

(2004) 05 AHC CK 0197

In the Allahabad High Court

Case No : Special Appeal No's. 522, 523, 525 and 526 of 2004

Netram Gangwar and Others

APPELLANT

Vs

State of U.P., Director of Education (Basic), Zila Basic Shiksha
Adhikari/Visheshagya Basic Shiksha Adhikari and Principal,
District Institute of Education and Training

RESPONDENT

Date of Decision : 14-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 5 AWC 4056

Hon'ble Judges : M. Katju, J;K.N. Ojha, J

Bench : Division Bench

Advocate : K.D. Tripathi, for the Appellant; P.D. Tripathi and S.C., for the
Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—These appeals have been filed against the judgment of the learned Single Judge dated 9.4 2004.

2. We have heard the learned counsel for the parties and have carefully perused the judgment of the learned Single Judge

3. The brief facts of the case are that the appellants who were initially appointed as Assistant Teachers in Primary Schools on substantive posts were promoted as Head Masters or Assistant Teachers in Junior High Schools. The appellants were appointed on deputation as Coordinators and Assistant Coordinators at the Block Resource Centres or at Nyaya Panchayat Resource Centres under "U.P. Education for All" project launched by the State Government in collaboration with the Central Government and World Bank, with the object of providing education to all children between 6 to 11 years They were given training at the District Institutes of Employment and Training and were appointed on deputation a pay scale higher than the pay scale drawn by them as Head Masters in Junior High Schools The G.O. dated 29.6.2001 amended the earlier Government Order dated

1.9.2001 providing for procedure for appointment of Coordinator and Assistant Coordinator. The G.O. dated 26.9.2002 provided for a maximum period of two years as Coordinator Assistant Coordinator after which fresh selection was "to be made. For block resource centre the teaching experience of Coordinator and Assistant Coordinator has been revised and that five years teaching experience have been made compulsory for Coordinator in Nyaya Panchayat Resource Centre. A further restriction has been placed for those persons who have less than ten years to retire, and they shall not be considered for selection on these posts. The Special. Basic Shiksha Adhikari issued an order informing that the services of the Coordinators and Assistant Coordinators in DPEP scheme shall come to an end with the closure of the; scheme on 30.6.2003 and that all the Coordinators and Assistant Coordinators shall be repatriated and must hand over charge to the Assistant District Education Officer. On 7.5.2003 an advertisement was issued inviting applications for selection to the post of Coordinators and Assistant Coordinators in Block in Resource Centre and Nyaya Panchayat Resource Centre in accordance with the Government Order dated 29.6 2002.

4. It may be mentioned that the "Education for all" project came to an end on 31.3.2005 and a new scheme called Sana Shiksha Abhiyan for providing education to children up to the age of 14 years was launched. This scheme was different from the earlier scheme, and hence those appointed on deputation in the earlier scheme were repatriated their parent department.

5. The learned Single Judge held that the eligibility for appointment as Coordinator / Assistant Coordinator has been changed in the new scheme, namely, Sarva Shiksha Abhiyan and all the petitioners in the writ petition were appointed on deputation and their repatriation to the substantive post of Head Master and Assistant Teachers will not cause any loss to them. He has also recorded the statement of the learned counsel for the respondent that if the petitioners are eligible they shall be considered for fresh engagement without any preference.

6. Learned counsel for the appellant submits that the learned Single Judge has erred in law by holding that both the schemes have different objects and purpose and that the appellants appointed on a higher pay scale were on deputation and could be repatriated. The change of criteria will make some of the appellants ineligible to apply and in fact they have been reverted without following the due procedure in law and giving them any opportunity of hearing.

7. The District Primary Education Programme was initiated in the State of U.P. with the aid of the Central Government and World Bank to provide education to all the children up to the age of 11 years. The Education for All scheme was initiated to provide for involvement of the community and to decentralise the primary education. With the help of Gram Panchayats by constituting Gram Shiksha Shiksha at the grass root level. In order to supervise and to carry out the objects of the scheme Block Resource Centres were set up at the Gram Panchayat level. The District Institute of Education and Training was given the

responsibility to supervise and to coordinate the objectives and funding of the scheme at the district level and State Institute of Education and Training at the State level.

8. The District Panchayat Education Programme, provided for improvement in standards of education achieving quality by bringing substantial changes in the method of, education, providing for a balance between the number of students and teachers, providing for material and details for education and for in service training for teachers for primary education. The Block Resource Centres and centres at Nyaya Panchayat level were setup to provide academic input for successful implementation of the scheme, and to motivate the teachers for achieving the targets of providing for inspections monthly meetings, competitions, work shops as functional units. The Head Masters and Teachers of the schools run by Basic Education Board were invited to be appointed after selection as Coordinators Assistant Coordinators and at the BRC / NPRC for achieving the aforesaid objectives. The scheme was spread out in the second and third phase covering the entire State.

