter dated 29.06.1993 stating therein that consequent upon the promotion of Gajendra Singh Rathi to the post of Lecturer in Hindi in the Institution, the petitioner was given appointment after selection till duly selected candidate joins the post. By a communication dated 24.12.1994, the District Inspector of Schools provisionally fixed the salary of Gajendra Singh Rathi in the post of Lecturer in the Hindi Department of the Institution and by another communication dated 04.03.1995 the District Inspector of Schools approved the temporary appointment of the petitioner in the original post of Assistant Teacher up to the time of joining duties by a candidate duly selected by the Commission or up to the time of demotion of Gajendra

Singh Rathi from the post of Lecturer to his original post of Assistant Teacher, whichever of the two occurred earlier in time. The petitioner accordingly worked as an Assistant Teacher in the Institution until his services were terminated pursuant to the order dated 13.01.1005 of the District Inspector of Schools.

3. Aggrieved, the petitioner filed Civil Misc. Writ Petition No.11400 of 2005 in the Allahabad High Court and on 28.02.2005 a learned Single Judge of the High Court hearing the writ petition stayed the order of termination. After counter affidavit was filed on behalf of respondent nos. 1 to 4, learned Single Judge of the High Court heard the writ petition and dismissed the same by order dated 21.12.2009. Learned Single Judge of the High Court held that after 14.07.1992 the vacancy which occurred on account of promotion of Gajendra Singh Rathi to the post of Lecturer was actually a substantive vacancy and the Committee of the Institution had no authority to make any selection and appointment to this vacancy of Assistant Teacher in Hindi in the Institution and it was only the

Committee constituted under the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 which could make the selection and appointment to this substantive vacancy. The learned Single Judge further held that the Prabandh Sanchalak of the Institution without advertising the vacancy in any newspaper took recourse to the notice board proceedings and based on the same proceeded to pass an order for appointment by holding interview by treating the vacancy in question as resultant vacancy and not a substantive vacancy. The learned Single Judge further held that even selection and appointment under the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, the selection was to be made by the Committee of the Institution on the basis of quality point marks and not on the basis of interview. The learned Single Judge also held that as Gajendra Singh Rathi had been an Assistant Teacher in Hindi, the vacancy which occurred on account of promotion of Gajendra Singh Rathi to the post of

Lecturer in the Institution was in the post of Assistant Teacher in Hindi and not in any general post of Assistant Teacher and as the petitioner had not opted Sanskrit as one of the subjects at the graduation, he was disqualified to be appointed as an Assistant Teacher in Hindi in L.T. Grade. For these reasons, the learned Single Judge refused to grant relief and dismissed the Writ Petition. Aggrieved by the order of learned Single Judge, the petitioner filed Special Appeal No.115 of 2010 before the Division Bench of the High Court and, by the impugned order, the Division Bench dismissed the appeal after observing that the learned Single Judge had come to the conclusion that the appointment of the petitioner was *dehors* the rules and, therefore, he was not entitled to any relief.

4. At the hearing, learned counsel for the petitioner submitted that it will be clear from the Resolution dated 27.06.1993 of the Committee of the Institution as well as the papers sent to the District Inspector of Schools and the order dated 04.03.1995 of the District Inspector of Schools approving the appointment of the

petitioner as an Assistant Teacher in the Institution that the appointment of the petitioner to the post of Assistant Teacher in the Institution was for a limited duration, i.e. up to the time of joining duties by a candidate duly selected by the Commission or up to the time of demotion of Gajendra Singh Rathi from the post of Lecturer to his original post of Assistant Teacher, whichever of the two occurred earlier in time. He submitted that the appointment of the petitioner was, therefore, to a short-term vacancy and not to a substantive vacancy. He submitted that the appointment to a short-term vacancy could be made under Clause 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. He submitted that this was, therefore, not a case where the petitioner was appointed to a substantive vacancy as has been held by the High Court. He further submitted that a Division Bench of the Allahabad High Court has held in judgment dated 18.08.1998 in Special Appeal No.948 of 1995 [(1988) 3 UPLBEC 1722] that in *K. N.*

Dwivedi v. District Inspector of Schools (1994 (1) UPLBEC 461) a learned Single Judge of the Allahabad High Court for the first time held that notifying the vacancy on the notice board of the Institution would be repugnant to the fundamental right under Article 16 of the Constitution and this judgment of the learned Single Judge in *K. N. Dwivedi* which was delivered on 13.01.1994 will not apply to the appointment to short-term vacancies prior to 13.01.1994. He submitted that in the present case the petitioner was selected and appointed on 27.06.1993 and he had joined in the post prior to 13.01.1994 and the notification of the vacancy only in the notice board of the Institution was not invalid. He finally submitted that until the regular appointment is made to the post of Assistant Teacher in the Institution after selection by the Commission, the petitioner should be allowed to continue as an Assistant Teacher in the Institution.

5. We need not deal with these contentions of the counsel for the petitioner because we find from the paragraph 2.9 of the Counter Affidavit of respondent no.5 filed in

this Court that as against the requisition of the Committee of the Institution, the Uttar Pradesh Secondary Education Services Selection Board after conducting selection has selected one Ambrish Kumar for the Institution and Ambrish Kumar had assumed his duty against the vacant post of Assistant Teacher on 14.10.2006. As the appointment of the petitioner to the post of Assistant Teacher in the Institution was made by the Committee of the Institution and approved by the District Inspector of Schools for the limited period up to the date of joining by a candidate duly selected by the Commission and such candidate duly selected by the Selection Board has already joined his duty on 14.10.2006, the petitioner's appointment, even if valid, has come to an end on 14.10.2006. We further find from a copy of the letter dated 26.07.2008 of the Principal of the Institution to the District Inspector of Schools annexed to the counter affidavit of respondent no. 5 as Annexure R-2 that the petitioner has drawn salary as an Assistant Teacher up to 14.10.2006 and thereafter. Hence, the question of

granting any monetary relief to the petitioner up to 14.10.2006 also does not arise.

6. For these reasons, we are not inclined to grant leave and instead dismiss the Special Leave Petition. No costs.

.....J.
(R.V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
June 24, 2011.