
(2012) 04 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19624 of 2012

Atul Kumar Goel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 13

Citation : (2012) 6 ADJ 312 : (2012) 4 AWC 4968

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Santosh Kumar Singh, for the Appellant; Ravi Shankar Prasad and C.S.C., for the Respondent

Judgement

Hon''ble Arun Tandon, J.—Petitioner before this Court was offered compassionate appointment as Assistant Teacher in Parishadiya Vidyalaya. Admittedly, the petitioner is untrained. He seeks quashing of the order of the Basic Shiksha Adhikari dated 23.12.2011, whereby the representation of the petitioner for promotion as Headmaster has been rejected on two grounds; (a) the notional seniority of five years provided to such teachers appointed on compassionate basis under Government Order dated 15.11.2009 has since been revoked by the State Government vide order dated 21st November, 2011 and (b) the petitioner being untrained is not qualified for the post of Head-master appointment whereof is regulated by U.P. Basic Education (Teachers) Service U.P. Basic Education Teachers Service Rules, 1981 (hereinafter referred to as "Rules, 1981"). The order is being challenged on two grounds (a) the State Government has the power to issue a Government Order having regard to the powers vested in it u/s 13 of the U.P. Basic Education Act, 1972 and (b) there are large number of similarly situate compassionate appointee, who were untrained but have been granted promotion on the post of Headmaster and are still working, while it is petitioner alone who has been discriminated in the matter of grant of such promotion.

2. The Court will deal with both the aforesaid contentions serially.
3. (a) It may be recorded that the power of the State Government conferred u/s 13 of the Act, 1972 is to issue such directions to the Board i.e. Basic Education Board, as may be required in the efficient administration of the Act, and the Board in turn is obliged to comply with the said directions.
4. In the facts of the case the State Government has not issued any direction to the Board for regulating its conduct in a particular manner. The State Government on its own issued a Government Order providing notional seniority of five years to the teachers appointed on compassionate ground, under which statutory authority such a direction could be issued by the State Government and that too without affording any opportunity to the teachers, who would be affected by grant of such notional seniority, could not be explained by the counsel for the petitioner. Therefore, the State Government, realizing its mistake, has rightly recalled the said Government Order vide its subsequent order dated 22nd November, 2011. The order of the State Government dated 22nd November, 2011 is strictly in accordance with law. There is no justification for grant of notional seniority to the persons appointed on compassionate ground, thereby superseding the regularly appointed teachers without affording them any opportunity in the matter.
5. So far as the second ground raised by the petitioner is concerned, suffice is to record that the minimum qualifications prescribed for appointment on the post of Head-master have been laid down in Rule 8 of the Rules, 1981. Training is a must for appointment on the post of Head-master/Headmistress in senior basic schools as well as in junior basic schools. Admittedly, the petitioner is not possessed of any training qualification as on date. In absence of his being possessed of the prescribed minimum qualification for such appointment on the post of Head-master, as per the statutory provisions applicable, the Basic Shiksha Adhikari appears to be justified in holding that the petitioner cannot be promoted on the post of Head-master/Head-mistress.
6. So far as the claim of parity is concerned, it may be recorded that the Hon'ble Supreme Court of India in the case of Ghulam Rasool Lone v. State of Jammu & Kashmir, JT 2009 (13) SC 422, has held that there cannot be any negative equality and no mandamus can be issued by a writ Court asking the State authorities to perpetuate the illegality. Therefore said contention is also repelled.
7. This Court, however, directs that respondent No. 1 shall take all necessary steps requiring the Basic Shiksha Adhikari of the district concerned to ensure that no person, who is not possessed of the prescribed minimum qualification as per Rule 8 of the Rules 1981, is appointed and permitted to work on the post of Head-master/Head-mistress, if any such appointment has been made, the same is recalled immediately in accordance with law.
8. Petitioner is at liberty to file a certified copy of this order before the Secretary, who shall take appropriate action within four weeks from the date a certified

copy of this order is filed before him. With the aforesaid observation/direction the present writ petition is disposed of.