
(1997) 02 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 3791 of 1997

Keshaeo Ram Dargan

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 6

Citation : (1997) 02 AHC CK 0117

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : Dhruva Narayana and Bala Krishna Narayana, for the Appellant;

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This writ petition was filed contending that upon retirement of earlier incumbent one substantive post of Lecturer in History in Kisan Vidyalaya Inter College, Laksar, Haridwar fell vacant. After the vacancy was communicated to the U.P. Secondary Education Service Commission, on 19.7.1990 the Committee of Management passed resolution promoting the Petitioner to the said post on the basis that the Petitioner was seniormost teacher in L.T. Grade in the college possessing requisite qualification. The proposal was forwarded to the Commission but when the post actually remained vacant in spite of notification for almost two and half years, the Committee of Management passed another resolution on 23.11.1991 promoting the Petitioner to the Post of Lecturer in History and forwarded the resolution for approval to the District Inspector of Schools, Haridwar. Such ad hoc promotion of the Petitioner was approved by the order dated 25.1.1991. On 28.11.1996 the District Inspector of Schools passed an order rejecting the proposal of the Committee of Management for promoting the Petitioner as per resolution dated 19.7.1990 on the ground that the result of Petitioner's M.A. final examination was declared on 27.9.1988 and as such the Petitioner was not possessing the minimum qualification for promotion as Lecturer on 1.7.1988 when the vacancy occurred.

2. Learned counsel for the Petitioner contended that for ascertaining sufficiency of the qualification the relevant date is the date of decision to fill-up the vacancy and not the date when the vacancy occurred. In support of such contention, reference has been made to the cases of Sangam Lal Pandey v. State of U.P. and Ors. (1990) 1 UPLBEC 706; Yogendra Nath Singh v. District Inspector of Schools and Ors. (1991) UPLBEC 484; Hans Raj Singh v. U.P. Secondary Education Service Commission and Ors. (1990) 2 UPLBEC 1127 and the case of Smt. Shanti Devi Verma v. Deputy Director of Education and Ors. 1982 UPLBEC 365.

3. Learned counsel for the Petitioner also referred to a case Ashok Kumar Sharma and Another Vs. Chander Shekher and Another, , in support of his contention. On facts, it has been stated that the examination in M. A. was held in May, 1988 whereas the Petitioner appeared and was successful and result was declared on 27.9.1988. Thus, it is stated that on the date of occurrence of vacancy, i.e., 1.7.1988 the Petitioner should be treated also as having due qualification in view of the law as referred to above.

4. Learned counsel for the Respondent-caveator contended that the Petitioner was not having requisite qualification on the relevant date. Learned counsel states that in Regulation 6 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act it has been clearly provided that the date of occurrence of vacancy was the relevant date and the Petitioner was not having due qualification on the said date. It has been also stated that the law holding that the declaration of result relates back to the date of examination if the candidate comes out successful, is no more a good law in view of the law decided in the case of U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, as also the case of Raman Kumar Pandey v. Sukhram Pal Singh 1995 ALJ 28.

5. Learned counsel for the Respondent-caveator also relied upon the case of Prem Balika Rai v. Regional Inspectress of Girls Schools, Pancham Mandal, Varanasi and Ors. (1993) I UPLBEC 141.

6. After considering the respective contentions of the parties and in view of the law decided in the case of U.P. Public Service Commission v. Alpana (supra), the Petitioner cannot be treated as having the due qualification on the date of occurrence of vacancy nor it can be accepted that the qualification was required to be there on the date of decision as contended by the Petitioner. In view of the said finding which has also been followed in the case of Raman Kumar Pandey (supra), the cases cited by the Petitioner are not helping him. In the case of Ashok Kumar Sharma (supra), the Rule 37 of the rules applicable therein specifically permitted consideration of candidates who have appeared in the examination but result was not till then declared. So that judgment also does not help in deciding the present case as Rules applicable herein are different set of rules and since interpreted by the Apex Court in the case of Alpana (supra).

7. In the aforesaid view of the matter, the present writ petition fails and is

dismissed. There will be on order as to costs.