

(2003) 10 AHC CK 0121

In the Allahabad High Court

Case No : Writ Petition No.6314 (S/S) of 2003 (with W.P.Nos.5272 (S/S) of 2003 and 6550 (S/S) of 2003)

Chandra Kishore and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 45

Citation : (2003) 10 AHC CK 0121

Hon'ble Judges : N.K.Mehrotra, J

Final Decision : Allowed

Judgement

N.K. Mehrotra, J.

1. In writ petition No.6314 (S/S) of 2003, the petitioners are working as "Subject Expert" in different subjects appointed by the Government in aided educational institutions where the regular teachers could not be appointed and the education was suffering. They were appointed in pursuance of the advertisement dated 9.4.2002 after a selection in the session 20002001 and continued in the next two academic session.

2. In writ petition No.5272 (S/S) of 2003, the petitioner is also a subject expert duly selected appointed by the Government in pursuance of the advertisement dated 9.4.2000 after due selection and he also worked in the next two academic sessions as such.

3. In writ petition No.6550 (S/S) of 2003, the petitioner is also a Subject Expert in pursuance of the advertisement dated 16.12.1999.

4. The case of the petitioners in all the three writ petitions is common. According to the petitioners, they joined as "Subject Expert" in the aided educational institutions after due selection at the consolidated salary of Rs.5,000/ per month and neither any initial scheme formulated for the appointment of the "Subject Expert" nor in the advertisement, there was any restriction that they will not be

permitted to continue after three academic sessions. The only condition imposed was that they will work only during the academic session and they will be discharged during summer vacations every year. They were required to teach four classes per day and 24 classes per week. Later on 30.6.2003, the Director, Secondary Education issued an order imposing a new restriction that those Subject Expert who have already worked in three academic sessions, their term shall not be renewed and for every subject expert, the maximum limit for their working will be three academic sessions only. It is this order dated 30.6.2003 Annexure6 which is impugned in all these three writ petitions.

5. According to the petitioners, the order dated 30.6.2003 issued by the Director, Secondary Education imposing a fresh restriction, is contrary to the initial scheme formulated by the Government for meeting the contingencies to impart education to the students in the aided institutions where thousands of vacancies were existing and education was suffering and the advertisement was issued for the selection of the Subject Expert. It is averred that there is need of the petitioners' services in the aided institutions because there are no teachers for the respective subjects in the respective colleges and the students are being deprived from teaching of the respective subjects. They further stated that they have crossed the age limit prescribed for the service and if they are not permitted to work, they will be deprived of their valuable right of employment because of the new arbitrarily imposed restriction by the Director debarring them from continuance as Subject Expert on a meagre amount of Rs.5,000/per month. Petitioners have further alleged the statement of the Education Minister in the Press that the term of the Subject Expert, shall be extended for the current session and the existing vacancies in the aided educational institutions, shall be filled up by regularising the services of the Subject Experts. The statements of the Minister are contained in Annexures8 and 9 to the writ petition No.6314 (S/S) of 2003. They have further alleged that several interim orders in various writs restraining the implementation of the impugned restrictions, have been passed by this Court at Allahabad but to no effect. They have alleged that in view of the necessity to provide teaching facility to the students, the Government cannot afford not to appoint any teacher but the opposite parties are intending to substitute the new teachers in place of the petitioners. They have alleged that they are governed by "Doctrine of Legitimate Expectation". They have further alleged that every year the Government, is saving two months salary in Summer Vacations by giving an artificial break in Summer Vacations. They have alleged that the Government cannot deviate from the terms and conditions of the advertisement and policy floated initially. All the petitioners have prayed for staying conditions imposed in the order dated 30.6.2003 which deprive the petitioner for their consideration to continue on the post of "Subject Expert". Therefore, they have sought a relief by way of writ of mandamus directing the opposite parties to permit their continuance as Subject Experts even after three academic sessions, pay their salaries and to make their regular appointments against existing vacancies.

