

(2006) 04 AHC CK 0111

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6663 of 2005

Mukesh Singh Chauhan, Randhir Singh Chauhan and Ramesh Chandra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Constitution of India, 1950 — Article 30

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(4), 16F, 16FF, 16FF(4), 17

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 17, 20

Citation : (2006) 9 ADJ 513 : (2006) 4 ARC 3471 : (2006) 4 AWC 3471

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Y.K. Saxena, for the Appellant; Ravi Ranjan, P.K. Prajapati, Rajesh Kumar and S.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Yogesh Kumar Saxena, the learned Counsel for the petitioners , Sri Ravi Ranjan, the learned Standing Counsel appearing on behalf of respondent Nos. 1,2 and 3 and Sri Rajesh Kumar, Advocate holding the brief of Sri P.K. Prajapati, the learned Counsel appearing for the respondent No. 4.

2. Three teachers in L.T. Grade retired on reaching the age of superannuation on 30.6.99 in a minority institution known as Christian Inter College, Mainpuri. The vacancy arose on 1.7.1999. The Committee of Management vide letter dated 2.9.1999 sought permission from the District Inspector of Schools to advertise three posts in general subject. The District Inspector of Schools vide an order dated 25.9.19099 granted permission for advertising the posts and for the initiation of the selection process for the appointment of Assistant Teachers in L.T. Grade.

3. It transpires that an advertisement were issued in the Hindi Newspaper "Amar

Ujala" dated 29.9.1999 and in the English newspaper "Statesman" on 5.10.1999. Further, a Selection Committee was duly constituted and the said committee recommended the names of the petitioners for appointment as Assistant Teachers. The committee of management issued the appointment letters dated 6.10.2000 in favour of the petitioners and simultaneously sent the papers to the District Inspector of Schools for financial approval.

4. It transpires that the District Inspector of Schools by an order dated 29.3.2003 refused to accord approval to the appointment of the petitioners on the ground that the advertisement was made after three months from the date of the occurrence of the vacancy and, therefore held that the selection was violative of Regulation 20 of Chapter II of the Regulations framed under the Intermediate Education Act 1921. The petitioners challenged the said order of the District Inspector of Schools in Civil Misc. Writ Petition No. 19401 of 2003, which was allowed by a judgment dated 4.10.2003 holding that the advertisement were made within the stipulated period of three months and remitted the matter back to the District Inspector of Schools to decide the matter afresh. The District Inspector of Schools by an order dated 19.1.2005 again rejected the claim of the petitioners on a variety of reasons. Consequently, the present writ petition.

5. The District Inspector of Schools in the impugned order has held that the advertisement was not issued as per the procedure contemplated under Regulation 17[a] of Chapter II of the Regulations framed under the Intermediate Education Act and that the post ought to have been advertised subjectwise instead of categorywise. The District Inspector of Schools further held that the selection proceedings were against the provisions of Section 16FF of the Intermediate Education Act read with Rule 17[a] to 17[g] of the Regulations framed under the Intermediate Education Act, and further held that the proceedings of the Selection Committee were not placed before the District Inspector of Schools. The District Inspector of Schools further found that the appointment given to the petitioners was prior to the approval sought from the District Inspector of Schools and therefore, the Committee of Management had committed a gross irregularity.

6. In my view, the District Inspector of Schools has proceeded on erroneous grounds and has gone on a witch hunt with the sole purpose of rejecting the claim of the petitioner for ulterior reasons best known to him. Initially, the District Inspector of Schools had refused to approve the appointments of the petitioners on the ground that the advertisement was made in violation of Chapter-II, Rule 20 of the Regulations framed under the Intermediate Education Act and, now by the impugned order, has taken out new grounds, which were not available to him when the initial order was passed by him. In the opinion of the Court, the order passed by the District Inspector of Schools appears to be malafide.

7. Section 16-FF of the Intermediate Education Act 1921 reads as follows:

16-FF. Savings as to minority institutions--

[1] Notwithstanding anything in Sub-section [4] of Section 16-E, and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in clause [1] of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management:

Provided that one of the members of the Selection Committee shall-

a] in the case of appointment of the Head of an Institution, be an expert selected by the committee of Management from a panel of experts prepared by the Director;

b] in the case of appointment of a teacher, be the Head of the institution concerned.

[2] The procedure to be followed by the Selection Committee referred to in Sub-section [1] shall be such as may be prescribed.

[3] No person selected under this section shall be appointed, unless-

[a] in the case of the Head of an Institution the proposal of appointment has been approved by the Regional Deputy Director of Education ; and

[b] in the case of a teacher such proposal has been approved by the Inspector.

