

(2009) 09 AHC CK 0111

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36441 of 2009

Arun Kumar Chaturvedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 2(c), 2(h), 4, 5

Citation : (2009) 09 AHC CK 0111

Hon'ble Judges : Arun Tandon, J

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri Ram Milan Mishra, learned counsel for the petitioner, Sri R.N. Singh, learned Senior Advocate assisted by Sri G.K. Singh, learned counsel for contesting respondent no.4, Sri K. Shahi, learned counsel for respondent no. 2 and learned Standing Counsel for the Staterespondents.

2. This writ petition has been filed for quashing the order passed by the Basic Shiksha Adhikari, Farrukhabad dated 21st November, 2008, whereby he has approved the appointment of respondent no.4, namely, Sunil Kumar Singh as headmaster of Vidya Mandir Purva Madhyamik Vidyalaya, Kayamganj, Farrukhabad.

3. The facts in short giving rise to the present writ petition are as follows:

Vidya Mandir Purva Madhyamik Vidyalaya, Kayamganj, Farrukhabad (hereinafter referred to as the "institution") is a recognized junior high school under the provisions of Basic Education Act, 1972 (hereinafter referred to as the "Act, 1972"). The provisions of Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 (hereinafter referred to as the "Act, 1978") are also applicable to the teachers and staffs of the said institution. The procedure for appointment on the post of headmaster in a recognised junior high school is regulated by Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978

(hereinafter referred to as the "Rules, 1978").

4. Post of headmaster in the institution fell vacant on 30th June, 2008 due to retirement of Krishna Chandra Mishra. Proceedings for appointment on the post were initiated in accordance with the provisions of Rules, 1978 and advertisement was published on 24th October, 2008. The last date for making the application was 8th November, 2008 while interview was scheduled for 10th November, 2008 at 12 a.m. Petitioner is B.Sc. from Kshatrapati Sahuji Maharaj University, Kanpur and also has a Teachers Training Certificate of the year 1996, he claims to be working as assistant teacher since 1st July, 1998 in a recognised basic school namely, Sri Ram Shiksha Sadan Purva Madhyamik Vidyalaya, Parauli, Hathaura, Farrukhabad. He also made an application in response to the said advertisement published along with respondent no.4 and other such candidates.

5. Respondent no.4, who is B.Sc. from Kshatrapati Sahuji Maharaj University, Kanpur and has a degree of B.Ed. from Dr. Bheem Rao Ambedkar university, Agra, has been selected for the post in question. Papers pertaining to the selections were transmitted to the Basic Shiksha Adhikari for approval as required under Rule 10(5) of Rules, 1978. The Basic Shiksha Adhikari under the impugned order dated 21st November, 2008 has granted approval to the appointment of respondent no.4 as headmaster and in pursuance thereof appointment letter has been issued in his favour by the Committee of Management of the institution on 21st November, 2008.

6. Approval and appointment of respondent no.4 is being challenged basically on the ground that he is not possessed of the essential qualifications prescribed for appointment on the post of headmaster under Rule4 of Rules, 1978. Challenge in that regard is limited to nonpossession of requisite teaching experience of five years (as per amendment to Rule4 vide notification dated 12th June, 2008), in a recognised school.

7. Respondent no.4 after obtaining a degree of B.Sc. from Kshatrapati Sahujimaharaj University in 1993 has done his B.Ed. course from Dr. Bheem Rao Ambedkar University, Agra. The result whereof was declared on 25th November, 2006. He claims to have worked as Assistant Teacher in Adarsh Janta Shikshan Sansthan Samiti Vidyalaya, Saraiyya Post, Awajpur, District Farrukhabad, which has been granted recognition as High School only on 7th March, 1998. Respondent no.4 claims to be have worked as assistant teacher in the said institution between 16th August, 1998 to 26th June, 2001. Thereafter he claims to have worked as Assistant Teacher in Saraswati Vidyalaya Junior High School, Yaqootganj, Farrukhabad between 1st July, 2001 to 31st January, 2005 and between 25th may, 2006 to 30th May, 2008. It is stated that this institution was granted recognition as Junior High School vide order dated 29th October, 1990. Lastly it is stated that he has worked as assistant teacher in Saraswati Shishu Mandir Purva Madhyamik Vidyalaya Kayamganj, Farrukhabad from 1st July, 2008 till he was appointed as head master of the institution in question.

