

(2013) 09 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30713 of 1996

Bali Raj and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 10 ADJ 138 : (2013) 101 ALR 605 : (2014) 3 AWC 2513 :
(2014) 140 FLR 211 : (2014) 2 UPLBEC 987

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : I.D. Mishra, M.P. Pandey and Advait Kumar Srivastava, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The case set up by the petitioners in the writ petition is that Dr. Bheem Rao Ambedkar Primary Pathshala Mahariya District Siddharth Nagar is a junior primary institution imparting education upto Class V and run by a Society namely Dr. Bheem Rao Ambedkar Primary Pathshala Mahariya, District Siddharth Nagar. It is recognized by Basic Education under the provisions of U.P. Basic Education Act, 1972 (hereinafter referred to as "Act, 1972"). The petitioners claim to have been appointed on 23.6.1981, 23.6.1982, 23.6.1983 and 23.6.1986 respectively.

They claimed to have worked for more than ten years and therefore, requested for sending them for training in view of certain Government Orders issued from time to time. It is also stated that Management recommended for exemption to petitioners from requirement of training in December, 1992. The said recommendation was approved by District Basic Education Officer, Siddharthnagar on 24.12.1992. The institution was brought in grant in aid by Government Order dated 31.3.1994 and in view thereof petitioners claimed that they should be paid salary from State Exchequer. It is with this prayer present writ petition has been filed.

I have heard Sri Advait Kumar Srivastava, Advocate, holding brief of Sri M.P. Pandey, learned counsel for the petitioners and perused the record.

2. Despite repeated query, learned counsel for the petitioners could not show any provision under which liability of payment of salary of teaching or non teaching staff of a privately managed junior primary school, like the institution in which petitioners are working, can be saddled upon the State Government. Admittedly, institution in question being a junior primary school owned and managed by a private body is not governed by the provisions of the Uttar Pradesh Junior High School (Payment of Salaries of Teachers & Other Employees) Act, 1978. There is no statutory provision whereunder State has undertaken responsibility of payment of salary to the teachers of recognized junior primary school managed by a private body. The grant in aid to such recognized junior high school is a financial aid extended to a recognized institution but does not result in conferring legal right upon the teachers to claim payment of salary from State Exchequer or by State Government. The relationship of teachers for all purposes whatsoever remain confined with management of institution who has appointed them and there is no privity of contract between such teachers and Government so as to entitle teachers to claim salary from State Exchequer. Moreover, in the present case, only the institution was recognized for the purpose of standard of education etc. and not to confer financial benefit also. It was not run by Basic Education Board but a private institution and hence governed by Uttar Pradesh Recognized Basic Schools (Recruitment & Conditions of Service of Teachers & Other Conditions) Rules, 1975 (hereinafter referred to as "Rules, 1975"). Rule 4 of Rules, 1975 clearly provides that it is the responsibility of management of privately managed but recognized junior primary school to arrange adequate finance for proper functioning of institution. Rule 4 of Rules, 1975 reads as under:

Financial resources.--In every recognized school adequate financial resources shall be made available by the management of such school for its efficient working and adequate facilities shall be provided in accordance with such standard as may be specified by the Board for teaching the subjects in respect of which such school is recognized.

3. The above rule, therefore, makes it very clear that State Government or any other body has no responsibility with regard to funds required by privately managed junior primary schools but the entire responsibility is of the management of such school. For the purpose of qualification etc., Rule 9 is referable, which is admittedly statutory provision. It reads as under:

No person shall be appointed as teacher or other employee in any recognised school unless he possesses such qualifications as are specified in this behalf by the Board and for whose appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. In case of vacancy the applications for appointment shall be invited by the concerned management through advertisement in at least two newspapers (one of them will be daily newspaper), giving at least thirty days time for submitting application. The date of interview

may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post, giving them at least 15 days time from the date of issue of the letter. The management shall not select any untrained teacher and if the selected candidate is a trained one, he will be approved by the Basic Shiksha Adhikari.

4. In *Hari Lal and Others Vs. Director, Samaj Kalyan and Others*, , it has been held that appointment made not in accordance with Rule 9 would not confer validity to a person appointed otherwise and such appointee cannot claim right for salary for the work done by him. Rule 9 categorically prohibit management from making appointment of an untrained teacher.

5. Interpreting the aforesaid rule with reference to relevant orders issued by the Government, it has been held that no person could have been appointed as Assistant Teacher in junior primary school unless he possess requisite training qualification of B.T.C. and other equivalent qualification. All these petitioners, who admittedly were appointed between 1991 to 1996 did not possess requisite qualification though institution in question was governed by statutory Rules 1975. Appointment of unqualified teachers like petitioners, therefore, was *ex facie* illegal and contrary to rules.