6. In the first two writ petitions, the counter and rejoinder affidavits have been filed). According to the opposite party No.2, due to ban on the appointment of teachers in secondary education in the institutions which were under the grants-in-aid scheme of the government, there was shortage of teachers, hence the government had undertaken alternative arrangement for engaging subject experts. It is submitted that the initial engagement of Subject Experts was for a period of 10 months in one academic session and at the start of initial session, they were giving engagement on renewal basis and this renewal was for a maximum period of three academic sessions. The Subject Experts who have completed three academic sessions, can apply afresh for their fresh engagement and their candidature will be considered along with other candidates as per Government Order dated 11.10.1999 and 6.6.2001 as Annexures 1 and 2 to the counter affidavit. The opposite party State Government has admitted that those Subject Experts who have completed three academic sessions, will not be disqualified and they will be entitled for moving application when the posts are again advertised and their candidature will be considered afresh. It is further contended in support of the order dated 30.6.2003 issued by the Director, Education that this order has been issued only to make the other fresh candidates eligible for applying on the post of Subject Experts but these candidates who have been working, have not been debarred from applying afresh. It is further stated that the Subject Expert has to take only four periods a day and they are free to take other work also along with this work of Subject Expert. It is also contended that the post of Subject Expert are not sanctioned posts and these are temporary posts which have been created in the interest of students' education and on the basis of the need in the particular institution.

7. The record of the Government relating to the policy of the appointment of the Subject Expert in aided institutions, has also been summoned and I have perused the entire record also.

8. After perusal of the record, it appears to me that in the State of U.P., there are 5,000 aided educational institutions and the teachers of these institutions are covered under the Payment of Salaries Act under which it is the liability of the Government to make the payment of salary of the teachers in the aided institutions. These aided educational institutions are governed by the provision of U.P. Intermediate Education Act and the regulations made thereunder. The appointment of teachers are regulated by the provisions of U.P. Secondary Education Service Selection Board Act, 1982. In the year 1999, the Government realised that in the educational institutions, the number of students has increased and there was a shortage of teachers. In writ petition No.30852/98: Bhim Singh and others v. State of U.P. and others, this court had observed that it was the duty of the State Government to make appropriate arrangement for the appointment of the teachers after taking into consideration the increasing strength of the students day to day. It appears from the record that after 1986, no post of the teacher was sanctioned in aided private educational institutions and unlimited number of students was increased. Government felt that still

teaching was suffering. In the year 1988, the posts of two thousands teachers had fallen vacant. Government could not make regular selections. Again in the year 1999, further two thousands posts had fallen vacant. Thus, on 1.7.1999, 4,000 posts of teachers were vacant. After realising this responsibility, Government made arrangement of the teaching of the students by creating 3,000 posts of Subject Experts for the aided educational institutions after formulating a scheme of selection.

9. In pursuance of this decision, Government floated a scheme for appointment of a Subject Expert on 11.10.1999 creating 3,000 posts for Subject Expert. Qualification of such Subject Expert was prescribed. The procedure for selection was also prescribed. It was also mentioned that the teachers having experience of teaching will be given priority. The appointment was made on the regional basis. There was nothing in this policy floated by the Government Order dated 11.10.1999 that those who were duly selected, will not be permitted to work after three academic sessions. I am of the view that if these Subject Experts are not appointed or new posts are not created or 4000 posts lying vacant in the aided educational institutions are not filled up, the students will be deprived of their fundamental rights of getting education. Under the "Directive Principles" of the Constitution of India, State is required to make endeavour to provide free and compulsory education for all the children until they complete the age of 14 years but this Directive Principle of the State policy is not only in the scope of the directive only after the decision of the Hon'ble Supreme Court in *Unni Krishnan v. State of U.P.*, AIR 1973 SC 2178. The Hon'ble Supreme Court has implied the right to education from right to life and personal liberty guaranteed by Article 21. Therefore, the right to education in the context of these Directive Principles means; every child has a right to free education upto the age of 14 years. It may be said that the Directive Principles are not enforceable in the courts but when Hon'ble Supreme Court has laid down the law by giving judicial decision in *Unni Krishnan's* case (*supra*), the right to educate the children upto the age of 14 years has become a fundamental right and the State is bound to grant this fundamental right.

