

(2015) 07 AHC CK 0062

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 36228 of 2015

Abhilasha Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16-F

Citation : (2015) 6 ADJ 279 : (2015) 4 AWC 4267 : (2015) 4 ESC 2054

Hon'ble Judges : Arun Tandon, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : S.K. Singh, D.K. Singh, G.K. Singh, S.K. Mishra and V.K. Singh, for the Appellant; A.K. Yadav, Advocates for the Respondent

Judgement

1. Following questions having vital significance for the cause of education in the State of Uttar Pradesh, arise for our consideration in the present writ petition:

(i) What should be the minimum qualifications for appointment of Chairman and Members of U.P. Secondary Education Service Commission Board, even in respect of persons specified under Section 4(iv) of the Act, should it be at par with the qualification for persons specified under clause (i), (ii) & (iii) of Section 4 on the principle of "Ejusdem Generis"?

(ii) Whether, respondent Nos. 4 to 6 who were working as L.T. Grade Teacher i.e. on a post which is at the lowest ladder of the faculty posts is a recognised Intermediate College could be appointed as Chairman and Member of the Secondary Education Service Selection Board, for making make selection on the post of Principal/Lecturer/Assistant Teacher in a recognised aided Intermediate institution?

While entertaining this petition on 3.7.2015, time was granted to the learned counsel appearing for State to verify the credentials of respondent Nos. 4 to 6, on the strength of which they came to be appointed as officiating Chairman and Members of the Board.

2. Learned Chief Standing Counsel alongwith the Advocate General of the State have appeared and have passed on the instructions received in the matter from the Principal Secretary of the State, which are taken on record. This order is being passed relying upon the facts so adduced before us by the State.

3. Petitioner before this Hon"ble Court is an applicant for the post of Principal in a recognised and aided intermediate college. She has approached this Court for issuing a writ of quo warranto questioning the appointment and continuance of respondent Nos. 4, 5 & 6 as officiating Chairman and members of the U.P. Secondary Education Service Selection Board, Allahabad, on the ground that the appointment of these three persons who were only working as L.T. Grade Teachers on the relevant date is per se arbitrary and based on misreading of the intent of Section 4 of U.P. Act No. 5 of 1982.

4. The qualification prescribed for appointment of Chairman and Members of the Board, as contained in Section 4(1) to (3) of the U.P. Act No. 5 of 1982 and reproduced in the writ petition are as follows:

"4. Composition of the Board: (1) The Board shall consist of a Chairman and ten members who shall be appointed by the State Government.

(2) A person shall not be qualified for appointment as Chairman unless he,-

(a) is or has been a Vice-Chancellor of any University established by law; or

(b) is or has been in the opinion of the State Government an outstanding officer of the Administrative Service not below the rank of Secretary to the State Government or Director of Education, Uttar Pradesh;

(c) is in the opinion of the State Government, an eminent person having made valuable contribution in the field of education.

3. Of the Members,-

(a) two shall be persons who are educationists having made significant contribution in the field of education.

(b) two shall be persons who are or have been, in the opinion of the State Government, an outstanding officer of the State Education Service not below the rank of Additional Director;

(c) other shall be persons, who,--

(i) have worked as a Professor in any University established by law in Uttar Pradesh or as a Reader of any Degree College recognised by, or affiliated to, such University for a period of not less than ten years; or

(ii) have worked as a Principal of any institution recognised under the Intermediate Education Act, 1921 for a period not less than ten years; or

(iii) are, in the opinion of the State Government, an eminent educationist having

made valuable contribution in the field of education.

(iv) is in the opinion of the State Government, an eminent person having made valuable contribution in the field of education.

4. Every appointment under this Section shall take effect from the date on which it is notified by the State Government."

5. We may, at the very outset, record that the Chief Standing Counsel made an allegation against the petitioner has deliberately quoted unamended Section 4(3)(c)(iv) of the Act and that the correct provision reads as under:

"(iv) is interested in the field of education and a graduate from a recognized University."

Submission is that in view of the language of sub clause (iv), the only qualification for appointment of Member is that he has to be a graduate from a recognised University and has interest in the field of education.

