

(2014) 10 AHC CK 0137

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 64274 of 2011

Amar Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16, 16E(3)
Uttar Pradesh Secondary Education Services Commission and Selection Boards
(Amendment) Act, 2006 — Section 3

Citation : (2014) 10 ADJ 126 : (2015) 6 ALJ 59

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Advocate : Nikhil Kumar and Ravindra Kumar, Advocate for the Appellant

Judgement

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Abhinava Upadhyaya, J.—Heard Shri Ravindra Kumar, learned counsel for the petitioner and Shri Saral Srivastava, learned Additional Chief Standing Counsel for the State.

By means of this writ petition the petitioner has raised a grievance that pursuant to an order dated 21.2.2007 issued by District Inspector of Schools, Firozabad the Committee of Management and Principal of Pali Inter College, Shikohabad, District-Firozabad have not allowed the petitioner to be appointed as Lecturer in Hindi pursuant to his engagement as Subject Expert in the institution on 1.8.2001.

The State Government vide order dated 9.12.1988 had imposed a restriction on creation of new post in private aided intermediate colleges, but in view of increase in number of students a necessity arose for further appointment of teachers. Therefore, a via media was evolved for creation of pool of "subject experts" to the extent of 3000 teachers and from that pool the requirement of various institutions would be fulfilled. The said "subject experts" were to be

selected on the basis of their academic qualification, experience and interview. The departmental selection committee was constituted and included the Director of Education (Secondary), Chief Accounts Officer, concerned Regional Deputy Director of Education (Secondary) and Regional Joint Director of Education. Under the aforesaid Government Order by such a selection committee petitioner claims to have been selected as "subject expert" and was allotted the aforesaid college. Such "subject experts" were to be appointed on fixed emoluments of Rs. 5,000/- per month.

2. The appointment and selection of teachers" of High Schools and Intermediate Colleges are governed by the Uttar Pradesh Secondary Education Services Selection Board Act, 1982. To accommodate such "subject experts" an amendment was brought by way of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2006 (U.P. Act No. 37 of 2006). Section 3 of the Act prescribes for insertion of new Sections 21-E and 21-F after Section 21-D. Section 21-E is quoted herein below:

"21-E. Absorption of subject experts.--(1) There shall be a list of subject experts working in private aided secondary schools possessing prescribed educational and training qualification including the subject experts who have received honorarium and worked for a minimum period of two academic sessions and were working on September 30, 2006. The list shall be maintained by the Director in such manner as may be prescribed.

(2) Where any substantive vacancy in the post of a teacher in an institution is to be filled by direct recruitment, such post shall, at the instance of the Inspector, be offered by the management to a subject expert whose name is included in the list referred to in sub-section (1).

(3) Where any subject expert who is offered an appointment in accordance with the provision of sub-section (2) fails to join the post within the time allowed, which shall not be less than seven days, his name shall be removed from the list, referred to in sub-section (1).

(4) No appointment of any teacher to an institution shall be made under Section 16 unless the list referred to in sub-section (1) is exhausted.

(5) The subject experts included in the list referred to in sub-section (1) shall be absorbed in those institution where any substantive vacancy is to be filled by directed recruitment. No subject expert shall have claim for appointment to any particular post."

3. A plain reading of Section 21-E of the Act indicates that "subject experts" working in private aided secondary schools possess prescribed educational qualification and training qualification including the "subject experts" who have received honorarium and worked for a minimum period of two academic sessions and working from September 30, 2006 will be given regular appointment in the institution in Lecture grade on any substantive vacancy that may occur in the

sanctioned posts of that grade.

4. The petitioner claims regular appointment in the said institution in view of the newly inserted Section 21-E in the 1982 Act. When no appointment/absorption was granted petitioner made several representations, but to no effect. Ultimately, the petitioner filed the present writ petition.

5. In the writ petition pleadings have been exchanged. The stand taken in the counter-affidavit is that although the petitioner was engaged as "subject expert" pursuant to the Government Order dated 11.10.1999 in 2001 and was allotted the aforesaid institution, but in view of Section 21-E of the Act he could be absorbed in the said institution only if he possess the minimum qualification prescribed for Lecturer in Hindi as provided in Appendix "A" to the Intermediate Education Act, 1921. Appendix "A" prescribes qualifications for "hindi teachers" for intermediate (Class 11 and 12) as M.A. in Hindi and B.A. with Sanskrit or Shastri Examination from Government Sanskrit College, Varanasi now Sampurnanand Sanskrit University, Varanasi. Admittedly, at the time of consideration the petitioner did not possess the qualification of B.A. with Sanskrit or Shastri Examination, as such, the petitioner was held to be ineligible for appointment.

6. Learned counsel for the petitioner however emphasized that Section 21-E of the Act is in two parts, one, the "subject experts" who have prescribed qualification and training, and secondly, such "subject experts" who have received honorarium and worked for a minimum period of two academic sessions, both will be entitled for absorption. Therefore, the petitioner not having B.A. with Sanskrit will not make him ineligible on account of lack of minimum qualification as he belongs to the second category.

7. I am unable to accept the aforesaid proposition advanced by the learned counsel for the petitioner. To my mind, Section 21-E of the Act clearly provides that only those teachers who possess the minimum qualification under the Intermediate Education Act and have received honorarium for at least two academic sessions and were working as such on 30.9.2006 would be entitled for absorption as Lecturer in Hindi. From the plain reading of the aforesaid provision it cannot be culled out that such "subject experts" who have worked for a minimum period of two academic sessions can be absorbed in the institution, even if they do not possess the prescribed minimum qualification. The Uttar Pradesh Intermediate Education Act, 1921, Section 16-E(3) whereof prescribes that no teacher shall be appointed in an educational institution without having minimum qualification as prescribed in Appendix "A" to the Act of 1921. The proviso to this section, however, contemplates for appointment without the prescribed qualification upon an exemption being granted by the High School and Intermediate Education Board having regard to his education, experience and other attainments. From the perusal of the record of the writ petition and the affidavits filed in support thereof does not disclose that any such exemption was granted by the Board. The newly inserted Section 21-E in Act No. 5 of 1982 also

does not carve out any such exception. That being the case, the petitioner admittedly not having B.A. with Sanskrit did not possess the minimum qualification for such absorption, as such, his claim has rightly been rejected.

There is no merit in the writ petition. It is, accordingly, dismissed.