[4] The Regional Deputy director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

[5] Where the Regional Deputy Director of education or the Inspector, as the case may be, does not approve of a candidate selected under this section, the committee of Management may , within three weeks from the date of receipt of such disapproval, make a representation to the directory in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of a teacher.

[6] Every order passed by the Director or the Regional Deputy Director of Education on a representation under Sub-section [5] shall be final.

8. Clause (4) of Section 16-FF indicates that the authority could not withhold the approval for the selection made where the persons selected possesses the minimum qualifications prescribed and was otherwise eligible. The impugned order does not speak about the qualifications of the petitioners nor does it indicate that the petitioners did not possess the requisite qualifications. In the absence of a finding in this regard, the District Inspector of Schools was therefore required to grant the approval of the appointments of the petitioners and could not go into the intricacies or irregularities alleged to have been made in the selection process, which otherwise did not exist, as would be clear

hereinafter. In my opinion, the provision contemplated under Regulation 17 of Chapter II of the Regulations framed under the Intermediate Education Act, in my opinion, could not override Sub-clause) of Section 16-FF of the Intermediate Education Act. In the opinion of the Court, Regulation 17 is only a guideline and any irregularity committed would not make a candidate ineligible when he was otherwise eligible and qualified for an appointment as contemplated under Sub-section [4] of Section 16-FF of the Act.

9. In *Karunesh Kumar Singh v. State of U.P. and Ors.* in Writ Petition No. 35525 of 2004, decided on 27.5.2005, a learned Single Judge of this Court held-

The scheme of the U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder for minority educational institutions provide for qualifications, eligibility and a method of selection. Once these tests are satisfied, the approval of a teacher who is qualified and eligible cannot be withheld. Section 16FF[4] secures the guarantee under Article 30[i] of the Constitution of India, and is in consonance with the rights of the minority to be established and administer educational institution. The Regulations are made under the Act. These cannot override or be inconsistent with the mandatory provisions of the Act. At best it may be said that the Regulation for minority institution are by way of guidelines to be followed for the benefit of the selection committee. Any further restriction namely, the assessment of comparative merit and to give reasons for selection from amongst those who are qualified and eligible will effect the choice of the selection committee and will infringe the freedom guaranteed under Article 30[i] of the Constitution of India.

10. I am in complete agreement with the aforesaid decision.

11. The District inspector of Schools further held that previous approval was not sought by the Committee before issuing the appointment letter. In *Smt Ranjana Agrawal v. Regional Inspectress of Girls Schools 1994 AWC 1108* it was held that from a reading of the Regulations, it could not be inferred that no appointment could be made before an approval was granted by the District Inspector of Schools and that a candidate could be appointed in anticipation of the approval being granted by the District inspector of Schools.

12. From the aforesaid, it is clear that Regulation 17 of Chapter II of the Regulations framed under the Intermediate Education Act, are by way of guidelines to be followed by the Selection Committee and an irregularity committed by the Selection Committee could not make the appointments invalid, if the candidate was otherwise eligible as per Section 16-FF[4] of the Intermediate Education Act 1921.

13. In any case, the ground alleged by the District Inspector of Schools to the effect that the procedure evolved u/s 17 has been violated is patently erroneous. The impugned order indicates that the proceedings of the Selection Committee was not placed before the District Inspector of Schools. The petitioners in paragraph-8 of the writ petition had categorically stated that all the papers were

sent to the District Inspector of Schools. This paragraph has not been denied by the respondent in paragraph-8 of the counter affidavit. The stand taken by the petitioners has also been supported by the committee of Management. In view of the aforesaid, the contention of the respondents that the proceedings of the Selection Committee were not sent to the District Inspector of Schools is patently erroneous.

14. In view of the aforesaid and in view of Sub-clause [4] of Section 16FF of the Act, which contemplates that the power of the Regional Deputy Director of Education or the District inspector of Schools is restricted to withhold the approval of the selection made only when a candidate does not possess the prescribed minimum qualifications and is not eligible and in the absence of any finding of this aspect by the authority, the Court is of the opinion, that the impugned order cannot be sustained, and is, therefore quashed. The writ petition stands allowed.

15. It is pointless to send the matter back to the District inspector of Schools for reconsideration, as on two occasions the District inspector of Schools has gone on a witch hunt and rejected the claim of the petitioner. Consequently, a mandamus is issued to the District Inspector of Schools, Mainpuri, respondent No. 3 to grant approval to the appointment of the petitioners within one month from the date of production of a certified copy of this order.