

(2009) 05 AHC CK 0186

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24290 of 2009

Committee of Management of Pandit Ram Dev Mishra
Intermediate College, Khaptiha, Allahabad through its
Manager

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 05 AHC CK 0186

Hon'ble Judges : Vineet Saran, J

Final Decision : Allowed

Judgement

Vineet Saran, J.—Heard Sri L.K. Dwivedi, learned Counsel for the petitioner as well as learned Standing Counsel appearing for the respondents and have perused the record. With consent of learned Counsel for the parties, this writ petition is being disposed of finally at this stage without calling for a counter affidavit.

2. The brief facts of this case are that on the retirement of one Assistant Teacher on 30.6.2008, the petitioner institution approached to the Zila Basic Shiksha Adhikari, respondent No. 2 to grant permission to advertise the post and send a nominee for selection of an Assistant Teacher. The U.P. Recognized Basic School (Junior High School Recruitment and Condition of Teachers) Rules, 1978 (hereinafter referred to as the "1978 Rules") provided for appointment of Headmaster and Assistant Teacher. As per Rule 3, it is the responsibility of the Management to fill a vacancy in the post of Headmaster or Assistant Teacher of a recognized school by 31st July every year. Rule 7 provides for advertisement of vacancy and Rule 9 provides for Selection Committee. For the post of Assistant Teacher in an institution, other than minority institution, the Selection Committee is to comprise of Manager, Headmaster of the recognized school and a nominee of District Basic Education Officer.

3. After the vacancy occurred on 28.8.2008, the petitioner wrote to the Zila Basic Shiksha Adhikari, Allahabad, respondent No. 2 for "grant of permission to advertise the vacancy for filling up the post of Assistant Teacher, which had fallen vacant and to send a nominee for the Selection Committee. Since the said application was not being decided, the petitioner filed a writ petition bearing Civil Misc. Writ Petition No. 62357 of 2008 (Committee of Management v. State of U.P.), which was disposed of on 3.12.2008 with the direction that the representation of the petitioner with regard to the aforesaid grievances may be considered by the Zila Basic Shiksha Adhikari by speaking and reasoned order. Pursuant thereto, the impugned order dated 17.2.2009 has been passed by the Zila Basic Shiksha Adhikari, Allahabad, respondent No. 2 denying permission to the petitioner to advertise the post of Assistant Teacher. Aggrieved by the said order, this writ petition has been filed.

4. The sole ground taken in the impugned order for denying such permission is a Government Order dated 20.1.2003, which provides that permission to fill up the vacant post in nongovernment aided institution should be granted only after prior approval from the State Government. The said Government Order came up for consideration before this Court in the case of Committee of Management of Vishva Nath Vidyalaya, Mundera, Allahabad v. State of U.P., 2008 (3) UPLBEC 2876 wherein it has been held that "District Basic Education Officer is enjoined upon to provide nominee in case there exists vacancy and same has to be filled up in terms of 1978 Rules. Government Order dated 20.1.2003 in the fact of the present case is uncalled for inasmuch as 1978 Rules are self contained and said rule does not envisage for taking any prior approval from the State Government before proceeding to make selection and appointment and as such said Government Order to the extent it directs taking sanction from State Government is ultra vires to the provisions as contained under 1978 Rules and the same cannot be made foundation and basis for withholding the permission. Thus, respondents are duty bound to provide nominee in case validly elected Managing Committee is proceeding to make selection as per 1978 Rules against duly sanctioned post."

5. After holding the provision for taking prior approval from the State Government in the said Government Order as ultra vires the provision contained under the 1978 Rules, in the aforesaid case, this Court directed the District Basic Education Officer, Allahabad to take appropriate decision on the application moved by the petitioner for sending of its nominee within a month.

6. In the present case, although the Zila Basic Shiksha Adhikari has noticed the aforesaid decision passed in the case of Committee of Management of Vishva Nath Vidyalaya, Mundera, Allahabad (supra) but has stated that Zila Basic Shiksha Adhikari is not competent to interpret the said Government Order and it is only the State Government, which can amend the same and thus he has referred the matter of the petitioner to the State Government/Directorate of Education.

7. It is very surprising that even after the provision of obtaining prior approval provided for in Government Order dated 20.1.2003 has been held to be ultra vires by this Court in the case of Committee of Management of Vishva Nath Vidyalaya, Mundera, Allahabad (supra), still the Zila Basic Shiksha Adhikari even after noticing the said judgment of this Court, does not honour the same and states that it is the State Government alone which can modify or amend the order, meaning thereby that the order of this High Court is not to be given, effect until the same gets the approval of the State Government. Such stand of the Zila Basic Shiksha Adhikari is very unfortunate as it is in total disregard of the directions issued by this Court.

8. In the facts and circumstances of this case, since the Zila Basic Shiksha Adhikari is obliged under law (Rule 9 of 1978 Rules) to send a nominee for the selection of Assistant Teacher in nongovernment aided institution, it is directed that the respondent No. 2, the Zila Basic Shiksha Adhikari shall forthwith grant permission to the petitioner to advertise the post for filling up the vacant post of Assistant Teacher in their college within three weeks from the date of filing of a certified copy of this order and send a nominee for selection of the Assistant Teacher on the date fixed for such selection. It is, however, provided that at the time of according approval, the Zila Basic Shiksha Adhikari, Allahabad shall ensure that only person is appointed as Assistant Teacher, who is eligible as per law.

9. Accordingly, the impugned order dated 17.2.2009 passed by the Zila Basic Shiksha Adhikari, respondent No. 2 is hereby quashed and this writ petition stands allowed with the directions given hereinabove.

10. Since the order has been passed in the teeth of the judgment of this Court passed in the case of Committee of Management of Vishva Vidyalaya, Mundera, Allahabad (supra), which has also been noticed by the Zila Basic Shiksha Adhikari in its order dated 17.2.2009 but he has refused to comply with the directions issued by this Court. It is directed that a copy of this judgment be sent to the Directorate of Education (Basic) who shall call for an explanation from the Zila Basic Shiksha Adhikari, Allahabad, respondent No. 2 and take appropriate action against the respondent No. 2 for referring the matter to the State Government despite the directions of this Court having been issued whereby the conditions laid down in the Government Order dated 20.1.2003 for seeking approval of the State Government had been set aside.