
(2011) 04 AHC CK 0328
In the Allahabad High Court
Case No : Writ A No. 23959 of 2011

Kamendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Constitution of India, 1950 — Article 30
Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 5

Citation : (2011) 04 AHC CK 0328

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard learned Counsel for the Petitioner, learned Standing Counsel for Respondents No. 1 to 3 and Sri Sujeet Kumar for Respondent No. 5.

2. Petitioner claims that he was appointed on a class-IV post in Respondent No. 4 institution, which is admittedly a minority institution, under dying-in-harness rules on 22.5.1998. A post of junior clerk fell vacant on 13.8.2009 due to promotion of the incumbent on the post of head clerk. The grievance of the Petitioner is that though the post falls under 50% promotion quota but instead of considering the case of the Petitioner for promotion on the said post, the committee of management is proceeding to fill the same by direct recruitment and has issued an advertisement in this regard.

3. The issue as to whether a minority institution can be compelled to abide by the provision of promotion contained in Regulation 5 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act has been subject matter of adjudication in writ petition No. 9776 of 1984 (N.B. Lal v. District Inspector of Schools and Ors.) decided on 31.8.1984 wherein it has been observed as under:

Learned Counsel for the Petitioner submitted that as the procedure for selection of teachers even of 16FF of the Intermediate Education Act, it implies that in regard to the minority institutions also the quota of 40 per cent reserved for promotees contemplated under Regulation-5 aforesaid shall be maintained. We do not agree with his contention. To a minority institution which is protected under Article 30 of the Constitution, such a restriction can not be read by implication. In our opinion, the mere fact that the procedure prescribed for selection is the same or similar to that applicable to other institutions cannot automatically bring in Regulation 5 of Chapter II. This provision not having been specifically applied to minority institutions the Petitioner cannot base any claim thereon. Learned Counsel for the Petitioner next contended that the right to promotion under Regulation 5 against the 40 per cent quota was a condition of the Petitioner's service and therefore, Regulation 5 should be deemed to be applicable to minority institutions also. As Regulation 5 does not apply to a minority institution, it cannot be treated as forming part of the Petitioner's conditions of service. A minority institution enjoys complete autonomy in respect of selections and appointments of teachers except to the extent specially restricted by the Intermediate Education Act. In the scheme of that Act, we find nothing which may have taken away the right of a minority institution to fill in the posts of teachers by direct recruitment regardless of the restrictions imposed as regards the quota of promotees contemplated in Regulation 5.

4. The aforesaid judgment of the Division Bench has later on been followed by learned single Judge in the case of Ram Narain Lal Gupta v. Committee of Management and Ors. writ petition No. 21301 of 1990 decided on 11.5.1993 and Maithali Sharan Karan Vs. Committee of Management, Christian Intermediate Collage and Others, wherein it was held that the provisions of Regulation 5 of Chapter II of Regulations framed under the U.P. Intermediate Act cannot be enforced against the wishes of the minority, claiming protection under Article 30 of the Constitution of India. Another Hon"ble single Judge in the case of Committee of Management, Shri Kund Kund Jain Inter College v. State of U.P. (writ petition No. 14558 of 2006 decided on 4.4.2006) has also taken the same view.

5. In view of the law being settled by the aforesaid authoritative pronouncements, the provision of Regulation 5 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act being not applicable in the case of a minority institution, the Petitioner cannot claim promotion on the post on the ground that it falls under 50% promotion quota.

6. In view of above, the relief of mandamus prayed for by the Petitioner for considering his case for promotion on the post of junior clerk is not tenable.

7. The writ petition accordingly fails and stands dismissed.