

(1999) 11 AHC CK 0144
In the Allahabad High Court
Case No : C.M.W.P. No. 17663 of 1996

Babu Ram and another

APPELLANT

Vs

Deputy Cane Commissioner, Morabadad and others

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 AWC 862 : (2000) 85 FLR 466 : (2000) 1 UPLBEC 422

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Veer Singh and R.K. Misra, for the Appellant; S.C. and Shashi Nandan, for the Respondent

Final Decision : Dismissed

Judgement

A. K. Yog, J.—Babu Ram and Harbir Singh, the two petitioners have filed this petition under Article 226. Constitution of India claiming a writ of certiorari to quash the order dated November 19, 1994 (Annexure-1 to the writ petition) in compliance to the resolution dated February 28, 1994 (Annexure-1A to the writ petition) as well as writ of mandamus directing the respondents not to interfere with the working of the petitioners as Seasonal Clerks and pay salary to them accordingly.

2. Briefly stated facts are that petitioners were appointed as Parchi Vltrak in the Office of Cane Society, Bijnor. In the year 1977-78 respectively. Question arose for making promotion to the post of Seasonal Clerk, which required High School as minimum qualification .

3. In paragraph 4 of the petition, it is alleged that petitioners had passed "Prathama" examination from Hindi Sahitya Sammelan, Allahabad. According to the petitioners, the said examination is equivalent to High School. Reliance has been placed on a Notification on the subject purported to have been issued by the Central Government (Annexure-2 to the writ petition),

4. it appears that petitioners were initially promoted treating term to be eligible for promotion on the belief that they were as good as "High School" on having passed "Prathama" and that they were at par with a person who had passed High School from U. P. Board. It appears, subsequently this mistake was detected by the employer and resolution was passed to revert such persons to their original post on the ground that they did not possess requisite academic qualification of High School. Accordingly, impugned order dated November 19. 1994 was passed.

5. Feeling aggrieved, petitioners have come to this Court and seek to challenge the aforesaid impugned orders (Annexures-1 and 1A to the writ petition).

6. A counter-affidavit has been filed on behalf of respondent Nos. 1. 2 and 3. In Paragraphs 6 and 9 of the counter-affidavit, it is stated that petitioners did not fulfil educational qualification prescribed by the relevant service regulations. According to the contesting respondents, minimum qualification prescribed is High School and petitioners did not possess the same as they. admittedly, passed "Prathama" examination conducted by Hindi Sahitya Sammelan. According to the contesting respondents, "Prathama" examination of Hindi Sahitya Sammelan is not equivalent to High School of U. P. Board. Copy of the resolution deciding to revert has been filed as (Annexure CA-1 to the counter-affidavit).

7. A rejoinder-affidavit has been filed denying aforesaid stand taken by the contesting respondents and it is stated that this Court vide judgment and order dated March 20, 1997 in Civil Misc. Writ Petition No. 135 of 1995, Vishambhar Singh and others v. Co-operative Cane Development Union Limited, Nagina and others, and others connected petitions has held that "High School" qualification mentioned in the regulation did not suggest that candidate should have passed "High School" examination conducted by U. P. Board only. According to the learned single Judge, use of word "High School" prescribing educational qualification in relevant regulation, meant and included In it other recognised equivalent examinations, e.g., S.S.C., C.B.S.C., etc., copy of said judgment has been filed as Annexure-1 to the rejoinder-affidavit.

8. Learned counsel for the respondent with reference to the averments contained in paragraph 6 of the counter-affidavit, drew notice of this Court to (Annexure-2 to the writ petition) and submitted that a bare perusal of the said Annexure-2 to the writ petition would show that by no stretch of imagination, "Prathama" examination of Hindi Sahitya Sammelan can be treated as equivalent to "High School" of U. P. Board and/or for that matter any other examination recognised as equivalent to High School.

9. Annexure-2 to the writ petition clearly indicates that "Prathama" examination of Hindi Sahitya Sammelan is recognised for limited purposes, namely, it is relevant for treating a person holding "Prathama Certificate" as having knowledge of Hindi only up to High School level. The Central Government Notification, filed as Annexure-2 to the writ petition, in so many words lays down that "Prathama" examination of Hindi Sahitya Sammelan cannot be treated at

par or equivalent to High School.

10. Again, before this Court, in the case of Vishambhar Singh (supra). the question whether "Prathama" should be treated equivalent to High School was neither arising out of pleadings nor raised and it was decided Incidentally. The main question for decision in the said case was regarding interpretation of the expression "High School" the expression used in the concerned regulation.

11. The observation of the learned single Judge regarding "Prathama" to be treated as equivalent to High School is only "per incuriam" and observations in this respect are "sub silentio ". It is not a precedent and cannot be treated as having binding force.

12. I called for the record of the case of Vishambhar Singh (supra) and gone through it. Perusal of the petition supports the above observation : namely the main question arising in the said case was whether an equivalent examination conducted by other recognized educational body was Included in the expression High School or not. The observation of the learned single Judge regarding "Prathama" examination being equivalent to High School appears to have been made on the basis of certain correspondence of the University [filed as (Annexure-RA-2 to the rejoinder-affidavit in that case) which was not the whole of the story. There is no reference to syllabus or statutes or Ordinance of the Allahabad University.

13. Petitioners have not filed syllabus or the certificate of "Prathama" to show that Hindi Sahitya Sammelan claims its said examination as equivalent to "High School". This Court takes judicial notice of the Educational Code of U. P., 1958 Edn. (Corrected up to 31.12.1962) published by Secretary to Government, Education Department, U. P. which does not recognise "Prathama" or any other examination conducted by Hindi Sahitya Sammelan, Allahabad. Again Manual of Government Orders (Revised Edition). 1981 Chapter 136 at particular page 482-reproduces-OM No. 8825/11-297-39 dated June 3, 1940, Vol. II, does not support the petitioner's case. No Statute/Ordinance or Regulation or any other Government Order was either filed in the case of Vishambhar Singh Uupra) or any of it is filed in the present case. There is no material to show that Hindi Sahitya Sammelan claims its "Prathama" examination equivalent to High School.

14. In view of the above I find no manifest error apparent on the face of record calling for interference with the decision taken by the respondents vide impugned resolution dated October 28, 1994 and consequently order dated November 19, 1994. Writ petition fails and is, accordingly, dismissed.

15. In the facts of the case particularly when petitioners who claim to be promoted, though under mistake of fact, are denied relief and they are persons getting meagre salaries as Parchi Vitrak in Sugar Cane Societies, I direct that parties shall bear their own costs.