6. Sri G.K. Singh, learned Senior Advocate, assisted by Sri S.K. Mishra, Advocate informed the Court that Section 4 of the Act has been quoted from an authentic book of a renowned publisher there may be some mistake in the book itself, which is neither deliberate nor intentional. We direct the learned counsel for the petitioner to make necessary corrections today itself so as to bring it in conformity with the amendment made in the year 2008.

7. We may now turn to the basic issue, as raised in the present petition.

8. U.P. Act No. 5 of 1982 was introduced for constituting, a Service Selection Board, as a substitute for the mechanism of selection of Principal and Teachers in a recognised aided intermediate colleges in the State of Uttar Pradesh under the U.P. Intermediate Education Act.

9. The U.P. Intermediate Education Act, 1921 (hereinafter referred to as Act 1921) contemplated nomination of subject experts for every selection committee to be constituted. These subject experts were to be the persons, who had academic qualification and experience in the field of education. Reference may be had to the provisions of Section 16-F of the Act 1921. Sub-section (4) to Section 16-F of the Act 1921 provided for the panel to be drawn by the Director in such manner as may be prescribed. It had to be revised once in every 3 years. Regulation 14 of Chapter-II of the Regulations framed under Act, 1921 lays down the category of persons, who can be included in the panel of experts to be prepared by the Director. Regulation 14 is being quoted below:

"14. The panel of Experts referred to in sub-section (4) of Section 16-F shall be drawn by the Director for each region separately for the selection of heads of institutions and for the selection of teachers from amongst the categories of persons given below after they have been given their consent in writing to act as Experts:

(a) Persons who may be appointed. as experts for the selection of heads of institution-

(i) Principals of Degree Colleges, Training Colleges, Agricultural Colleges and Polytechnics including Central Schools;

(ii) Gazetted Officers of the Education Department not below the P.E.S. level, whether serving or retired;

(iii) Professors and Readers of Universities and Degree Colleges;

(iv) Lecturers of Universities and Degree Colleges provided they have worked as such for at least ten years.

(v) Any other person considered suitable by the Director;

(b) persons who may be appointed as experts for the selection of teachers.

(i) Principal or Headmaster of any Intermediate College, High Schools or Government Normal School, whether serving or retired;

(ii) Gazetted Officer of the Education Department not below the rank of a Deputy Inspector of Schools, whether serving or retired;

(iii) Lecturers of Degree Colleges, Training Colleges or Polytechnics and Gazetted Officers of Education Department of at least five years" standing;

(iv) Any other person considered suitable by the Director.

The number of experts on each regional panel shall be such as may be considered necessary by the Director, provided that experts appointed for the selection of teachers of Intermediate classes shall be experts in that subject (i.e. they should possess the minimum qualifications prescribed by the Board for a teacher of Intermediate classes in the subject concerned). The regional panel shall remain valid for three years but the Directors may add to or remove any person from the panel even during the above period. Name of one person may be included in more than one panel where necessary."

10. It will be seen from a simple reading of the aforesaid provisions that the Act, 1921 contemplated that persons not below the rank of Principal of Degree college training college, agriculture college and gazetted officer of the education department not below the rank of additional director, professor of any university or a Reader, Lecturer (with 10 years experience) of any degree college recognised by or affiliated to such University, or any other person having made valuable contribution in the field of education and considered suitable by the Director could be included in the panel for the post of Principal/Head of the institution.

11. In the case of teachers such persons could be empanelled who had to be a principal of an Intermediate institution, Gazetted Officer or Lecturer of Degree College. Clause-4 authorised the Director to induct any other person as

considered suitable by him.

12. Section 4 of the U.P. Act No. 5 of 1982, which lays down the qualification for the Chairman and Members of the Selection Commission, has been quoted above. The qualification for appointment as Chairman under Sub-section (2) of Section 4 are that he (i) is or has been a Vice-Chancellor of any University established by law; (ii) an outstanding officer of administrative service not below the rank of Secretary to the State or Director of Education U.P.; (iii) an eminent person having made valuable contribution in the field of education.

