
(2010) 09 AHC CK 0189
In the Allahabad High Court
Case No : Special Appeal No. 828 of 2008

Manoj Kumar Nagar and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 AWC 1675 : (2011) 1 UPLBEC 784

Hon'ble Judges : Sunil Ambwani, J;Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Kamlesh Shukla and Shri Pradeep Pandey for the petitioners appellants.

2. Shri Manoj Kumar Nagar, Principal and 16 Assistant Teachers of "Nain Singh Junior High School, Shivali, District Bulandshahr are aggrieved by the judgment of learned Single Judge dated 23.1.2008 in Civil Misc. Writ Petition No. 1317 of 2007 Manoj Kumar Nagar and Ors. v. State of U.P. and Ors. by which their writ petition for grant-in-aid to the Junior High School fulfilling the terms and conditions under the Government Order dated 7.9.2006, was dismissed on the ground that the petitioners were working in the institution, which was established to be maintained from its own financial resources, and thus, it cannot expect the State Government to pay salary to the teachers and its employees. Learned Judge found that the judicious discretion of the State Government to choose some of the institutions, which comply with the conditions for grant-in-aid, is not subject to discretion under Article 226 of the Constitution.

3. Shri Kamlesh Shukla and Shri Pradeep Pandey learned Counsel for appellant would submit that the institution was given permanent recognition as Junior High School on 1.7.1985 under the Government Order dated 7.9.2006, by which the State Government had decided to give grant-in-aid to 1000 Junior High Schools

running classes from 6 to 8. The application for grant-in-aid, sent by registered post was received on 4.10.2006, whereas the forms were required to be deposited between 14.9.2006 to 3.10.2006. The name of the Junior High School, in which petitioners are teaching, was not included in the list on the ground that the Junior High School was upgraded to High School, and thus did not qualify for being included in the grant-in-aid list, which was applicable to those Junior High School, running only from Class 6 to 8.

4. In the counter affidavit of Smt. Kamlesh Gupta, Deputy Basic Education Officer, First, Bulandshahr, only these two reasons are given for not including the Junior High School, in which the petitioners are teaching in the grant-in-aid list.

5. Learned Counsel for the appellants has relied upon a judgment in Vidya Devi Laghu madhyamik Vidyalaya, Basti v. State of U.P. and Ors. 2008 (2) ESC 1497 (All) (DB) and the judgment of Supreme Court in SLP (C) No. 4630 of 2008 State of U.P. and Ors. v. Committee of Management, Tapeshwari Saraswati Vidya Mandir and Ors., decided on December 2, 2009 to allege that the upgradation of the school, cannot be taken as a ground to disqualify the school.

6. We find that learned Single Judge has not considered the grievance of the petitioner in the light of the objections taken by the respondents. The petitioners' application was rejected only on the ground, that it was received a day later than the date fixed and that the institution was upgraded as High School.

7. Both the grounds cannot be sustained inasmuch as the application was sent by registered post, before the date fixed for receiving the applications. The State Government was as such not justified in refusing to accept the application. Further we find that inspite of the objections of late arrival, the application was actually considered and the institution was not found qualified to receive the ground on the ground that it was upgraded to Junior High School. In the Supreme Court judgment cited as above, it has now been held that upgradation of the institution as High School cannot be a ground to refuse the grant-in-aid to Junior High School section.

8. The Special Appeal is allowed. The judgment of learned Single Judge dated 23.1.2008 in Writ Petition No. 1317 of 2007 is set aside. The respondents are directed to reconsider petitioners' application in the light of judgments as above very expeditiously, and in any case within a period of two months from the date the petitioners furnish a certified copy of the judgment alongwith the relevant records in the office of the Director of Basic Education, UP.