8. It is contended that teaching experience in a recognised school alone is to be taken into consideration under Rule 4 of Rules, 1978 and recognised school has been defined under Rule 2 (h) of Rules, 1978.

9. According to the petitioner, the teaching experience as claimed by respondent no.4 for the period between 16th August, 1998 to 26th June, 2001 in Adarsh Janta Shikshan Sansthan Samiti Vidyalaya, Saraiyya Post, Awajpur, District Farrukhabad, which is recognised High School under U.P. Intermediate Education Act, 1921 cannot be taken into consideration, inasmuch as it is not a recognised institution covered by Rule 2 (h) of Rules, 1978. Even otherwise, he did not have requisite minimum qualification for appointment as assistant teacher in a recognised High School as he was not trained, during the said period, nor his appointment had been approved by any competent authority qua such institution, nor it is his case, that he was appointed against any sanctioned post in the institution. So far as the teaching experience gained by respondent no.4 between 1st July, 2001 to 31st January, 2005 and thereafter 25th May, 2006 to 30th May, 2008 in Saraswati Vidyalaya Junior High School, Yaqootganj, Farrukhabad is concerned, learned counsel for the petitioner submits that respondent no.4 had obtained a degree of B.Ed. only, he was not possessed of any "teaching certificate" as required under Rule 4 of Rules, 1978, he could not be validly appointed in a recognised Junior High School. Rule 5 of Rules, 1978 declares that any person not possessed of the prescribed minimum qualification cannot be appointed in a recognised Junior High School and therefore, such appointment and experience gained on that basis is of no legal consequence.

10. Learned counsel for the petitioner submits that any teaching experience gained qua working in an institution without being possessed of the prescribed minimum qualification is to be ignored and such experience cannot be taken into consideration for the purposes of satisfying the requirement of Rule 4 of Rules, 1978. He clarifies that a degree of B.Ed. is not equivalent to the essential minimum qualification prescribed for appointment in recognised junior high school as per Rule 4 of Rules, 1978 and even this B.Ed. degree has been obtained by respondent no.4 in the year 2006. He clarifies that for satisfaction of the requirement of Rule 4 (2)(c) of Rules, 1981, it is mandatory that appointment of the teacher in a recognised school (made subsequent to the enforcement of aforesaid Rules has to be in accordance with Rules, 1978) must be in pursuance to an appointment made in accordance with Rules, 1978 only and not de hors the same.

11. It is therefore, contended that respondent no.4 being not possessed of the prescribed minimum qualification could not be appointed in a recognised institution in view of Rule 5 of Rules, 1978. The impugned order passed by the Basic Shiksha Adhikari granting approval to the appointment of respondent no.4 as head master is liable to be set aside with a direction upon the Basic Shiksha Adhikari to consider the claim of other candidates including that of the petitioner, who is possessed of the essential minimum qualifications prescribed.

12. Contention so raised on behalf of the petitioner is opposed by Sri R.N. Singh, learned Senior Advocate for respondent no.4 and distinction is sought to be drawn with regard to requirement of teaching experience as per Rule 4 (2) (c) of Rules, 1978. He submits that there are two types of teaching experience, (a) de jure and (b) de facto. According to the learned Senior Advocate, if a person satisfies the requirement of teaching experience de facto, he will be qualified for the post. According to him it is not necessary that the teaching experience should have been gained only on the strength of de jure appointment. Heavy reliance has been placed by him upon the judgements of the Hon'ble Supreme Court of India in the case of Gokaraju Rangaraju vs. State of Andhra Pradesh, reported in AIR 1981 SC 1473, Dr. Asim Kumar Bose vs. Union of India & Ors., reported in AIR 1983 SC 509, Trivedi Himanshu Ghanshyambhai vs. Ahmedabad Municipal Corpn. & Ors. reported in (2007) 8 SCC 644, as well as upon the judgements of this Court in the case of Committee of Management, B.D. Bajoria Inter College, City and District Shaharanpur & Ors. vs. Director of Education (Secondary), U.P. Lucknow & Ors. reported in (2000) 1 UPLBEC 46, Smt. Shakuntala Saxena vs. Director of Higher Education Allahabad & Ors. reported in 2003 (1) ESC 164 and Dr. U.S. Sinha vs. State of U.P. & Ors. reported in 2008 (2) ADJ 205 (DB). He has stated that respondent no.4 has necessary teaching experience de facto and therefore, qualified.

13. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present writ petition.

14. Teaching experience gained by respondent no.4 which is the bone of contention between the parties can be divided into three periods:

(a) between 16th August, 1998 to 26th June, 2001 while working in Adarsh Janta Shikshan Sansthan Samiti Vidyalaya, Saraiyya Post, Awajpur, District Farrukhabad, which was granted recognition as high school on 7th March, 1998,

(b) between 1st July, 2001 to 31st January, 2005 and between 25th May, 2006 to 30th May, 2008 while working in Saraswati Vidyalaya Junior High School, Yaqootganj, Farrukhabad which was granted recognition as Junior High School on 29th October, 1990 and

(c) from 1st July, 2008 till he was appointed as head master of the institution in question in Saraswati Shishu Mandir Purva Madhyamik Vidyalaya Kayamganj, Farrukhabad.

15. It is not in dispute between the parties that respondent no.4 did not have any Teaching Certificate referable to Rule 4 of Rules, 1978 (prior to its amendment vide notification dated 12th June, 2008), namely, Basic Teaching Certificate, Teaching Certificate, Junior Teaching Certificate, Hindustani Teaching Certificate. Respondent no.4 admittedly obtained B.Ed. degree in the year 2006.

16. Essential minimum qualifications are prescribed for appointment as Assistant Teacher in a recognised Junior High School under Rule 4 of Rules, 1978 (as was

then applicable and as amended in 2008) reads as follows:

17. Recognised school has been defined in Rule 2 (h) of Rules, 1978, which reads as follows:

"2. Definitions.

(h) "Recognised School" means any Junior High School not being an institution belonging to or wholly maintained by the Board or any local body recognised by the Board as such;"

18. Rule 5 of Rules, 1978 declares that no person can be appointed in any recognised school, unless he possess the minimum qualifications prescribed for such post. Rule 5 is being quoted herein below:

"5. Eligibility for appointment. No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school, unless

(a) he possess the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee."

19. From a reading of Rule 4 of Rules, 1978, it is apparently clear that the rule making authority in its wisdom has decided to take into consideration only that teaching experience which is gained by the candidate concerned while imparting education in "recognised school". The recognised school referred to in Rule 4 has to be the Recognised School as defined under Rule 2 (h) of Rules, 1978.

20. In the opinion of the Court on simple reading of Rule 2 (h), Rule 4 and Rule 5 of Rules, 1978, jointly leads to a conclusion that it is the teaching experience gained after appointment in a recognised school within the definition of recognised school under the provisions of Rules, 1978, after being possessed of the prescribed minimum qualification alone can be taken into consideration for the purposes of satisfying the requirement of Rule 4 (2) (c) of Rules, 1978. Any teaching experience in any institution will not satisfy the requirement so provided.

21. Judged in the aforesaid legal background it will be seen that the first period of teaching experience claimed by respondent no. 4 while working in recognised "High School" namely, Adarsh Janta Shikshan Sansthan Samiti Vidyalaya, Saraiyya Post, Awajpur, District Farrukhabad, has to be excluded for two reasons:

(a) A recognised "High School" will not answer the description of a recognised school as per definition under Rule 2 (h). Further in the year 1998, petitioner was not qualified for being appointed in a recognised high school as Assistant Teacher as he was not trained. Reference may be had to Appendix A of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921.

It is needless to emphasise that under Section 16 E (3) of U.P. Intermediate Education Act, 1921 as well as under Section 16 of U.P. Secondary Education Services Selection Board Act, 1982, it is specifically provided that a person teachers possessed of the prescribed minimum qualification as per Appendix A of

Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921 alone can be appointed in a recognised "High School" covered by the U.P. Intermediate Education Act, 1921. Section 16 of Act, 1982 further goes on to declare that any appointment made in contravention of the provisions would be void. Therefore, first period of teaching experience gained by respondent no.4 cannot be taken into consideration for the purposes of Rule 4 (2) (c).