13. Similarly, for the office of Member, qualifications prescribed; (a) educationists having made significant contribution in the field of education; (b) an outstanding officer of the State Education Service not below the rank of Additional Director; (c) Professor of a University established by law or a Reader of a degree college recognised by or affiliated to a University for not less than ten years; Principal of any Intermediate institution recognised under the Act of 1921 for not less than ten years; (d) an eminent educationists having made valuable contribution in the field of education, and lastly (e) a graduate having interest in education, as provided in Clause-iv.

14. This clause according to State constitutes a separate class in itself and the other clauses providing qualification would have no bearing.

15. We are, prima facie, not inclined to accept this argument, as it would run counter to the scheme of the Act itself.

16. Provisions contained in Sub-sections (2) and (3) of Section 4 provide for the qualifications required to be possessed by a person before being appointed as Chairman and Member of the Board. We are of the view that principles of "Ejusdem Generis" would clearly be attracted in the instant situation and Sub-clause (iv) would have to be read as being of the same kind or nature, and for same class or category which apply to the previous clauses. The Apex Court in *Nirma Industries Ltd. and Another Vs. Securities and Exchange Board of India*, (2013) 6 AD 349 : AIR 2013 SC 2360 : (2013) 115 CLA 13 : (2013) 178 CompCas 423 : (2013) 3 CompLJ 275 : (2013) 7 JT 185 : (2013) 7 SCALE 261 : (2013) 8 SCC 20 : (2013) 121 SCL 149 : (2013) AIRSCW 3489 has held as follows:

"63. The term "Ejusdem Generis" has been defined in Black's Law Dictionary, 9th Edn. as follows:

"A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."

64. The meaning of the expression *Ejusdem Generis* was considered by this Court on a number of occasions and has been reiterated in *Maharashtra University of Health Sciences and others v. Satchikitsa Prasarak Mandal and others* [9] The principle is defined thus : "The Latin expression "*Ejusdem*

Generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context".

It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication [see Glanville Williams, *The Origins and Logical Implications of the Ejusdem Generis Rule*, 7 Conv (NS) 119]."

65. Earlier also a Constitution Bench of this Court in *Kavalappara Kottarathil Kochuni v. State of Madras* construed the principle of *Ejusdem Generis* wherein it was observed as follows : "..... The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

66. Again this Court in another Constitution Bench decision in the case of *Amar Chandra Chakraborty v. Collector of Excise* observed as follows:

".... The *Ejusdem Generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

17. We are, *prima facie*, of the opinion that the requirement of eminence in the field of education as provided in sub clauses (i), (ii) and (iii) would have to be read in clause (iv) of Section 4(3)(c) of the Act also. Only a person having eminence in the field of education, as illustrated by various sub-sections of Section 4 could be appointed as Chairman and Member of the Board. The contrary interpretation suggested by the Chief Standing Counsel would be detrimental to the system of education in the State.

18. In our opinion the phrases "made valuable contribution in the field of education" and "interested in field of education" must mean some contribution in the field of education which is tangible and which can be evaluated by experts in the field of education to see as to whether that particular man satisfied the requirement of the said phrases or not. It cannot be based on complete subjective satisfaction. Some objective material for the purpose has to be seen.

19. The qualifications for the office of member has been whittled down by the

State Government under the 2008 amendment as a result whereof we are faced with a situation in which respondent Nos. 4 to 6 are functioning as the officiating Chairman and Members of the Board.

20. It is relevant to note that the respondent No. 4, Smt. Anita Yadav, who was only a LT grade teacher in K.K. Inter college, is now acting as Chairman of the Selection Board for selecting Principals of recognised inter colleges i.e. a post, for which she herself is prima facie not eligible to even apply. She is stated to be double M.A. She is untrained nor she has passed TET examination.

21. The other members of the Commission i.e. Smt. Ashalata Singh was initially appointed as subject expert and thereafter Lecturer in Intermediate College, for which selection was made by the committee of Management of a private college. Meaning thereby that she has not faced any selection conducted by the Service Selection Board or by the Public Service Commission. She is stated to have been regularised as Lecturer in the year 2007 and she has now been appointed as Member for holding selection for the Post of Principal of a recognised Intermediate College, a post she has never held nor is qualified to hold.

