

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2364 OF 2007

(Arising out of S.L.P.(C) No. 2664/2006)

VIPIN KUMAR

..... APPELLANT

(S)

:VERSUS:

STATE OF U.P. AND ORS.

..... RESPONDENT

(S)

O R D E R

Leave granted.

Appellant herein was appointed in Dr. Ambedkar Junior High

School, Indragadhi, Ghaziabad. There were 8 sanctioned posts of

Assistant Teachers besides one post of Headmaster. One Ms. Poonam

Kushwaha was transferred to the said school by an order dated

23.4.1997 passed by the District Basic Education Officer, Ghaziabad.

One Mahinder Singh, who was working as Assistant Teacher, was selected as Principal on 15.5.1997. Shri Yograj Singh was appointed in the said school on 7.10.1997. He, however, resigned from the services on 27.9.1999. Appellant is said to have been appointed on 19.4.2003 against the post which allegedly fell vacant upon acceptance of the

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resignation of the said Yograj Singh.

The services of the appellant were, however, terminated with effect from 24.1.2004 on the premise that all the eight sanctioned posts had already been filled up. Aggrieved by the said order, the appellant filed a writ petition in the High Court of Judicature at Allahabad. The learned Single Judge of the said Court by a judgment and order dated 7.9.2005 dismissed the same opining :

"The guidelines for sanction of strength of teachers in a junior High School provide for determination of the number of teachers in accordance with the number of students and the sections of classes in the school. The strength in a school cannot be increased on the ground

that the strength of students in some other school has decreased to the level that the post of Assistant Teacher has become surplus in that school."

The learned Single Judge further noticed that the appellant by

having not questioned the transfer of said Ms. Kushwaha and she

having not been impleaded in the writ petition, the relief by way of a

declaration that her appointment was invalid, could not be granted. By

reason of the impugned judgment, the special appeal, preferred by the

appellant against the order of the learned Single Judge, has been

dismissed by the Division Bench of the High Court stating:

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"Admittedly, there were only eight sanctioned posts of

Assistant Teacher in the institution at Dr. Ambedkar

Junior High School, Indragadhi, Ghaziabad. Smt.

Poonam Kushwaha was transferred to the said

institution and the said order was never challenged by

the petitioner. After the resignation of Sri Yograj Singh

on 25.6.1999, eight assistant teachers including Smt.

Poonam Kushwaha contineud to work in the aforesaid

institution and thus, there was no vacancy against which

petitioner could have been appointed. Therefore, the claim of the appellant has rightly not been accepted by Hon'ble Single Judge. We do not find any fault in the order of Hon'ble Single Judge. It is not disputed that no appointment can be made beyond the sanctioned strength of posts."

Mr. S.C. Maheshwari, learned senior counsel appearing on

behalf of the appellant would submit that the District Basic Education

Officer, Ghaziabad had approved the 9th post as would appear from a

letter of the management of the school dated 18.2.1992 which is in the

following terms:

"From: Manager, Dr. Ambedkar Junior High

School, Indergarhi.

To: The District Basis Education Officer, Ghaziabad.

It is hereby certified that in the aforesaid institution, the

following list of teachers and employees are duly

approved:

1. Shri Mahinder Pal, Principal

2. Smt. Omwati Devi, Assistant Teacher

3. Shri Ram Sunehri Ram, Assistant Teachers
4. Shri Rajbir Singh, Assistant Teachers
5. Kum. Radha Rani, Assistant Teacher
6. Smt. Rajbala Devi, Assistant Teacher
7. Shri Ompal, Assistant Teacher
8. Shri Ranjit Singh, Assistant Teacher
9. Smt. Poonam Kushwaha, Assistant Teacher
10. Shri Yograj Singh, Assistant Teacher"

It was further urged that having regard to the fact that Yograj

Singh was working as an Assistant Teacher against a sanctioned post,

the respondents were not correct in taking the stand that there were

only 8 sanctioned posts. Our attention in this connection has also been

drawn to an office order dated 23.4.1997 issued by the District Basic

Education Officer, Ghaziabad.

Section 14 of the U.P. Junior High School (Payment of Salaries

to Teachers and Other Employees) Act, 1978 does not confer any

authority on the District Basic Education Officer to sanction a post or

create a post. It merely protects acts done by the officers in good faith.

It is, therefore, evident that the District Basic Education Officer

neither could create a post nor could approve an appointment of more

than the sanctioned strength of eight teachers in the respondent-

institution.

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A contention has been raised by the learned senior counsel

appearing on behalf of the appellant that the transfer of the said Ms.

Kushwaha was invalid in law. We have noticed hereinbefore that such

a contention had not been raised in the writ petition nor she has been

impleaded as a party therein. In her absence, therefore, the High Court

has rightly refused to go into the said question.

For the reasons aforementioned we do not find any merit in

this appeal which is accordingly dismissed. No costs.

.....J

(S.B. SINHA)

.....J

(MARKANDEY KATJU)

NEW DELHI,

MAY 4, 2007.

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ITEM NO.204

COURT NO.4

SECTION XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).2664/2006

(From the judgement and order dated 07/10/2005 in SA No. 1227/2005 of
the HIGH COURT OF JUDICATURE AT ALLAHABAD)

VIPIN KUMAR

Petitioner(s)

VERSUS

STATE OF U.P. AND ORS.

Respondent(s)

(With appln(s) for permission to file rejoinder affidavit, exemption
from filing O.T. and prayer for interim relief and office report)

(FOR FINAL DISPOSAL)

Date: 04/05/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