10. In the instant petitions, the State Government has frankly admitted that there is a need of teachers. They have also admitted that several thousands of posts of teachers are lying vacant. They have not denied their responsibilities to impart education. They have not denied the right to the petitioners to continue but they have contended that they have to go through a fresh selection while admittedly they have already gone through a due process of selection and they are duly selected and qualified Subject Experts. If the posts are there and the work is there and obligation of the State to impart education is there and even then these petitioners are deprived of their right of employment which will be a breach of their fundamental right to continue in employment arbitrarily by imposing unreasonable restriction.

11. The initial policy of the State Government in making appointment to the

teachers on the post of Subject Expert indicates that the Government desire to give preference to the teachers having experience. Now by issuing an order on 30.6.2003, the Director Education is debarring those experienced teachers who had obtained experience before the joining on the post of Subject Experts and those who have further increased their experience by teaching the students in the three academic sessions. Therefore, this restriction that the maximum limit for giving appointment to a Subject Expert will be three years, is most arbitrary and unreasonable and contrary to the requirement as shown in the advertisement.

12. After perusal of the record of the Government, I am also of the view that the restrictions imposed by the Director Education in Annexure6 restricting those Subject Experts who have completed their job in three academic session, is unauthorised also. Before formulating the policy as contained in Government Order dated 11.10.1999, Annexure1 to the counter affidavit, the policy was approved by the Education Minister and the Chief Minister but at the time of imposing this restriction, no such approval has been taken at the level of the Education Minister and the Chief Minister.

13. Further I find from the record that the Education Minister has taken a decision to permit the existing Subject Expert to continue further for a period of one year and in view of that decision, the Director, Education is not competent to debar such Subject Experts including the petitioners by imposing a restriction that those who have worked in three academic sessions, will not be permitted to continue further. It appears that this condition has been imposed only to take their favourites by depriving the petitioners who were selected in the year 20002001.

14. In this State of U.P., the Government is being headed by a teacher. Earlier also when the decision was taken, it was headed by a teacher Chief Minister and now again a teacher Chief Minister is heading the Government while the education is suffering from adhocism and old adhoc teachers are going to be replaced by the new adhoc teachers who would be favourable to the education authorities. Such practice will be in violation of the Article 16 of the Constitution.

15. Learned counsel for the petitioner has referred Ratan Lal and others v. State of Haryana and others (1985) 4 SCC 43 in which it was held by the Hon'ble Supreme Court that this practice of appointing large number of teachers on ad hoc basis at the commencement of the academic year, terminating their services before next summer vacations or earlier and reappointing them on ad hoc basis at the commencement of the next academic session, causing break in service by saving salary and depriving the salary benefits to such teachers in summer vacations amounts to unreasonable and arbitrary hire and fire policy and such policy of adhocism followed by the State Government for long period, results in breach of Article 14 and 16 of the Constitution of India.

16. Learned counsel for the petitioner has further referred that the Government

is stopped under the principles of "Promissory Estoppel" because the petitioners who were employed at other places, have left their jobs to join the post of Subject Experts after issuing the conditions in the advertisement when there was no restriction for their renewal after three years and now they have crossed their upper age limit for getting the job. The petitioners have acted on the promise of the State Government and now they are being deprived of their employment even if they are asked to appear again for the selection. Now the Government should not be permitted to go back from their promise.

17. Learned counsel for the petitioners has referred Dr. Ashok Kumar Maheshwari v. State of U.P. (1998) 2 SCC 502 and National Building Construction Corporation v. S. Raghunath and others (1998) 7 SCC 66 to argue that the "Doctrine of Legitimate Expectation" applies and the petitioners cannot be deprived from continuance even after three academic sessions if the need is there and post of Subject Experts are there and the obligation of the State to provide teaching to the students still exists. They have expectations on the better footings that those who were not in employment and for those unemployed, Government has thought of imposing this unreasonable restriction. I agree that this contention of the learned counsel for the petitioners that the conditions which were not imposed at the initial state, it cannot be imposed now to replace duly selected Subject Experts for giving opportunity to those who are out of employment.

