

(2004) 01 AHC CK 0052
In the Allahabad High Court
Case No : Special Appeal No. 486 of 2001

Harihar Prasad Kushwaha

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

University Grants Commission Act, 1956 — Section 3

Citation : (2004) 1 UPLBEC 934

Hon'ble Judges : Tarun Chatterjee, C.J.; Amar Saran, J

Bench : Division Bench

Advocate : R.S. Shukla, for the Appellant; Prakash Padia, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Chatterjee, C.J. and Amar Saran, J.—This appeal is filed against the judgment and order passed by Hon'ble R.K. Agrawal, J., in Civil Misc. Writ Petition No. 6314 of 2001, Harihar Prasad Kushwaha v. Director of Education (Secondary), U.P., Lucknow and Ors. and also in Civil Misc. Writ Petition No. 35136 of 2000, Harihar Prasad Kushwaha v. State of U.P. and Ors.

2. Before we consider the case, on merits, we however, keep on record that Dr. Padia, learned Counsel appearing on behalf of the respondents has submitted that the does not raise any objection as to the maintainability of the appeal against the judgment and order passed in the aforesaid two writ petitions. Accordingly, we do not want to go into the question as to whether a single appeal preferred against the judgment and order, disposing of two writ petitions lies or not.

3. In Writ Petition No. 35136 of 2000, the appellant-writ petitioner had sought for a writ of mandamus directing the respondents to regularize the services of the appellant-writ petitioner on the post of Principal in Mahatma Gandhi Inter College, Sakhwawa, District Kushinagar and also for a direction upon the respondents not to disturb in peaceful functioning of the writ petitioner-appellant

as Principal of the Institution.

4. So far as the Writ Petition No. 6314 of 2001, is concerned, this writ application was filed seeking a writ in the nature of certiorari for quashing the impugned order dated 25.1.2001, passed by the Director of Education (Secondary), U.P., Lucknow contained in Annexure No. 3 to the said petition.

5. So far as the Writ Petition No. 6314 of 2001 is concerned, we find that on the directions issued by a learned Judge of this Court in the earlier writ petition being Civil Misc. Writ Petition No. 42043 of 2000, Ram Ashray Singh v. Director of Education (Secondary), U.P., Lucknow and Ors., the Director of Education passed the impugned order dated 25.1.2001, which was under challenge in the aforesaid writ petition being Civil Misc. Writ Petition No. 6314 of 2001. At the very outset we may say that the merits of this writ petition, which had been filed against the order of the Director of Education need not be considered, if we decide the present appeal against the judgment and order passed in Civil Misc. Writ Petition No. 35136 of 2000, as we find that the Director of Education has assigned reasons in the said order which may not be very relevant for our purpose for deciding the present appeal. Accordingly, we need not go into the merits of this writ petition on the basis of the views expressed as above.

6. The writ petitioner-appellant was appointed on the post of Lecturer in Mahatma Gandhi Inter College situate at Sakhwawa in the District of Kushinagar on 1st January, 1966. It is not disputed before us that he is senior most Lecturer in the College. The dispute arose only on 30.6.2000, when the regular Principal had retired. The question, at that stage has whether the writ petitioner-appellant could be appointed as officiating Principal of the College, in question or the private respondent, namely; Ram Ashray Singh.

7. In order to decide the is dispute, we have to look into the requisite qualifications of both the parties. At this stage, from the materials, on record, it is clear to us and it is also admitted by the learned Counsel for the appellant-writ petitioner that the appellant-writ petitioner is not having the qualifications of "trained" Post Graduate Diploma holder in Science. The learned Judge of this Court, after hearing the learned Counsel for both the parties, rejected both the writ petitions. Before we go into the merits of this question raised by the learned Counsel for both the parties before us we may refer to Appendix-A in which minimum qualifications for appointment of the Head Master and Teachers in Private Recognised Higher Secondary Schools have been "prescribed".

APPENDIX- A MINIMUM QUALIFICATIONS FOR APPOINTMENT OF HEAD MASTER AND TEACHERS IN PRIVATE RECOGNISED HIGHER SECONDARY SCHOOLS :

(1) Degree and Diploma in the concerned subject of any University established or regulated by or under any Central Act. Provincial Act or State Act, which is considered to be a University u/s 3 of the University Grant Commission Act, 1956 or of any such institution especially empowered by any Act of Parliament shall be recognised for the purpose of minimum qualifications prescribed under it.

(2) Under it in reference to prescribed qualifications the word "trained" means post graduate training qualification such as, L.T., B.T., B.Ed., S.C. or M.Ed. of any University or institution as specified in earlier para or any equivalent (Degree or Diploma). It also includes departmental A.T.C. and C.T. with minimum teaching experience of five years, J.T.C./B.T.C., grade teacher shall also be considered to be C.T., if he has worked in C.T. Grade at least for five years.