22. So far as respondent No. 6, Lalit Kumar Srivastava, is concerned, he worked as Clerk in the office of District Inspector of School upto the year 2003, where after he is stated to be appointed as L.T. Grade Teacher, before being appointed as Member of the Board in the year 2013. Even he is to select Principals and Lecturers, although he himself is not qualified for the posts. His period of appointment has been extended again on 12.6.2015 for further two years. Sri Lalit Kumar Srivastava who is stated to be post graduate, is not even trained, and thus, prima facie, ineligible to be appointed even as L.T. Grade Teacher.

23. None of these three (Chairman and two members), as on date, prima facie can be selected for the post of Principal in a recognised Intermediate college for want of qualification, but the irony is that they have been authorised to select Principals and Lecturers for recognised Intermediate Colleges.

24. The Court, in the facts of the present case, is constrained to inquire as to whether considerations other than the interest of education pervial in the mind of the concerned officials of the department of education in the State, while appointing Respondent Nos. 4 to 6. Response is required from the Principal Secretary/Chief Secretary of the State. We regret to observe that the entire education in State is being ruined because of incompetent persons being appointed to hold selection for the post of Principals/Lecturers and L.T. Grade Teachers of the recognised intermediate college. The Court will not be a mute spectator. The State cannot be permitted to break the backbone of education system on which our democratic polity professes to thrive. We are compelled to interfere not only in law but for wider cause of education in the State itself.

25. Has the State of U.P. become so bankrupt in the matter of academies/ administrative officers that it has to appoint persons as Chairman/Members of the Selection Board who have made absolutely no contribution in the field of

education, is the other question which was to be answered.

26. Learned Chief Standing Counsel submitted that this petition may not be entertained, as a previous PIL Petition No. 11684 of 2014 had been dismissed on 26.11.2014, vide following orders:

"This petition lacks bona fide. It appears that it is a proxy petition at the instance of ex-secretary of Education Board as on her papers enquiry has been asked for.

In view of the above, PIL is dismissed."

27. Another PIL Petition No. 12548 of 2014 was filed and following orders were passed on 18.12.2014:

"Shri Ankit Srivastava, Advocate, appearing for respondent Nos. 2 and 3, prays for and is allowed three weeks" time to seek instructions in the matter, particularly in respect of proceedings, if any drawn, against the respondent Nos. 4 and 5 by the State Government. Learned Standing Counsel, representing State respondents, may also seek instructions within same period.

List in the 3rd week of January, 2015.

Prayer for interim relief is rejected."

28. An SLP was preferred against the order dated 18.12.2014, which was rejected on 22.1.2015. It is submitted by the Chief Standing Counsel that in view of the aforesaid orders, present petition be not entertained.

29. We would like to observe that consideration for entertaining a PIL and grant of interim orders therein proceed on different footing. The present writ petition has been filed by a candidate, who is to face interview, for issuing a writ of quo warranto, this petition has no concern with the earlier petitions filed, as this is for a different relief. We further find that issues raised in the petition have important significance for the cause of education in the State, the writ petition must, therefore, be entertained. The objection of the State, in this regard, stands rejected.

30. We may also record that a response to the facts as stated in the writ petition and the prima facie findings which have been recorded by this Court, shall be made by means of a personal affidavit by the Chief Secretary of the State of U.P.. The original records on the basis of which these three persons were appointed as Chairman and Members of the Selection Board, shall be produced before this Court by an officer, not below the rank of Joint Secretary on the next date. Learned Chief Standing Counsel prays for and is allowed 3 weeks" time to file Counter-affidavit. Issue notice to respondent Nos. 4 to 6, who may also file counter-affidavit within the same period. Steps be taken within five days. Petitioner will have one week thereafter to file Rejoinder-affidavit.

List this petition on 10.8.2015.

In the meantime, respondent Nos. 4, 5 & 6 are restrained from holding any

selection in their capacity as Chairman and Members of the Board. However, their salary is not being interfered with, at this Stage.