
(2009) 08 AHC CK 0069
In the Allahabad High Court

Hemant Kumar and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2010) 1 AWC 840

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioners before this Court seeks a writ of mandamus directing the respondents to approve the appointment of the petitioners and to provide salary from the State Exchequer. Facts in short are as follows:

2. Two vacancies on Class IV post in Hindu Inter College, Koshikala, Mathura are said to be available. The vacancies were advertised with the permission of District Inspector of Schools. The petitioners applied in response to it. A Selection Committee was constituted and the petitioners were selected one of them is a general category candidate and other is of backward class category. Papers seeking approval qua the petitioners selection were transmitted to the District Inspector of Schools vide letter dated 12.2.2008. No orders have been passed by the authority hence this petition. Normally this Court would have required the District Inspector of Schools to pass orders on the papers received qua appointment on Class IV posts in the recognized intermediate college in view of the provisions of Chapter 3 of the Regulations framed under the Intermediate Education Act. However, such a course is not being adopted in the facts of this case for following reasons:

3. It is admitted on record that the selection committee which was constituted for the purpose of appointment on Class IV post in the institution did not include the nominee of the District Magistrate.

4. Counsel for the petitioner vehemently argued that under letter dated 1.6.2001 it has been provided that the procedure prescribed for appointment on Class IV post in Government establishments would be applied for the purpose of selection on Class IV post in Intermediate Colleges. However the requirement of the nominee of District Magistrate stands excluded as per the letter dated 28th August 2008 as also in view of law laid down by this Court in the case of Smt. Shiksha and Anr. v. State of U.P. and Ors. 2008 (3) ESC 1584 (All),

5. It is not in dispute that Regulations 101 to 107 of Chapter III framed under the Intermediate Education Act provide for appointment on Class III and Class IV posts in. recognized intermediate colleges. Regulation 101 provide for prior approval of District Inspector of Schools before making any appointment. Other regulations deal with compassionate appointment etc. None of the regulations lay down the procedure which is to be adopted for appointment by direct recruitment against substantive vacancy in Intermediate Colleges on Class III and Class IV posts. It is for this reason that an order was issued under the signature of the Director Education U.P. dated 1.6.2001 which provides that the procedure for appointment on Class III and Class IV posts by direct recruitment in recognized intermediate colleges shall be the same as that applicable qua appointment on group D post in the employment of the Government establishment. It has been provided that U.P. Direct Recruitment on Group D Posts Rules, 1985 (hereinafter referred to as Rules, 1985) would be applicable. It is not in dispute that under the aforesaid 1985 Rules the vacancies have to be advertised in newspaper. The Selection Committee would include amongst others a nominee of the District Magistrate. For ready reference the letter dated 1.6.2001 is quoted below:

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fo"k;& v"kkldh; lgk;rk izkIr ek;/fed fo|ky;ksa esa prqFkZ Js.kh deZpkjh;ksa dh fu;qfDr dh izfdz;k ds lEcU/k esa A

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mi;qZDr fo"k; dh vksj vkidk /;ku vkdf"kZr djrs gq;s fuosnu gS fd "kklu us vkus i= la[;k 693@15&12&2001&1601?793?@2000] fnukad 11-5-2001 }kjk ;g funksZ"k fn;k gS fd ek;/fed f"k{k{k ?la"ksf/kr? vf/kfu;e] 1921 ds v;/k;&ruhu&fofue; 2?1? esa ;g O;oLFkk nh x;h gS fd v"kkldh; ekU;rk izkIr@lgk;rk izkIr mPprj ek;/fed fo|ky;ksa ds prqZFk Js.kh deZpkjh;ksa dh U;wure "kSf{k{d ;ksX;rk ogh gksxh] tks jktdh; mPprj ek;/fed fo|ky;ksa ds led{k{h; deZpkjh;ksa ds fy;s le;= ij fu/kkZfjr dh x;h gS] fdUrq vf/kfu;e esa prqZFk Js.kh deZpkjh;ksa ds fjDr inksa ds Hkjus dh izfdz;k Li"V :i ls of.kZr ugh dh x;h gSa A ;g Li"V gS fd v"kkldh; lgk;rk izkIr ek;/fed fo|ky;ksa esa "kklu dh mDr vf/klwpuk la[;k&dkfeZd&2&2017&1986&2 ?1?] y[ku? 8 flrEcj] 1986 }kjk iz[kfir

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6. By means of U.P. Direct Recruitment Inclusion of Nominee of District Magistrate In Selection Committee Rules, 2006 the nominee of the District Magistrate in the selection committee has been made mandatory. It is with reference to the said Rules of 2006 that the single Judge of this Court in the case of Shiksha and others (supra) has held that Rules of 2006, has been framed in exercise of power under Article 309 of the Constitution of India and, therefore, will not be applicable qua the procedure to be followed for appointment on Class III and Class IV posts under the Intermediate Education Act. It has been held that the Regulations 101 to 107 operate in different field vis-a-vis the Rules of 2006.

7. I have examined the judgment in the case of Shiksha and Ors. (supra) and have considered Government order dated 1.6.2001 which provides that the Rules relating to appointment on Group D post in the State Government would be followed for appointment on Class III and Class IV post in recognized intermediate college.

8. It is not in dispute that no procedure for direct recruitment on Class III and Class IV post has been provided for under the regulation framed under the Intermediate Education Act. It is for this reason that for filling up the vacuum that the State Government has by reference incorporated the Rules of 1985 as per the letter at 1.6.2001. This order of the State Government is also referable to Section 9 of the Intermediate Education Act. Therefore all appointment on Class III and Class IV posts in recognized Intermediate College have to be made after following the procedure prescribed for appointment on Group D posts in the employment of the State Government, i.e., Rules 1985. The aforesaid aspect of the matter has not been examined in the judgment in the case of Smt. Shiksha (supra). This Court is, therefore, not inclined to follow the same.

9. It may also be clarified that so far as the Rules of 2006 are concerned, the same made the nominee of District Magistrate in the Selection Committee for Group "D" posts mandatory the said amendment has to be read alongwith the Rules of 1985 which have been incorporated by reference under Government order as per the letter of the Director 1.6.2001 for appointment on Class III and Class IV post in Recognized Intermediate Colleges. There is no challenge to the competence of State to issue the direction as per the letter of the Director at 9.6.2000 in the present writ petition.

10. I am of the considered opinion that all the judgments relied upon in the judgment and order of the learned single Judge were clearly distinguishable. The Hon''ble Supreme Court in the case of Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, has held as follows:

It is well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

The said judgment has been followed in the recent judgment of the Hon''ble Supreme Court in the case of Dr. Rajbir Singh Dalai v. Chaudhari Devi Lal University, Sirsa and Anr. 2008 AIR SCW 5817 : 2008 (6) AWC 6578 (SC).

11. In these set of the circumstances the Court is of the opinion and Selection Committee constituted for Class IV posts in the institution in question is not in accordance with the procedure prescribed as per the letter of the Director dated 1.6.2001 and therefore any recommendation made by such Selection Committee need no consideration by the Education Authority under Regulation 101 of Chapter III of the Regulation framed under the Intermediate Education Act.

12. Accordingly, this writ petition is dismissed.

13. At this stage counsel for the petitioner prayed that this Court may leave it open to the Principal of the Institution to constitute a Selection Committee in accordance with the letter of the Director including the nominee of the District Magistrate and to complete the process of selection subsequent to the advertisement published earlier afresh. Such liberty prayed is always available to the appointing authority.