(b) So far as the second period of working as claimed by respondent no.4 between 1st July, 2001 to 31st January, 2005 and between 25th May, 2006 to 30th May, 2008 in Saraswati Vidyalaya Junior High School, Yaqootganj, Farrukhabad is concerned, this Court may record that during this period of teaching, respondent no.4 was not possessed of any Teaching Certificate as required by Rule 4 (1) of Rules, 1978. Appointment in a recognised institution as claimed is subsequent to enforcement of Rules, 1978. Teaching experience gained by respondent no.4 during the said period suffers from two illegalities (a) such appointment has not been made in accordance with Rules, 1978, (b) petitioner was not possessed of the minimum qualifications prescribed for the post of assistant teacher in a recognised junior high school.

(c) The period of this experience is not sufficient to satisfy the requirement of the Rule 4 (2) (c) of Rules, 1978

22. The Hon'ble Supreme Court of India in the case of Mohd. Sartaj vs. State of U.P. & Ors., reported in 2006 (1) JT 331, has laid down that essential qualification for recruitment on the post are to be satisfied on the date of appointment and any amount of continuous service on the post without such essential qualification will not cure the defect. The Hon'ble Supreme Court of India has proceeded to hold that such appointments are void and lack of qualification cannot be regularized. It has been also held that the degree of B.Ed. is not equivalent to the degree of B.T.C., H.T.C. Etc. Reference in that regard may also be had to the judgment of the Hon'ble Supreme Court in the case of Pramod Kumar vs. U.P. Secondary Education Services Commission & Ors., reported in 2008 (4) ALJ 207.

23. Any teaching experience gained by respondent no.4 on the strength of an appointment, which is per se illegal cannot be taken into consideration and is of no legal consequence. In view of the aforesaid, the teaching experience gained by respondent no.4 during the aforesaid period has also to be ignored.

24. Distinction of de jure and de facto experience as argued by the learned Senior Counsel for respondent no.4 does not appeal to the Court, in view of the specific language of Rule 4 (2) (c) of Rules, 1978.

25. In my opinion, application of the principle of de facto experience in this case would be in violation to the specific provisions of Rule 2 (h) and Rule 4 read with Rule 5 of Rules, 1978. Any abstract principle, which whittles down the intent of the clear unambiguous language of the statutory provision has to be avoided.

26. The judgements relied upon by the learned counsel for respondent no.4 are clearly distinguishable in the facts of the present case, inasmuch as in none of the aforesaid cases there was an identical provision restricting the nature of teaching experience required as that contained in Rule 4 (2) (c) of Rules, 1978, whereunder only the teaching experience of a particular category i.e. working in a "recognised school" alone is to be considered.

27. The Hon"ble Supreme Court of India in the case of Bhavnagar University vs. Palitana Sugar Mills (Pvt.) Ltd. & Ors., reported in 2003 (2) SCC 11, has held as follows:

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

28. The said judgment has been followed in the recent judgment of the Hon"ble Supreme Court of India in the case of Dr. Rajbir Singh Dalal vs. Chadhari Devi Lal University, Sirsa & Anr. Reported in AIR 2008 SCW 5817.

29. I am of the considered opinion that having regard to language used in Rule 4 (2) (c) read with Rule 2 (h) only one conclusion is possible in the facts of the present case, namely, respondent no.4 is not possessed of the prescribed teaching experience, so as to be eligible for appointment on the post of headmaster in recognised junior high school covered by Rules, 1978 and therefore, his appointment is hit by Rule 5 of Rules, 1978. It is held accordingly.

30. In view of the aforesaid, the order passed by the Basic Shiksha Adhikari dated 21st November, 2008 granting approval to the appointment of respondent no.4 as headmaster is hereby set aside. The writ petition is allowed.

31. Let the Basic Shiksha Adhikari reexamine the papers pertaining to the appointment qua other candidates within 8 weeks from the date a certified copy of this order is filed before him and to pass a reasoned speaking order in accordance with the observations made above.