

(2014) 07 AHC CK 0252

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 39049 and 39096 of 2014

Anil Kumar Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 21A, 45, 51A

Right of Children to Free and Compulsory Education Act, 2009 — Section 3

Citation : (2014) 6 AWC 6518 : (2014) 4 UPLBEC 2871

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : V.D. Yadav, Advocate for the Appellant; A.K. Yadav and Diwakar Singh, Advocate for the Respondent

Judgement

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Pradeep Kumar Singh Baghel, J.—In both the writ petitions, similar question of law is involved, therefore, by a common judgment the writ petitions are being decided finally. The grievance of the petitioners in the writ petitions is in respect of selection of Prerak (Motivator) under the Literate India Mission (Sakshar Bharat Abhiyan).

2. The experience reveals that large number of writ petitions are filed by the unsuccessful candidates for the post of Prerak and/or Coordinator. One of the common grounds of challenge in the writ petitions is that the selected candidate has got his/her selection on the basis of the fabricated documents, unfair process of selection, incomplete application form submitted by the candidate, etc. Thus, factual disputes are raised by the petitioners in the writ petitions.

3. Looking to the large number of similar writ petitions being filed in this Court, it is necessary to give a brief history of Shakshar Bharat Abhiyan to decide the point involved in the writ petitions.

4. The Supreme Court in the case of Miss. Mohini Jain Vs. State of Karnataka and

others, , took the view that right to education is a fundamental right under Article 21 of the Constitution of India. This view was modified in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , and it was held that right to free education is available only to children upto the age of 14 years. The Supreme Court considered the Article 45 under Chapter IV, Directive Principles of State Policy, and also Article 51-A, Fundamental Duties as in Part-IV-A of the Constitution.

5. In the light of the law laid down by the Supreme Court in the aforesaid decisions and the suo-motu proceedings initiated by the Law Commission on the same issue, the Government of India decided to move an amendment in the Constitution. Accordingly, the Parliament by the Constitution (Eighty-Sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution. Article 21-A reads as under:

"21-A. Right to education.--The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

6. After insertion of Article 21-A in the Constitution, the right to free and compulsory education became fundamental right and the State was under the obligation to provide free and compulsory education in the educational institutions run and established by the State as well as other institutions, which receive aid out of the State fund and recognition from the appropriate authority.

7. To implement the object of Article 21-A of the Constitution, in the year 2009 the Right of Children to Free and Compulsory Education Act, 2009 (for short, the "Act, 2009") was enacted. One of the objects of the Act, 2009 was in terms of the object of Universal Elementary Education for strengthening the democracy and to provide equal opportunity to all. Section 3 of the Act, 2009 enjoins that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school.

8. The Government of India launched a scheme "Literate India (Sakshar Bharat)" with a view to achieve 80 percent literacy level by 2012 at national level. To achieve the said goal, the Government of India earmarked 365 districts in the country where it was found that adult female literacy rate was 50 percent or below. From 2009-10 to 2011-12, 370 districts were identified in the country. In the State of Uttar Pradesh also said scheme has been implemented in large number of districts.

9. Under the Sakshar Bharat Scheme the State Government has issued various Government Orders from time to time to strengthen the said scheme. Vide Government Orders dated 27.4.2010, 6.5.2010 and 21.5.2012 detailed guidelines have been issued for engagement of Prerak (Motivator). The Scheme provides that there will be four posts of Coordinators in each district; one post of Coordinator at the Block level; and, two posts of Prerak (Motivators) at Village level i.e. Lok Shiksha Kendra. The scheme further provides that engagement on

these posts shall be made on contract basis for eleven months.

10. For engagement on the aforesaid posts three Committees were constituted. At the Gram Panchayat level, Gram Panchayat Lok Shiksha Samiti was constituted which comprises of 8 members, such as, Gram Pradhan of the concerned Village as Chairman, one nominated Member from amongst the Members of Gram Panchayat as Member-Secretary, one of the senior-most Headmaster of the Primary School, Gram Panchayat Development Officer, and social workers etc. At the Block Level, the Block Lok Shiksha Samiti is headed by Block Pramukh as Chairman, Block Development Officer as Member-Secretary, representative of N.G.O. and others as Members. The District Level Lok Shiksha Samiti is presided by Chairman of Zila Panchayat and the District Magistrate is its Coordinator apart from other members.