18. A perusal of the record goes to show that several writ petitions are being filed in this Court in Allahabad and its Lucknow Bench. Following writ petitions were filed in Allahabad High Court:

- (i) Writ Petition no.39030 of 2003, Shri Anoop Kumar v. State of U.P.
- (ii) Writ Petition No.35653 of 2003, Manoj Kumar Rastogi and others v. State of U.P.
- (iii) Writ Petition No.37513 of 2003, Kaushal Kumar Rawat v. State of U.P.
- (iv) Writ Petition No.40912 of 2003, Shri Tej Prakash and others v. State of U.P. & ors.
- (v) Writ Petition no.39313 of 2003, Sarvesh Chandra Sharma and others v. State of U.P.

19. In all the aforesaid writ petitions, this court passed an interim orders in the following direction:

"As an interim measure, it is provided that the operation of the impugned Govt. Order dated 6.6.2001 and 30.6.2003 shall remain stayed. It goes without saying that when the aforesaid Govt. Orders have been stayed by this court, the question of extension shall be considered without taking into consideration the said Govt. Order."

20. A perusal of the record of the Government goes to show that no action has been taken on these interim orders, so far. The education in the State of U.P. is

suffering. The session has started in July. The month of October is going to pass. Students have to prepare themselves for the half early examinations but the aided educational institutions are without teachers. Either under the Intermediate Education Act or under the U.P. Secondary Education Service Selection Board Act, the Government has not permitted the management to make temporary appointments of the teachers in cases of vacancies. It is beyond imagination that the State Government whose head has been a teacher, is tolerating the education to suffer in this manner and the posts of teacher shall be permitted to be filled up by removing one adhoc set of teachers by another adhoc new candidates who may not have such an experience which the petitioners and other Subject Experts like the petitioners will have.

21. I am of the opinion that since necessity of the teachers in aided educational institutions is still existing and since the petitioners are duly selected subject experts and qualified for the post having experience, are entitled to continue on their posts and they are also entitled to get the salary fixed by the State Government. They are also entitled to get the salary during the period the artificial break is given to the continuation of their service in the summer vacation. The other work is also being taken from these experts like other teachers, therefore, they will be entitled to get the remuneration for the period of summer vacation also. Since several thousands of posts of teachers are lying vacant and right to get employment is a fundamental right, I am of the view that these duly selected Subject Experts should be permitted to continue without holding new selection. They are also entitled for their regularisation of their services after the policy for regularisation is formulated by the Government, Since the academic session has started in July, 2003, the order for their renewal of the term is to be issued immediately.

22. In view of the above, all the three writ petitions are allowed with the following directions:

(i) The impugned order dated 30.6.2003 which prohibits the renewal of those Subject Experts who have completed three academic sessions, is quashed.

(ii) Similar restriction imposed in the order dated 6.6.2001 alongwith the restriction for nonpayment during summer vacation are also quashed.

(iii) The opposite party No.2 is directed to issue direction for all the Regional Joint Directors for permitting all the Subject Experts including the petitioners in their respective regions to resume duties immediately if the Subject Experts are eligible and they were selected according to the prescribed procedure. The order shall be issued within a period of 10 days so that the students may not suffer any more.

(iv) The opposite party No.1 shall make arrangement of the budget either by contingency or by getting it sanction in the ensuing budget within a period of one month.

(v) The opposite party No.1 is directed to frame a policy for the regularisation of the existing Subject Experts against the existing 4000 vacancies of the teachers in the aided educational institutions after taking into consideration the aforesaid observations and if required, make necessary amendment in the U.P. Intermediate Education Act or U.P. Secondary Service Selection Board Act within a period of two months.

23. Chief Standing Counsel for the State of U.P. in this Court is directed to serve the copy of this judgment on State of U.P. through the Principal Secretary, Secondary Education and the Director Education (Secondary), U.P., Lucknow for compliance. He will also send a copy of this judgment to Principal Secretary, Judicial and L.R. who will apprise the Chief Minister about suffering of Education and for making necessary arrangement within the period of ten days. Required copies of this judgment be issued to the C.S.C. within two days.

(Petitions allowed)