Essential Qualification

(1) Head of the Institution.--(1) Trained M.A. or M.Sc. or M.Com. or M.Sc. (Agri.) or any equivalent post graduate or any other degree which is awarded by corporate body specified in above mentioned para one and should have at least teaching experience of four years in Classes 9 to 12 in any training institute or in any institution or University specified in above mentioned para one or in any Degree College affiliated to such University or institution, recognised by Board or any institution affiliated from Boards of other States or such other institutions whose examinations are recognised by the Board or should the condition is also that he/she should not be below 30 years of age.

(2) First or Second Class post graduate degree along with teaching experience of ten years in Intermediate classes of any recognised institutions or third class post graduate degree with teaching experience of fifteen years.

(3) Trained post graduate diploma-holder in Science. The condition is that he has passed this diploma course in first or second class and have efficiently worked for 15 or 20 years respectively after passing such diploma course.

8. Learned Counsel for the appellant-writ petitioner, however, submits that the appellant-writ petitioner should be considered to be a "trained" Post Graduate Diploma Holder in Science in view of the fact that he is Post Graduate Diploma Holder and having the experience of more than 15 years in teaching. Therefore, automatically he became a Post Graduate Diploma Holder in Science. Secondly, the learned Counsel for the appellant-writ-petitioner contended that the Appendix-A may not come in the way for the appointment as officiating Principal of the College, in question as a Division Bench of this Court in the case of A.P. Singh (Dr) v. State of U.P. and Ors. (2000) 1 UPLBEC 638 held that this qualifications are not mandatory in nature and for the appointment as officiating Principal of the College, in question only seniority has to be counted. In the said decision, in Paragraph 6, it was observed that for appointment as officiating Principal in an affiliated College the criteria was seniority. Relying on Paragraph 6 of the aforesaid decision, the learned Counsel for the appellant-writ petitioner contended that the qualifications mentioned in Appendix-A could not be said to be mandatory, in nature and the appellant-writ petitioner ought to have been appointed as officiating Principal on the basis of his seniority.

9. We are unable to accept this submission made on behalf of the appellant-writ petitioner. It is true that an observation has been made by the Division Bench of this Court in the aforesaid decision that for appointment as officiating Principal in

the Post Graduate Department in an affiliated College the criteria was seniority. In our view, this decision of the Division Bench of this Court would not be applicable to the facts and circumstances of the present case, as we find by the statutory provision in Appendix-A that for appointment as Principal or Head Master certain qualifications are necessary.

10. Learned Counsel for the appellant-writ petitioner thereafter argued that in view of the Government Order dated 24.4.88, it is made clear that the person having qualifications like that of the appellant-writ petitioner with 15 years experience can be appointed as officiating Principal of the College. This submission also in our view, has no substance, as it is well-settled law that when there is a statutory provision that cannot be supplemented by any executive order of any Executive Authority.

11. Dr. Padia, learned Counsel appearing on behalf of the respondents however, drew our attention to a Circular in which it has been said that the order that was passed and relied upon by the learned Counsel for the appellant was not a Government Order, but only a Circular passed by the Director of Education. Since there is a statutory provision, we do not consider it fit that such Circular should be relied upon by the learned Counsel for the appellant-writ petitioner. Accordingly, this submission of the learned Counsel for the appellant-writ petitioner is also devoid of any merit.

12. Before we part with this case, we may refer the case of " Shamshul Zama Vs. District Inspector of Schools, Chandauli and Others, " where in Paragraph 13, it has been clearly stated that when a particular candidate is not a Post Graduate Degree Holder, but only a Post Graduate Diploma Holder in Science and not "trained", but one as this "trained" word has been shown a special meaning in Appendix-A. It has to be held that the appellant-writ petitioner or any other candidate like him does not possess essential qualifications for the post of Head of Institution and consequently he has no claim to be appointed as officiating Principal. Same view was also expressed by another Division Bench in the case of Bansh Lal Singh Sengar v. District Inspector of Schools, Kanpur Dehat and Ors. (1989) 1 UPLBEC 425.

13. Accordingly, we do not find any substance in the arguments of the learned Counsel for the appellant-writ petitioner.

14. Before we part with this judgment, we may also refer to another question, which was raised by the learned Counsel for the appellant-writ petitioner that whether the appointment of a permanent Principal on the basis of Appendix-A should also be applicable in the case of appointment of officiating Principal. So far as this question is concerned, in our view, in the case of Shamshul Zama (supra), it has clearly been held that the essential qualifications would be required for the appointment of an officiating Principal. No other question was raised before us.

15. For the reasons stated aforesaid, we do not find any merit in the appeal. The

appeal is thus dismissed. No order as to costs.