9. The DPEP scheme has been replaced by Sarva Shiksha. Abhiyan in the continuing effort to universalise the elementary education by community ownership of the scheme, where it is responsible, for improving the quality of basic education all over the country in the attempt to provide opportunity for improving capabilities of the poor children through community owned quality education. It involves Panchayat Raj institutions, the scheme management committee, village and slum level education committees. parents teachers association, mothers teachers association, and the tribal autonomous councils, in the management of elementary schools. The effort is to achieve the target in partnership between the Central and State Government. The aims and objects of the scheme as provided in the guidelines issued by State Institute of Education and Management Training, Allahabad, are to provide useful and relevant elementary education for all children in 6 to 14 years of age group by 2010; to bridge social and gender capabilities with active participation of the community in the management of the school; to allow children to learn and master the natural environment in a manner which allows harnessing of their potential both spiritually and materially by value based learning. The object is to encourage and tie all children to school to complete 5 years of primary school by 2007 and 8 years of elementary schooling by 2010. The focus is elementary education by quality which emphasizes education for life and to bridge the gender and social category gaps at Primary stage by 2007, with elementary education level by 2010 and to universalise retention by 2010. The scheme provides for setting up block resource centre/cluster resource centre at block levels. The scheme also provides for identification of BRC/NPRC personnel after intensive selection process in the preparatory phase and to train such personnel.

10. The DPEP programme targeted children up to 11 years and to achieve the target for increasing the enrolment of children to primary Schools and more

particularly enrolment of girl children and to improve the gross enrolment ratio at the primary stage. There were problems of drop out, reduced low level of learning achievements and low participation of girls and other disadvantages. It was found that out of 200 million children in the age group in the country 59 million children are not attending schools out of which 35 million are girls. The surveyors found that there were habitations in the country without schools within a kilometre and there were systemic issues common in all communities like inadequate school and infrastructure, poor functioning schools, high teacher absentees, large number of Vacancies, poor quality of education and inadequate funds. In order to achieve the elusive goal of universalisation of elementary education with 100% enrolment and to achieve the target of National Policy of Education 1986 for providing compulsory education to all children up to 14 years of age and to achieve the goals set but by the Supreme Court in Unni Krishnan's (1993) case which recognized the right of free! education to every child of the country until he completes the age of 14 years the Sarva Shiksha Abhiyan was initiated. This programme is in continuation of the previous programme with expanded targets. reach and objectives. In the Sarva Shiksha Abhiyan the provisions of financial resource planning and method of achievement of targets are different from the earlier programme.

11. The appointment letters issued by the District Basic Shiksha Adhikari specifically provided that they were appointed on deputation on a purely temporary arrangements which can come to an end at any time without any prior information. The appointment order made it clear that the deputation is up to the period of the scheme or up to 31.3.2003 whichever is earlier and the post shall be treated to be sanctioned only till that time.

12. The learned Single Judge relied on the decision of the Supreme Court in Jaipal and Others Vs. State of Haryana and Others, in which the Supreme Court considered the question of payment of equal pay and for regularisation of the instructors under the Adult and Non-Formal Scheme under the Education Department of Haryana. The Supreme Court did not accept the claim for regularisation on the ground that project of Adult and Non Formal Education was temporary and was likely to last up to 1990. In M.D., U.P. Land Dev. Corpn. and Another Vs. Amar Singh and Others, the Supreme Court observed that the employees cannot claim regularisation as a matter of right alter the project came to a close.

13. The appellants were on deputation and they have been repatriated to their substantive post. As rightly held by the learned Single Judge, the petitioners have no right to continue under the new scheme. They were on deputation, and it is well settled that a person on deputation has no right to continue on deputation, and he can be repatriated to his parent department at any time vide Kunal Nanda Vs. Union of India and Another, ; Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others, ; Dr. O.P. Singh v. State of U.P. and Ors. 2003 (5) AIR 44; Rameshwar Prasad Vs. Managing Director U.P.

Rajkiya Nirman Nigam Limited and Others,

14. The petitioners were not held out any assurance that they would be engaged as Coordinator / Assistant Coordinator for an indefinite period. The scheme was treated to be sanctioned up to the year 2000 by the G.O. dated 18.8.1984 which was extended upto 31.3.2003. The appointment order specifically provided that he was appointed on deputation on a purely temporary arrangement which could come to an end at any time without prior, intimation The appointment order made it absolutely clear that the deputation is upto the period of the scheme or upto 31.3.2003 whichever is earlier, and the post shall be treated to be sanctioned only till that time.

15. All the eligible appellants have been given the right to be considered" under the new scheme without any preference. The learned Single Judge has rightly found that the scheme provided for revised eligibility terra and selection proceeding and that the appellants right under Article 14 and 16 of the Constitution have not been violated.

16. The appeal is dismissed