

(1997) 11 AHC CK 0041

In the Allahabad High Court

Case No : C.M.W.P. No. 4134 of 1997, Connected with C.M.W.P. No. 16261 of 1997

Ikramul Haq

APPELLANT

Vs

District Inspector of Schools, Allahabad and others

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 99

Citation : (1998) 1 AWC 377

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Prakash Gupta and R.G. Padia, for the Appellant; S.C. and M.S. Haq, for the Respondent

Final Decision : Disposed Of

Judgement

Sudhir Narain, J.—The common questions of law and facts are Involved In both these petitions. They are being disposed of jointly. The reference to the petitioner and the respondents shall be taken from Writ Petition No. 4134 of 1997.

2. The dispute relates to the promotion to the post of Lecturer in Majidia Islamlia Inter College. Allahabad (hereinafter referred to as the Institution). Ikramul Haq, petitioner and Mohammad Sabir, respondent No. 3 both are functioning as Assistant Teachers in L.T, grade in the Institution. One Mohammad Khalid was permanent lecturer in the Institution. He retired on 30th June, 1996, on attaining the age of superannuation and on his retirement, the post of lecturer fell vacant. The petitioner and respondent No. 3 both claimed promotion to the post of lecturer. The petitioner is admittedly senior to respondent No. 3. The dispute was that the petitioner was not eligible and qualified for appointment to the post of lecturer in Urdu and Persian on the date the vacancy came into existence on 30th June, 1996. In Wand Kishore v. U. P. Secondary Education Services Commission, Allahabad and others (1993) 1 UPLBEC 201, it has been held by a Division Bench of this Court that the qualification for promotion to the next higher grade shall be

taken into consideration on the date of occurrence of vacancy.

3. Learned counsel for the petitioner submitted that the qualification for promotion to the post of lecturer In Urdu was M.A, in Urdu and Persian. The petitioner had appeared for M.A. (Previous) Examination in Persian from Allahabad University in the year, 1994. He appeared for M. A. (Final) Examination in the year, 1996. For M.A. (Persian) 1995 (Final) Examination five theory papers were conducted from 16.3.1996 to 30.5.1996 and viva voce was conducted from 10.6.1996. The provisional marks-sheet of the petitioner of M.A. (Persian) 1995 Examination was sent by Allahabad University to the Institution on 29.6.1996. It Is contended that the petitioner having passed the examination prior to the date of occurrence of vacancy was entitled to promotion in preference to respondent No. 3.

4. Learned counsel for the respondent contended that the petitioner appeared as a regular student of two years" course of the University In M.A. (Persian) while he was functioning as an Assistant Teacher in L.T, grade in the Institution. He cannot rely upon any certificate obtained by the petitioner having passed M.A. Examination In Persian. It is admitted to the petitioner that he was working as Assistant Teacher in L.T, grade in the Institution and was drawing salary regularly. On the other hand, he got admission in Allahabad University for two years" regular course in M.A. (Persian). The petitioner had not taken any leave from the Institution for joining the University as a regular student. He sought permission from the Management to appear in the examination of M.A. (Previous) in Persian. The petitioner could not have been admitted as a regular student in the University unless he had taken the leave from the Institution.

5. Regulation 99 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act provides that the principal, teachers and other employees are entitled to casual leave, medical leave, extraordinary leave, maternity leave, leave without pay and special leave for personal reasons and such leaves can be granted in accordance with the Government Orders which are applicable in relation to the Government service. In the absence of any leave being granted by the Management/Authority concerned, the petitioner could not have joined the Institution as regular student in M.A, in the University. The State Government grants fund to pay the salary to the teachers. The teachers get salary from the State fund. He is expected to teach the students. If he wants to join any University as a regular student, he is to take leave in accordance with the rules applicable in the matter. He cannot at the same time function as a teacher, draw salary and on the other hand, Join a University as a regular student to obtain a degree for his future career/promotion.

6. The District Inspector of Schools relied upon the Government Order dated 12.7.1975 while disapproving the promotion of the petitioner. The Government Order provides that those teachers who are working as teachers in an institution and want to join any training course e.g., B.Ed., M.Ed., L.T. etc., such teachers have to obtain leave from the Institution so that a substitute may be appointed

in his place. It is further emphasised that it would not be appropriate that a person should function as teacher and also studying as a regular student in an Institution. The rules regarding grant of leave will be applicable as provided under Regulation 99 of Chapter III of the Regulations framed under the U. P. Intermediate Education Act. This Government Order clearly provides that those Assistant Teachers who want to obtain B.Ed, degree and other training courses, have to apply for leave. The same principle Is applicable when a teacher wants to join a course as a regular student in any Institution or University.

