

(2010) 07 AHC CK 0082
In the Allahabad High Court
Case No : C.M.W.P. No. 2842 of 2010

Dr. Deepak Bhatiya and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 7A

Citation : (2011) 3 AWC 2876

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : N.L. Pandey, for the Appellant; Satish Chaturvedi, A.A.G. and A.K. Yadav, C.S.C., for the Respondent

Judgement

Arun Tandon, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State-Respondents.

2. Petitioners had been working as full time teacher in institutions which are affiliated from the Central Board for Secondary Education, New Delhi, is recognised Intermediate Colleges which have been granted recognition under self-finance. The Petitioners have made applications for being considered for the post of Principal available in various High School and Intermediate Institutions recognised by the Madhyamik Shiksha Parishad in terms of the advertisement published by U.P. Secondary Education Services Selection Board established under U.P. Act No. 5/1982. The application of the Petitioners have not been considered by the Selection Board because the Petitioners have been working in self-financing institution and they were not being given salary from the State exchequer.

3. Counsel for the Petitioner has placed reliance upon the judgment of the Apex Court in the case of Mohd. Altaf and Ors. v. Public Service Commission and Anr. C.A. Nos. 961 and 962 of 1999 : 2002 (4) AWC 2720 (SC) as also upon the judgment of the Apex Court in Contempt Petition (C) No. 372/2002 in C.A. No. 962/1999 Shamim Khanam v. K.B. Pandey and Anr. it is submitted that teachers

working in self-financed institution cannot, as a class, be excluded from consideration. Relevant portion of the order of the Supreme Court relied upon by the Petitioner is quoted herein below:

Part time teachers would be excluded from consideration. However, it is made clear that there cannot be a class of exclusion of teachers who are working in self-financed institutions. Any exclusion of a candidate on the basis that he or she is a part time teacher must be made only in individual cases after proper verification.

4. On behalf of the Petitioner, it is contended that from the aforesaid, it is clear that there cannot be an en masse exclusion of teachers working in self-financed institution in the matter of consideration for the post of Principal of Intermediate College. The controversy, therefore, stands settled in favour of the Petitioners.

5. Shri Satish Chaturvedi, Additional Advocate General could not dispute the correctness of the law as flows from the judgment of the Apex Court noticed above.

6. Full time teachers working in self-financing institutions have due recognition from statutory boards cannot be excluded if they satisfy all other conditions, it is only the part time teachers who on examination of individual cases can be excluded from such consideration.

7. So far as teachers working in recognized Intermediate Colleges having recognition u/s 7A of the Intermediate Education Act are concerned; this Court may notice that since 1986 all Intermediate and High Schools have been granted recognition under self-finance only, i.e.. u/s 7A. The teachers are appointed for such institutions u/s 7AA read with Government order dated 16.4.2004. Although termed as part time they in fact are required to work as full time teachers. Therefore, their claim also cannot be excluded en masse.

8. This Court holds that the Commission was not justified in excluding such teachers who are working in self-finance institutions en masse. The Board must scrutinise the application of the candidates concerned working in such self-financed recognized institutions and satisfy itself as to whether they are part time teachers or full time teachers. All full time teachers appointed in accordance with rules applicable to such institution are within the zone of consideration and the Selection Board shall take appropriate action accordingly.

9. In view of the aforesaid the circular issued by the State Government dated 16.4.2004 has to read accordingly.

10. Let consequential action be taken in the matter of selection of Principals by the Selection Board pending before it accordingly.

Writ petition stands disposed of.