

(2009) 04 AHC CK 0390
In the Allahabad High Court

Krishna Kumar Pathak

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0390

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

Present writ petition has been filed for issuing writ in the nature of mandamus commanding the State Government as well as Director of Education to regularize the petitioner on the post of Principal as per Government policy.

Petitioner is functioning as Ad hoc Principal since 01.07.2000. Petitioner's contention is that on 14.09.2007 for the purposes of extending benefits of regularization to adhoc Principal, decision has been taken to extend the benefit of regularization and for this necessary recommendation was to be made. Petitioner has further contended that pursuant to the same, District Inspector of Schools, have forwarded requisite information to all concerned Division qua the incumbents who are entitled to be regularized. Petitioner submits that till date said proceedings have not been finalized. At this juncture present writ petition has been filed.

Sri V.K.Srivastava, learned Senior Advocate, assisted by Sri Dhiraj Srivastava, Advocate contended with vehemence that once policy decision has been taken then said policy decision has to be implemented and given effect to and State Government cannot be permitted to sit tight over over the matter and requisite direction as has been prayed for be issued.

Countering said submission, Learned Standing Counsel Sri K.K.Chand, contended with vehemence that till date no provision has been incorporated under U.P. Act No. V of 1982 for extending the benefits of regularization to adhoc Principal who

have been appointed w.e.f. 01.07.2000 on wards and without there being any statutory provision regularization cannot be accorded as Section 16 of U.P. Act No. V of 1982 clearly provides that any appointment made in contravention of the provision of U.P. Act No. V of 1982 shall be void as such writ petition as it has been framed and drawn as on date liable to be is dismissed.

After respective arguments have been advanced factual position which is emerging from the pleading mentioned in the writ petition is that meeting has been convened on 26.06.2007 wherein Director of Education and Principal of Pradhancharya Parisad had participated and therein resolution was passed that except for institution wherein selection proceedings has been undertaken, for rest of the institution as per provision as contained, under U.P. Act No. II of 1921 proceedings for regularization be considered and for the same Director of Education Secondary alongwith requisite resolution shall transmit the matter to the State Government and pursuant to the said resolution passed details were to be furnished to the State Government. Thereafter it appears that letter was written by the District Inspector of Schools asking for full particulars in this regard. It appears that thereafter requisite particular have been furnished and as State Government has not taken any decision in respect of extending the benefit of regularization. Prayer has been made to regularize the petitioner on the post of Principal as per Government Policy.

In the present case merely because proposal is in pipe line same does not ipso facto mean that petitioner has got crystallized right for consideration of his claim for regularization. Even the said resolution talked of regularisation in terms of provision of U.P. Act No. II of 1921 and not beyond the same. Section 16 of U.P. Act No. V of 1982 clearly provides that appointment made in contravention of provision of U.P. Act No. V of 1982 shall be void. Petitioner is claiming his regularization on the post of Principal under U.P. Act No. V of 1982. Till date there is statutory provision for extending the benefit of regularization to adhoc Principals who have been appointed after 01.07.2000 and in the absence of any statutory provision no direction can be issued for regularization of petitioner on the post of Principal as per Government Policy, inasmuch as said policy is of no consequence unless and until statutory amendment is incorporated in U.P. Act No. V of 1982 in the same way and manner as Sections 33(iA),(iB) (iC),33B,33C,33D,33E and 33F have been incorporated. This Court in the case of Smt. Kanti Bansal Vs. State of U.P. and others (Civil Misc. Writ Petition No. 20920 of 2009) decided on 20.04.2009 has taken similar view.

Consequently in the facts of the case as on date no relief can be accorded to the petitioner, as such writ Petition as it has been framed and drawn is dismissed.