
(2011) 08 AHC CK 0263
In the Allahabad High Court
Case No : Writ A No. 54268 of 2005

Ekhlague Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 30

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 103

Citation : (2011) 08 AHC CK 0263

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Petitioner claims appointment on compassionate grounds on account of death of his father who died in harness on 19.11.2000. Deceased father of the Petitioner was working as Assistant Teacher in Mirza Anwar Beg Inter College, Usarhata, Jaunpur, which is a minority Institution. It is contended that the Petitioner, having possessed with requisite qualifications, was eligible to be appointed in the Institution on a Class III post and in this behalf representation was made to the concerned College for issuance of proper orders. Available papers were sought by the DIOS, concerned from the Institution in respect of the deceased father of the Petitioner. After receipt of the informations no steps were taken by the Officials/Respondents which compelled the Petitioner to file a writ petition before this Court being Civil Misc Writ Petition No. 50638 of 2004. The said writ petition came up for consideration before the Court on 13.11.2004 and this Court disposed of the writ petition with a direction to the Respondents to take proper decision on the representation of the Petitioner by passing a speaking order in this behalf. Representation of the Petitioner was considered and the same has been rejected vide order dated 3.5.2005. This order is subject matter of challenge before this Court.

2. The case of the Petitioner is that in terms of the U.P. Recruitment of

Dependants of Government Servants Dying in Harness Rules, 1974, the Petitioner is eligible to be appointed on compassionate grounds. In terms of Regulation 103 of the Chapter III of the Regulations framed under the U. P. Intermediate Education Act 1921 any teacher or employee of ministerial grade of any recognized, aided Institution dies in harness, member of his family who is not less than eighteen years in age can be appointed on the post of teacher or any ministerial post if he possess requisite qualification. Proviso to the aforesaid regulation provides that the said regulation would not apply to any aided Institution established and administered by any minority class. A note is also appended to the said regulation according to which this regulations would apply to those employees who had died on or after 1.1.1981.

3. An amendment was made to the said Regulation w.e.f. 9.8.2001 whereby the proviso attached to Regulation 103 stands deleted as a result of which the said regulations would apply to any recognized aided Institution established and administered by any minority class. In view of the said amendment affected in the said regulation, Petitioner would be eligible to be considered for compassionate appointment. Despite amendment having been affected Respondents have rejected the claim of the Petitioner for appointment under the said provisions.

4. On the other hand stand of the Respondents is that minority Institutions are protected under Article 30 of the Constitution and any such regulations which would infringe the right of minority Institution cannot be enforced.

5. Heard learned Counsel for the parties and perused the material on record.

6. The question that arises for consideration in this case is as to whether the amendment affected under Regulation 103 which provides for appointment on compassionate grounds can be affected when it is found that subsequent amendment in Regulation tantamount to violation of right of Institution under Article 30 of the Constitution.

7. Learned Counsel for the Petitioner has placed reliance on Division Bench judgment of this Court in the case of St. Andrew's College Association, Gorakhpur and Anr. v. State of Uttar Pradesh and Ors. (supra) 2003 (4) A.L.R. 381. The Division Bench was considering similar government order providing for compassionate appointment in minority Institutions in a Degree College. The Division Bench took the view that the regulation providing for appointment of the deceased employee even in a minority Institution is regulatory in nature and permissible and does not offend Article 30 of the Constitution. The order impugned in the writ petition was an order giving appointment of one of the Respondents as routine grade clerk in the College on compassionate ground due to death of his father who was lecturer in the College. The Division bench in concluding part of the judgment made following observations:

We see no reason why humanitarian regulations, such as the kind, which has been impugned in this petition, cannot be made for minority Institutions. We

cannot see how such humanitarian measures of the kind with which we are dealing in this petition can be said to infringe the right under Article 30 of a minority Institution.

It may have been a different matter if the compassionate appointment was sought to be made on the post of Head Master or teacher, and there it possibly could have been said that this infringes the right of the minority Institution under Article 30 of the Constitution, since teaching work is certainly related to the standard of education imparted. That is not the case here. Here we are concerned with an appointment on a Class III post in a minority Institution on compassionate ground. We see no violation of Article 30 of the Constitution in such a case or in case of a class IV post.

15. Learned Counsel for the Petitioner has invited our attention to the decision of a learned Single Judge of this Court in Committee of Management MAH Inter College v. DIOS, Ghazipur 2002 (2) AWC 2221, in which a contrary view has been taken by the learned Single Judge. The learned Single Judge was of the view that since an appointment on compassionate grounds is not made on merit since there is no competition with the candidates from the open market hence it cannot be said that a direction for making such appointments in minority Institutions will be conducive to efficiency and standards of education in the said Institution. We respectfully disagree with the reasoning given by the learned Single Judge. As held by the Supreme Court in TMA Pai's (supra) a regulation for the welfare of teacher does not infringe the right of a minority Institution under Article 30 of the Constitution. We do not see how appointment on a class III or class IV post will affect, the standard of education in a minority Institution. After all, a class III post is not a teacher's post.

8. It is thus evident that reasoning followed by Hon'ble Single Judge in Committee of Management, MAH Inter College (supra) to quash the notification dated 9th August, 2001 were not approved by the Division Bench in St. Andrew's College Association (supra) and the Division Bench expressed its disagreement with the said reasoning. The said disagreement has been noticed specifically in the following words:

We respectfully disagree with the reasoning given by the learned Single Judge.

9. The perusal of the judgment of the learned Single Judge in Committee of Management, M.A.H. Inter College and Anr. (Supra) shows that learned Single Judge held that the regulation providing for compassionate appointment in minority Institution is in violation of Article 30 of the Constitution of India. This observation has been over ruled by the Division Bench judgment in The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. (Supra).

10. Examining both the judgments it would reveal that learned Single Judge had struck down the amendment in regulation 103 on the ground that the minority Institution cannot be compelled to make appointment on compassionate grounds

as it would lower down the standard of the education. Their fundamental rights to regulate their Institution cannot be whittled down by issuance of regulations which is in the realm of subordinate legislation and impinges upon the minority character of the Institution.

11. Distinction has been drawn by the division bench in the case of St Andrew's College Association Gorakhpur and Anr. (supra) by stating that it may be a different matter if the compassionate appointment was sought to be made on the post of Head Master or teacher, and there it possibly could be said to have infringed the right of the minority Institution under Article 30 of the Constitution. Teaching work is certainly related to the standard of education imparted. However, same would not apply where the appointment is made to Class III Post as is the issue involved in the present case. It cannot be said by providing compassionate appointment for Class III employee the standard of education would be lowered. Applying the import of the Division Bench judgment, it be seen that the Petitioner had applied for Class III post and by virtue of the deletion of the proviso to regulation 103 on 09.08.2001 he had become eligible for the appointment on the compassionate grounds in the minority Institution.

12. In terms of the direction of this Court in the case of St Andrew's College Association Gorakhpur and Anr. (supra), it was observed that the appointments of the non teaching staff cannot be considered to be a regulation which erodes the minority character of the Institution.

13. In view of the direction of Division Bench in the case of St Andrew's College Association Gorakhpur and Anr. (supra), I direct that the Petitioner's case be also considered for appointment on compassionate grounds, subject to eligibility within a period of three months from the date a certified copy of this order is produced before the authorities concerned.

14. In the result the writ petition is allowed with aforesaid observation.