6. Since the petitioners did not possess requisite qualification at the time of appointment, question of their exemption from such qualification does not arise for the reason that under the Rules no power has been conferred upon any authority to exempt a person from possessing requisite minimum qualification for appointment and thereby validate his/her appointment. The question of training or exemption was applicable only to such teachers who were appointment before enforcement of such statutory rules since after enforcement of Rules, an appointment of unqualified teachers is not contemplated. This aspect in a little similar circumstances was considered in the light of relevant Government order by a Division Bench of this Court (in which I was a member) in Special Appeal No. 10 of 2007, *State of U.P. and others v. Shailesh Kumar Dwivedi and others*, decided on 17.12.2008. This Court held as under:

In view thereof, this appeal is disposed of directing the competent authority to consider the case of the petitioners-respondents in the light of two conditions provided in the judgment of the Hon'ble Single Judge, impugned in this appeal, as well as in the light of the conditions provided by the Division Bench in its judgment in the case of *Kali Charan Singh Arya (supra)*. Further, if the petitioners have been appointed after the enforcement of 1975 Rules of 1970 Rules in Junior Primary School or Junior High School, as the case may be, in violation of the provisions thereof and without possessing training qualification, such petitioners cannot be allowed to undergo training pursuant to the Government Order dated 6.9.1994. Thus, only those petitioners-respondents, who fulfill all the aforesaid requirement and directions, shall be allowed to complete their training and their result shall also be declared.

7. Thereafter a recall application was also filed in the aforesaid appeal which was heard at length and decided vide order dated 4.9.2009. With reference to statutory rules this Court noticed contentions of Sri Ashok Khare, learned Senior Advocate and held as under:

Thus, under the Rules, there is a clear mandate that a person who does not possess requisite qualification shall not be appointed. Therefore, after the enforcement of the above two set of Rules, any appointment, if made on the post of Assistant Teacher in a Primary School governed by the aforesaid Rules, without adhering to the above Rules, is clearly in the teeth of the aforesaid Rules. In the absence of any provision empowering the State Government or any other authority to relax any of the provision pertaining to qualification etc. under the rules, such appointment cannot be said to be valid in law. However, since the appointment of none of the petitioners-respondents were under challenge before us, we did not quash their appointments but while considering the question of the applicability of the Government Order dated 6.9.1994, we have to read the aforesaid Government Order in order to make it valid, consistent with the aforesaid Rules. It is well-settled that an executive order which is inconsistent with a statutory rule is invalid and cannot be acted upon. We, therefore, by making the observation that the Government Order dated 6.9.1994 permitting training to such Assistant Teacher, who are working and were appointed before the enforcement of 1975 and 1978 Rules, as the case may be, in the institution governed by the aforesaid Rules respectively, would only be governed by the said Government Order dated 6.9.1994, have tried to harmonize the Rules as well as the said Government Order. The aforesaid Government Order cannot be read in a manner so as to validate appointments made in the teeth of the statutory rules particularly when the Rules do not confer any power of relaxation either on the State Government or any other authority.

The contention that the State Government has not raised any such plea in earlier matters or that during the pendency of the appeal the judgment of the Hon'ble Single Judge has been implemented pursuant to the order passed in the contempt proceeding initiated by the petitioners-respondents would not render the appeal infructuous. We are not impressed that the said subsequent proceeding would amount to rendering the appeal infructuous, inasmuch as, the intra Court appeal has been preferred against the judgment of the Hon'ble Single Judge and the correctness thereof has to be judged by this Court. Merely for the reason that no interim order was passed by this Court and, therefore, during the pendency of the appeal, under the compulsion of the proceeding of contempt initiated by the petitioners-respondents, the appellants acted to implement the judgment of the Hon'ble Single Judge would not deprive the appellants of their right to assail the judgment of the Hon'ble Single Judge before this Court in such manner and to such extent as they find expedient. Any action of compliance in a pending matter, neither would render the statutory remedy meaningless nor the doctrine of res-judicata has any application in such cases. The issue raised before this Court by the learned Standing Counsel while

arguing the appeal was legal and it has to be decided by us in the light of the statutory provisions and the exposition of law applicant in this regard.

The correctness of legal principle observed by us in the judgment could not be disputed by the learned counsel for the applicants. He could not say or argue that the said Government Order if tried to be applied to all the teachers, who have been appointed in contravention of 1975 or 1978 Rules, as the case may be, would be in the teeth of the relevant rules and, therefore, the observation of this Court that in such case the said Government Order will not apply legally is neither erroneous in law nor otherwise can be assailed. But he argued that in view of the subsequent events this Court should refrain from passing any order which may affect the petitioners-respondents otherwise, which submission is not acceptable since this Court is more concern with maintaining rule of law and not to confer whimsical benefit upon certain individuals in breach of law. No other point has been argued and despite having given full opportunity to the learned counsel for the applicants, he failed to point out any error crept in our judgment dated 17.12.2008. We, therefore, do not find any reason to recall the same.

The application is, accordingly, rejected.

8. In view of above decision of Division Bench, after promulgation of statutory rules, mandating that no appointment shall be made if a person does not possess requisite minimum educational qualification including training, the question of engagement of an untrained person after promulgation of rule and thereafter directing him to sent for training, does not arise.

9. Learned counsel for the petitioner neither could point out any power vested in any of educational authority or even State Government empowering it to grant exemption to a person so as to be appointed as teacher or continued to work as teacher despite lacking requisite minimum qualification prescribed for the post and also that a teacher appointed in a privately managed recognized junior high school can claim salary from State Exchequer. On the contrary Rules 1975 clearly contemplate that financial aspect shall be the sole responsibility of management of the institution concerned.

10. In view of the above discussion, the relief sought for in the writ petition, in my view, cannot be granted.

11. Dismissed. Interim order, if any, stands vacated.