7. Learned counsel for the petitioner then contended that the petitioner had obtained the permission from the Committee of Management to appear in M.A. Examination in Persian from the Allahabad University. The Committee of Management has not shown any authority under any law to permit a teacher to join the Institution as a regular student without sanctioning leave for the period of studies.

8. It is next contended that the petitioner had not missed any teaching classes In the Institution and on the other hand, never attended University classes as no classes were conducted in the University. In paragraph 28 of the writ petition, it Is stated that in the University no regular attendance is required. The University permits a candidate to appear In absence of attendance In classes. It is not denied that the petitioner was a regular student for two years" course in M.A. (Persian). The calendar of the University prescribes that attendance is required in the classes. Clause 10 of Chapter 21 of the Allahabad University Calendar lays down the following condition for appearing in the examination as a regular student:

"No student of the University shall be allowed to appear at a University Examination unless he or she has attended 75 per cent of the lectures and the tutorial classes separately in each subject during the course of instruction for the examination. In the case of students studying a Science subject or a subject where Practical classes are held, 75 per cent of attendance during the course of Practical work shall be required. In the case of students preparing for the L.L.B. Examination, attendance at 75 per cent of lectures in each paper and tutorials shall be required, and in case of the students preparing for L.L.M. Examination, attendance"

The fact that the classes are not held in the University on account of strike or other reasons wilt not justify the student to remain absent. The student is expected to attend the classes.

9. The petitioner was not appearing as a private student. Once a teacher takes admission, he is to devote his time and energy in the subjects for which he has joined the University. A teacher who Joins a University as a student will not be Justified to function as a teacher for teaching in the classes in the Institution without devoting his full energy and time in it and on the other hand, also not devoting properly the time and energy while studying the subject for which he

joins the University. The petitioner, in these circumstances, cannot rely upon the degree obtained by him for the purpose of promotion to the lecturer's grade in the Institution in which he is already teaching.

10. The next question is whether the petitioner was eligible for consideration for promotion to the post of lecturer on the date of occurrence of the vacancy, i.e., 30th June, 1996. The University had declared the final result of M.A. Examination on 16th July, 1996. The petitioner was thus not eligible for promotion on the date of occurrence of the vacancy.

11. Learned counsel for the petitioner contended that he had already appeared in the examination of M.A. (Final) in person and if the result of the examination was declared later on, he will be deemed to have passed the examination on the date of occurrence of the vacancy. He has placed reliance upon the decision *Babban Singh v. Deputy Director of Education Vth Region, Varanasi and others.* (1992) 1 UPLBEC 731, wherein it was held that if a teacher appeared in M.A. Examination before the date of vacancy and his result was declared after the date of occurrence of vacancy, it would be deemed that he had passed the examination on the date the vacancy had arisen. The Apex Court in *U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpna,*, held that the eligibility of a candidate is to be considered on the last date of submission of application and if a candidate has appeared in the Examination but the result was not declared by the said date, such candidate shall not be treated as eligible on the date of the last submission of the application. The contention of the respondent therein that she had appeared in the examination by August 20, 1988 but the result was declared on October 1988 and she was declared successful and her further contention that she having been permitted to appear for the selection of the U. P. Public Services Commission, were repelled by the Hon'ble Supreme Court holding that the mere appearance in the examination will not make the applicant eligible unless the result was declared by the date of submission of the application. The view taken by this Court in *Babban Singh's case* (supra) is no longer good law. It is now settled law that the eligibility of a candidate shall be determined on the date of occurrence of the vacancy vide *Nand Kishore v. U. P. Secondary Education Services Commission. Allahabad and others* (1993) 1 UPLBEC 201 and *Kripa Shankar Trpathi v. Deputy Director of Education IVth Region, Allahabad and Others.* (1997) 1 UPLBEC 533.

12. The last submission of learned counsel for the petitioner is that though the result was declared on 16th July, 1996 but the Controller of Examination of Allahabad University, Allahabad has sent a confidential letter dated 29.6.1996, intimating to him the provisional marks-sheet of M.A, (Final) Persian Examination of 1995 of the petitioner. The marks disclosed that the petitioner has passed the examination. This letter is not a declaration of the result of the University. The Controller of Examination was not justified in sending the confidential letter to the Principal of the Institution intimating the marks of the petitioner. The practice adopted by the Controller of Examination of Allahabad

University may lead to malpractice. Secondly, it was only a provisional marks-sheet. The petitioner cannot on the basis of the said confidential letter claim that his result was declared by the University prior to the date of occurrence of the vacancy, Le.. 30th June. 1996.

13. In the result, the Writ Petition No. 4134 of 1997 is dismissed and Writ Petition No. 16261 of 1997 is allowed.

14. Considering the facts and circumstances of the case, however, the parties shall bear their own costs.