
(2010) 08 AHC CK 0463
In the Allahabad High Court

Mohd. Rafey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 30

Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF

Citation : (2010) 6 AWC 5630 : (2011) 1 UPLBEC 258

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—The petitioner claims himself to have been appointed as an Assistant Teacher in "Siraje Hind Inter College, Murki Kerakat, District Jaunpur" which according to the petitioner is a minority institution. The post of Assistant Teacher had fallen vacant on the resignation of one Dhananjay Kumar Gupta who had been appointed in the year 2003. It is alleged that the petitioner has been appointed in the Institution following the procedure prescribed u/s 16FF of the U.P. Intermediate Education Act, 1921, which is a declared minority institution under the Government Order dated 13th March, 1995.

2. The prayer in the petition is for a mandamus directing the respondent DIOS to grant approval and take an appropriate decision on the representation filed by the petitioner as a teacher in the institution.

3. A counter affidavit has been filed by the Principal of the institution supporting the cause of the petitioner and another counter affidavit has been filed on behalf of the committee of management to the same effect. A rejoinder has been filed to the same.

4. A counter affidavit has been filed on behalf of the respondent State through the Principal, Government Higher Secondary School alleging therein that Dhananjay Kumar Gupta had resigned way back in 1999 whereas the

advertisement to fill up the post against which the petitioner is claiming appointment came to be published on 22nd May, 2007. In view of this fact the provisions of Regulation 20 of Chapter II were clearly attracted and hence the committee could not have proceeded to make any selections or appointment on the post and the same would lapse.

5. Learned Counsel for the petitioner contends that this amounts to infringing the rights of the minorities and reliance has been placed on the judgment in the case of C/M. St. John Inter College Vs. Girdhari Singh and Others, to substantiate the said submission. A subsequent judgment in the case of Mukesh Singh Chauhan and Ors. v. State of U.P. and Ors. reported in 2006 (64) ALR 33 and a judgment delivered by me in writ petition No. 14558 of 2006 [Committee of Management, Sri Kund Kund Jain Inter College, Muzaffarnagar v. State of U.P. and Ors. reported in 2006(3) ESC 1528] has also been placed to contend that the law as settled therein would leave no room for doubt that the inaction on the part of the respondents and their stand of the post having lapsed is hit by Article 30 of the Constitution of India.

6. Sri Yadav vehemently contends that the provisions of Regulation 20 amount to interfering with the rights of the minority in proceeding to make appointments of their own choice and hence it be declared ultra-vires.

7. Learned Standing Counsel contends that the provisions of Regulation 20 are regulatory in nature and the mandate contained therein in no way amounts to interfering with the minority rights of the petitioner.

8. Having considered the submissions of the pleadings on record including the formal grounds taken in the amendment application, it would be relevant to point out that the interference of the State in the selection and appointment of teachers in a minority institution has been held to be violative of Article 30 of the Constitution of India to the extent as explained in the case of St. John Inter College (supra). However, the said judgment nowhere rules that regulatory measures applied by the State of the nature presently involved are hit by Article 30 of the Constitution of India. It is the selection making process and the choice of the minority which cannot be interfered with by the executive to the limited extent as explained therein. If the incumbent has no right to be considered for the post under the law framed by the legislature then the same would not amount to interfering with the right of the minority to select a teacher of its own choice.

9. To explain the position the relevant Regulation 20 of Chapter II is quoted below:

Reg. 20 of Ch. II: Where the Committee of Management has failed to advertise any sanctioned post which has fallen vacant in accordance with the regulations contained in this Chapter within a period of three months from the date of occurrence of the vacancy, such post shall be deemed to have been surrendered and shall not be filled up unless its creation is sanctioned afresh by the Director.

10. The aforesaid regulation restricts the right of any committee of management whether it be a minority institution or not to proceed to make any appointment in relation to a post which has not been advertised within three months of the same having fallen vacant. The post is deemed to have lapsed and it shall not be filled up unless there is a formal sanction of the Director of Education obtained in this regard afresh.

11. In my opinion, the very language of the Regulation is regulatory and it does not prohibit the making of any appointment restricting the right of the management to select a teacher of its own choice inasmuch as once a period of three months lapses on the occurrence of the vacancy, the management is put to a caveat calling upon it not to fill up the post except with the fresh sanction of the Director of Education. The committee therefore has a right to seek a formal sanction and approval in order to proceed to make an appointment against such a post which is deemed to have been lapsed on account of the expiry of the said period. It is, therefore, clear that the law does not pronounce any absolute prohibition and leaves it open to the committee to make a request to the Director of Education for grant of sanction in order to enable it to proceed to make an appointment on a post which is deemed to have lapsed under the said provision.

12. Regulation 20 therefore is regulatory in nature and this issue as to whether the said provision is discriminatory has already been dealt with in detail by this Court in the decision in the case of *Mumtaj Ahmad v. Deputy Director of Education Allahabad Regiona, Allahabad and Ors.* reported in 1997 (3) ESC 1444 where the issue stands answered against the petitioner. There is no reason to disagree with the view so taken.

13. The contention of the petitioner that the District Inspector of Schools has extended the benefit in a similar case cannot come to the aid of the petitioner inasmuch as in the illustrations cited by the petitioner no such issue was either raised or decided nor has the District Inspector of Schools taken notice of Regulation 20 of Chapter II as raised in the present matter. The petitioner therefore cannot get any benefit thereof as the Principle of equality engrained in Article 14 is not attracted in unequal situations. If the law by way of a restriction mandates that the post will be deemed to have lapsed, then the management has no right to proceed to make selections without sanction or approval of the Director of Education. The restriction is reasonable and rational. The State controls finances as well as allocation of posts and therefore it is inherent in the State to reasonably restrict the procedure of appointments.

14. Even otherwise as explained above Regulation 20 is a regulatory measure and such measures are not hit by Article 30 in view of the law explained by this Court in the case of *Committee of Management, M.M. Inter College, Chandpur, District Bijnor v. Deputy Director of Education III Region Bareilly and Ors.* reported in 1984 UPLBEC 271. The judgment in the case of *Sri Kund Kund Jain Inter College (supra)* has been referred by me doubting the proposition of law laid down therein, on the ground that provisions relating to claim of promotion

are regulatory in nature. The referring order is reported in 2009 (10) ADJ 611, Committee of Management, Swami Lila Shah Adarsh Sindhi Inter College, Agra and Anr. v. State of U.P. and Ors.

15. The rights of the minorities do not extend beyond the pale of statutory measures which regulate appointments on such posts which are funded by public exchequer. The State Government can impose suitable regulatory restrictions with regard to employment and such regulatory measures as presently involved in my opinion do not in any way restrict the right of the minorities to either establish or administer their institutions by making appointments of employees of their own choice.

16. None of the Judgments which have been relied upon by the learned Counsel for the petitioner go to the said extent and they are of no aid on the issue presently involved . The writ petition is therefore misconceived and does not raise any legal issue worth issuing a mandamus as prayed for. Accordingly the grounds raised in the amendment application do not hold water and the same is rejected, the writ petition also stands dismissed.