
(2009) 05 AHC CK 0573
In the Allahabad High Court

Girdhari Lal Pandey

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0573

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

Present writ petition has been filed by the petitioner for quashing the Notification dated 24.02.2009 by means of which U.P Secondary Education Services Selection Board has proceeded to declare the result of the post of Principal.

Brief background of the case is that there is recognized and aided institution known as Kisan Uchchattar Madhyamik Vidyalaya Ismailpur, District Barabanki. Said institution is governed by the provisions as contained under U.P. Act No. II of 1921, U.P. Act No. V of 1982 and U.P. Act No. 24 of 1971. In the said institution petitioner had been performing and discharging duties and qua the said institution in question vacancy in question was advertised being Advertisement No. 1/99/2000 dated 24.12.1999 in daily newspaper Dainik Jagran. Against said advertisement, petitioner filed Civil Misc. Writ Petition No. 31351 of 2002. This Court passed order of status quo, qua the office of Principal and net effect of the same was that petitioner who was functioning as Adhoc Principal continued to function. Said writ petition alongwith bunch of other writ petitions dismissed and then Special Appeals preferred against the same were allowed and thereafter matter travelled up to the Hon''ble Apex Court and therein final judgment has been passed on 16.05.2008 and thereafter pursuant to the aforesaid judgment selection proceedings has been finalized and panel has been sought to be enforced. At this juncture present writ petition has been filed with following relief.

(i) Issue a writ or direction in the nature of certiorari quashing the impugned notification dated 24.02.2009(Annexure No. 3 to this Writ Petition) as far as petitioner's institution is concerned

(ii) Issue a writ or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful functioning of the petitioner being an adhoc Principal of the institution in question till the decision taken by the State Government regarding regularization of the petitioner on the post in question.

(iii) Issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case."

Sri Bheem Singh, Advocate contended with vehemence that in the present case matter of regularization is still pending consideration and as such recommendation which has been made should not be accepted and as such writ petition deserves to be allowed.

Countering said submission, Learned Standing Counsel Sri K.K.Chand, contended with vehemence that till date no provision has been incorporated under U.P. Act No. V of 1982 for extending the benefit of regularization to adhoc Principal who have been appointed w.e.f. 01.07.2001 on wards and without there being any statutory provision regularization cannot be accorded as Section 16 of U.P. Act No. V of 1982 clearly provides that any appointment made in contravention of the provision of U.P. Act No. V of 1982 shall be void as such writ petition as it has been framed and drawn as on date is liable to be dismissed.

After respective arguments have been advanced factual position which is emerging in the present case that questioning the validity of selection proceedings which were being undertaken, petitioner has filed Civil Misc. Writ Petition No. 31351 of 2002 and in the aforesaid writ petition initially interim order was accorded but subsequently writ petition was dismissed and then Special Appeal preferred against the same was allowed and thereafter Special Leave Petition was allowed on 16.05.2008 and pursuant thereto result in question has been declared. Once results are being declared pursuant to final judgment passed by the Hon"ble Apex Court then petitioner cannot be permitted to question the validity of the select panel collaterally again specially when he has lost earlier round of litigation by mentioning that matter of regularization is pending. As far as other prayer is concerned qua regularization it would be relevant to mention that meeting has been convened on 26.06.2007 wherein Director of Education and Principal of Pradhancharya Parisad had participated and therein resolution was passed that except for institution wherein selection proceedings has been undertaken, for rest of the institution as per provision as contained, under U.P. Act No. II of 1921 proceedings for regularization be considered and for the same Director of Education Secondary alongwith requisite resolution shall transmit the matter to the State Government and pursuant to the said resolution passed details were to be furnished to the State Government. Thereafter it appears that letter was written by the District Inspector of Schools

asking for full particulars in this regard. It appears that thereafter requisite particular have been furnished and as State Government has not taken any decision in respect of extending the benefit of regularization. Prayer has been made to regularize the petitioner on the post of Principal as per Government Policy.

In the present case merely because proposal is in pipe line same does not ipso facto mean that petitioner has got crystallized right for consideration of his claim for regularization. Even the said resolution talked of regularisation in terms of provision of U.P. Act No. II of 1921 and not beyond the same. Section 16 of U.P. Act No. V of 1982 clearly provides that appointment made in contravention of provision of U.P. Act No. V of 1982 shall be void. Petitioner is claiming his regularization on the post of Principal under U.P. Act No. V of 1982. Till date there is no statutory provision for extending the benefit of regularization to adhoc Principals who have been appointed after 01.07.2001 and in the absence of any statutory provision no direction can be issued for regularization of petitioner on the post of Principal as per Government Policy, inasmuch as said policy is of no consequence unless and until statutory amendment is incorporated in U.P. Act No. V of 1982 in the same way and manner as Sections 33A, 33(iA), (iB) (iC), 33B, 33C, 33D, 33E and 33F have been incorporated. This Court in the case of Smt. Kanti Bansal Vs. State of U.P. and others (Civil Misc. Writ Petition No. 20920 of 2009) decided on 20.04.2009 has already taken similar view.

Consequently in the facts of the case as on date no relief can be accorded to the petitioner, as such writ Petition as it has been framed and drawn is dismissed.