11. The primary duty at the Gram Panchayat Level is to identify the group of illiterate people and to motivate their children to join the neighbourhood school. Emphasis is on the cent per cent literacy of the female children.

12. For the engagement of Prerak and the Coordinator, District Lok Shiksha Samiti issues the advertisement calling for the applications for engagement of Coordinators at the district and block level and Prerak at the Gram Panchayat Level. Educational qualifications etc. are also prescribed in the guidelines as well as in the advertisement.

13. As is evident from the aforesaid scheme, there is no statutory provision to deal with the selection/engagement of Prerak and Coordinator. This scheme has been formulated by the Central Government to strengthen the object of the Act, 2009. There is no statutory Rules or regulations framed by the Government of India. Each State has been asked to implement the Sakshar Bharat Scheme through SCERT (State Council for Educational Research and Training) of each State. The Government of India provides only fund to the said scheme and also takes policy decision, which is communicated to the concerned State Governments through the office-memo and circulars. From the guidelines it appears that the posts of Coordinator and Prerak have been created but at the same time the policy decision provides that the engagement shall be on contract basis for the limited period.

14. Ordinarily, this Court does not entertain the petitions involving disputed question of facts and contractual matters. There is no legal right for the continuance of a Prerak or Coordinator. There is huge pendency of cases in this Court and if this Court grants indulgence in deciding this factual dispute, it would not serve any purpose as the term of engagement is only for eleven months. The disputed question of facts in respect of fraud, unfair procedure, violation of guidelines, etc. cannot be adjudicated upon effectively in the writ jurisdiction.

15. In addition to above, the contractual appointment comes to an end at the end of contract. An employee cannot insist to extend his term, once it comes to end. Reference may be made to the judgments of the Supreme Court in the

cases of Secretary, State of Karnataka and Others Vs. Umadevi and Others, ; State of Tripura and others v. Jhuma Gupta (Smt) and others, 1999 SCC (L and S) 622; and Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, .

16. After careful consideration of the matter, I am of the view that the State Government may consider to constitute a Committee in each district to consider the grievances raised in respect of unfair and illegal selection made by the Gram Panchayat Lok Shiksha Samiti. From a perusal of the guidelines it is evident that sufficient safeguard has been provided in the guidelines, so in case there is any unfair and illegal selection, it can be rectified by the Committees at the block Level and district Level. Senior officers are Secretary and Convener of the respective Committees. The District Magistrate is Secretary/Convener of the Committee at the district level and the Block Development Officer is Secretary/Convener at the block level.

17. The Committee constituted by the State Government can examine the legality of the selection at the first instance. The Committee can summon the original records, thus, it can effectively decide the various factual aspects raised by the complainant/aggrieved person.

18. In view of the above, for effective and proper adjudication of the matters relating to Prerak and Coordinators, following directions are issued:

(a) The State Government may constitute a Grievance Redressal Cell in all the districts of the State to consider the grievance in the matter of selection of Coordinates, Co-Coordinates and Prerak under the Sakshar Bharat Scheme. The opinion/recommendation of the Committee shall be considered by the District Magistrate, who shall pass the order. The opinion/recommendation of the Committee shall be in the nature of recommendation only.

(b) Till such Committee is constituted by the State Government, the District Magistrate of the respective districts shall constitute an ad hoc Committee comprising of a senior administrative officer nominated by the District Magistrate, District Basic Education Officer of the concerned district and some other Officers nominated by the District Magistrate as Members to deal with the grievance of the aggrieved persons.

19. Accordingly, the writ petitions are disposed of leaving it open to the petitioners to make a representation to the concerned District Magistrate, who shall refer the matter to the Committee constituted by him. Said Committee may call for the original records and consider the representations. The Committee may decide the matter on the basis of the representations and in case of necessity, it may give personal hearing also but personal hearing is not necessary in all the cases. In case such a representation is made within three weeks from the date of receipt of certified copy of this order, the Committee constituted by the District Magistrate shall decide the representation by reasoned order expeditiously. The Registry of this Court is directed to send a copy of this

order to the Secretary, Shiksha Anubhag-14, Government of Uttar Pradesh, Lucknow and Director, Saksharta, Vaikalpik Shiksha, Urdu Evam Prachya Bhashayen, Nabiullah Road, Lucknow for compliance.

No order as to costs.