

(1996) 11 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29154 of 1996

Brijesh Kumar Yadav and Others

APPELLANT

Vs

Secretary Basic Shiksha Parishad and Others

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Citation : (1997) 1 UPLBEC 7

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : R.N. Singh and G.K. Singh, for the Appellant; S. C. and S.G. Hasnain, for the Respondent

Judgement

M. Katju, J.—This writ petition and several connected writ petitions have been filed for quashing the impugned orders dated 26-8-1996 and 31 -8-1996 Annexures 1 and 2 to the petition and for a mandamus restraining the respondents from interfering in the functioning of the petitioners on their post.

2. I have heard Lri R. N. Singh for the petitioner in this case and also Sri Ashok Khare and other counsels in the connected cases for the petitioners as well as Sri S. G. Hasnain for the respondents.

3. It has been alleged in paragraphs 2 and 4 of the petition that several posts of primary Teachers were advertised by the District Basic Education Officer on 22-7-1995 and 9-10-1995 vide Annexures 1 and 2 to the petition. In pursuance of the first advertisement several candidates including the petitioners applied and were called for interview. The second advertisement was published to enable the B.T.C. correspondence course candidates to apply. Those who applied in pursuance of the first advertisement were interviewed on 5th, 6th and 7th October, 1995 whereas the persons who applied in pursuance of the second advertisement were interviewed on 31-10-1995. On the. basis of these interviews a combined merit list was prepared by the Department for making appointments. Initially a list of 105 candidates was declared by the Department

followed by another list of 454 candidates including the petitioners. These selected candidates were issued appointment letters. True copies of some of these appointment letters are Annexures 3 to 13 to the writ petition. In these letters of appointment it is stated that these appointments are of temporary nature and can be cancelled at any time. In pursuance of these appointment orders the petitioners joined their duties on various dates in February, 1996. However, by the impugned order dated 31-8-1996 the services of the petitioners were terminated by the District Basic Education Officer vide Annexure 14 to the petition. Similar termination orders have been passed in cases of other petitioners. These orders were passed in pursuance of the order dated 26-8-1996 passed by the respondent No. 1. True copy of the order dated 26-8-1996 is Annexure 15 to the writ petition.

4. It is alleged in paragraph 14 of the writ petition that a perusal of the order dated 26-8-1996 shows that the secretary of the Basic Shiksha Parishad received some complaint and he appointed an Enquiry Committee consisting of the Assistant Director of Education (Basic) Kanpur, Expert Rajya Pariyojna Karyalaya, Lucknow and Finance and Accounts Officer, Basic Shiksha Parishad. These three persons conducted some enquiry and submitted their report to the Secretary and on the basis of which the impugned order dated 26-8-1996 was passed. In paragraph 15 of the writ petition it is stated that no opportunity of hearing was given to the petitioners before passing the order dated 26-8-1996 and the ex parte enquiry report on the basis of which the Secretary passed the impugned order was not served on the petitioners.

5. Several contentions have been raised in the writ petition and have looked into the same and have heard the submissions of the learned counsels for the petitioners and respondents. I have also perused the counter affidavit in which various averments have been made alleging that selection was illegal. In my opinion, it is not necessary to go into the merits of the case at this stage inasmuch as these petitions can be disposed of on the short point that admittedly no opportunity of hearing was given to 1Mb petitioner before passing the impugned order dated 26-8-1996. This impugned order was passed on the basis of ex parte enquiry report. The averments in paragraph 15 of the writ petition that the copy of this report was not supplied to the petitioners and they were not given opportunity of hearing is unrebutted. In my opinion, copy of the report should have been supplied to the petitioners and they should have been given opportunity of hearing before termination of their services vide *Shrawan Kumar Jha and others Vs. State of Bihar and others*,

6. However, on the facts and circumstances of the case I am of the opinion that it is not necessary to set aside the impugned orders at this stage since a post decisional hearing can be given to the petitioners. Such post decisional hearing has been permitted in several decisions, e. g. *State of U. P. v. V.K. Tripathi*, AIR 1995 SC 1330 : (1995) 2 UPLBEC 737 , *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, .

7. Hence I dispose of this petition finally with the direction to the Director Education (Basic), U.P. to supply a copy of there report of the enquiry committee to the petitioners and give them opportunity of hearing. Since there are 454 candidates in the second list it will not be reasonably possible to sup. ply copy of this report to each one of them and give each one of them a separate hearing. Hence I direct that a copy of the said report may be handed over by the learned counsel for the respondent No. 1 Sri S. G. Hasnain, to the learned counsel for the petitioners Sri R.N. Singh Within two weeks of the date of this judgment i.e., by 22-11 -1996. The petitioners of this petition as well as of the other connected petitions may thereafter prepare a single comprehensive representation containing all the factual and legal averments which they may wish to make and this representation should be submitted to the Director by 16-12-1996. The Director need not give personal/oral hearing to the petitioners but he shall decided the representation by a speaking order after dealing with the submissions made in the said representation by 31-1-1997. once again make it clear that I am not staying the impugned orders at this stage but am only directing for a post decisional hearing by the Director. With these observations this petition and all the connected writ petitions whether they are listed today or not finally disposed of.