

(2010) 01 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5936 of 1980 and 60122 of 2009

Brijendra Kumar Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(2), 16FF, 16GG

Citation : (2010) 01 AHC CK 0123

Hon'ble Judges : A.P.Sahi, J

Final Decision : Disposed Of

Judgement

A.P. Sahi, J.—I have heard Sri A.N. Tripathi, learned Senior Counsel for the petitioner in Writ Petition No.5936 of 1980 and Sri Arvind Kumar Shukla for the same petitioner in Writ Petition No. 60122 of 2009. A caveat was filed in the second writ petition through Sri Mukim Ahmad, Advocate, on behalf of Mohd. Shamim Khan Respondent No.5 therein.

2. An Amendment Application was filed challenging the order of the Joint Director of Education dated 13.10.2009 which was allowed by this Court on 10.11.2009. A counteraffidavit has been filed on behalf of the Committee of Management and Sri Mukim Ahmad represents the Committee of Management in Writ Petition No. 5936 of 1980.

3. Learned counsels have been heard and the Standing Counsel has advanced his submissions on behalf of the State Authority.

4. With the consent of parties, the matter is being disposed of finally under the Rules of the Court as no further Affidavits need be entertained in view of the nature of the order that is to be passed.

5. The petitioner Brijendra Kumar Mishra claims himself to have been appointed as Lecturer (Sanskrit) against a substantive and clear vacancy having been appointed in accordance with the then existing Rules which was approved by the District Inspector of Schools vide order dated 1.11.1975; copy whereof is

Annexure1 to 1980 petition. The said approval was then granted under Section 16F2 read with the Removal of Difficulties Order. The petitioner claims to have been continued as a Teacher and he claimed regularisation under the Government Order dated 21.4.1977 which has been subsequently incorporated under Section 16GG of the U.P. Intermediate Education Act, 1921. The petitioner contends that he was, therefore, continuing as a Teacher in view of the aforesaid provision and his services stood regularized.

6. The petitioner contends that his services were allegedly terminated w.e.f. 1.7.1980 without taking prior approval of the District Inspector of Schools which compelled him to file the present writ petition challenging the said termination order dated 30.6.1980, Annexure6 to the writ petition.

7. At the very outset, it may be noted that initially there was an internal dispute relating to the Management of the institution and further as to whether the institution was a minority institution or not. The said issue was ultimately decided in *Badrul Hasan Quadri Vs. State of U.P. and others*, Writ Petition No. 2940 of 1979 dated 12.2.1992 reported in 1992 ESC 167 holding that the institution did not have a minority status. The said decision of the Division Bench of this Court was upheld by the Apex Court.

8. The question, therefore, is whether the petitioner was continuing in substantive capacity or not and in the event he was continuing in the substantive capacity, then the consequential benefits will ensue including the claim of seniority of the petitioner as against Shamim Ahmad.

9. Sri A.K. Shukla on behalf of the petitioner, urged that in view of the decision of this Court in the case of *Uma Shanker Pandey Vs. District Inspector of Schools, Deoria and others*, reported in 1985 UPLBEC 170, the appointment of the petitioner would stand regularized and, therefore, he will be deemed to be in substantive capacity.

10. The question of seniority of the petitioner would, therefore, be entirely dependent on the question of his continuance in service.

11. Learned counsel for the respondent Committee contends that the petitioner's services stood terminated by operation of law and, therefore, the subsequent termination order which is under challenge in the present petition cannot ensue any benefit to the petitioner. It is submitted that for the purpose of regular appointment under Section 16GG of the U.P. Intermediate Education Act, 1921, the petitioner does not fulfil the conditions referred to therein and, therefore, in absence of any continuance of service, there is no occasion to consider him to be a regular employee. The subsequent termination, which is under challenge in the present writ petition, therefore, also does not reflect any vested right in the petitioner.

12. It is to be noted that this Court vide order dated 15.9.1980, passed an interim order staying the operation of the termination order. The petitioner has,

therefore, continued in service on the strength of the aforesaid order. It is for this reason that the District Inspector of Schools passed the order on 6.8.2009 attesting the signatures of respondent No.5 Mohd. Shamim Khan as the officiating Principal of the institution. The question of consideration of seniority by the Committee of Management was, therefore, directed by the Joint Director of Education on 13.10.2009 which has been challenged through the amendment application. Learned counsel for the petitioner contends that the petitioner has been treated to be a permanent Teacher of the institution in substantive capacity and for that certain documents have been relied upon, filed along with the amendment application in Writ Petition No. 60122 of 2009. It has also been stated that the erstwhile Manager has also admitted the aforesaid legal position in favour of the petitioner.

13. Having heard learned counsel for the parties and the Affidavits exchanged, it is evident from the records of Writ Petition No.5936 of 1980 that the claim of regular appointment of the petitioner has not been finalized due to the pendency of the said writ petition. The status of the petitioner is being disputed on account of absence of a regularisation order in favour of the petitioner and also on the ground that the petitioner could have been terminated by the Management as he was working in a minority institution. It is further noticed in the counteraffidavit of the Management that the District Inspector of Schools was of the opinion that the petitioner deserves regularisation whereas the Committee of Management had taken the stand that there was no proper approval under Section 16FF of the U.P. Intermediate Education Act. The Committee of Management has levelled allegations against the District Inspector of Schools in the said counteraffidavit.

14. In view of the aforesaid position and the stand taken by the respective parties before this Court is concerned, one thing needs to be clarified and that is that there is no order of the competent authority in relation to the status of the petitioner's initial appointment and continuance in service. The claim of the petitioner has to be adjusted in relation to his status and claim of regularisation under Section 16GG of the U.P. Intermediate Education Act, 1921. The institution has been admittedly held to be not a minority institution in view of the decision reported in 1992 ESC 167 (supra).

15. Accordingly, I am of the opinion that the claim of the petitioner has to be first determined after calling for the records in relation to his status of employment and regularisation before proceeding to decide his claim of seniority. The writ petition No.5936 of 1980, which challenges the termination order dated 30.6.1980, has to be disposed of in the light of the said facts.

16. The authority will also have to determine as to whether the termination order dated 30.6.1980 was passed in accordance with law and as to whether the same required any prior approval or not. It is, therefore, necessary that the writ petition be disposed of with a direction to the Regional Joint Director of Education, Azamgarh Region, Azamgarh, to examine the status of the petitioner's appointment and in the event it is found that the petitioner was a

regular employee then as to whether the order of termination dated 30.6.1980 should stand the scrutiny of law or not. The petitioner will, therefore, file his representation before the Regional Joint Director of Education and the said authority shall, after issuing notice to the Committee of Management and calling for comments from the District Inspector of Schools, proceed to determine the status of the petitioner as well as the legality of the order of termination dated 30.6.1980. In the event the petitioner is found to be entitled to retain his service, then necessary directions shall be issued for determination of his seniority. While doing so, the Regional Joint Director of Education shall hear the objection of the aggrieved parties and record his findings in this regard.

17. Accordingly, the writ petition stands disposed of with a further direction that the petitioner shall be entitled to continue in service in terms of the interim order dated 15.9.1980 passed by this Court in Writ Petition No. 5936 of 1980 till final orders are passed by the Joint Director of Education within 3 months from the date of production of a certified copy of this order before him as observed herein above.

18. With the aforesaid observations, both the writ petitions stand disposed of.