
(1994) 12 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 10584 of 1994

Paras Nath Pandey and Others etc.etc.

APPELLANT

Vs

Distt.Basic Edu.Office,Sonbhadra and Another

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 9
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 33A

Citation : (1994) 12 AHC CK 0060

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—There are common questions of law and fact involved in these writ petitions and they are being decided by a common judgment.

2. Bina Project Educational Society, Bina Project, Sonbhadra is a registered Society which runs Bina Project Primary School, district Sonbhadra (hereinafter referred to as the school). The school is recognised under the provisions of U. P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975. The school, however, is not on the grantin aid list of Government. The salary of the teacher? is being paid by the Committee of Management of the school.

3. Petitioners, in all these writ petitions, were appointed for a fixed period for short term. In Writ petition No. 21279 of 1994 petitioners Nos. 1 and 2 were initially appointed on the consolidated salary of Rs. 700 per month by an order of appointment letter dated 22101990 which was upto 3041991. They were again appointed on 181991 on consolidated salary of Rs. 700 per month upto 3041992. The third appointment letter was given on 2071992 on consolidated salary of Rs. 800 per month upto 551993 and the last appointment letter was given on 1471993 for the period upto 30494. Similarly other petitioners were appointed

for a fixed period on consolidated salary.

4. The Committee of Management of the school issued advertisement on 29.5.1994 to fill up the vacancies of teachers in the institution fixing 31.7.1994 as the date of interview. The date of the interview was, however, changed to 10th July, 1994 by a notice dated 23.6.1994. Petitioners filed writ petition challenging the advertisement dated 29.5.1994 and the notice dated 23.6.1994 on the ground that petitioners should be treated as regularly appointed teachers and no appointment should be made on the post on which they were working.

5. In Writ Petition No. 13881 of 1994 the petitioners prayed that a mandamus be issued commanding respondents to pay salary, dearness allowance and additional dearness allowance to them which are paid to the teachers of U. P. Basic Education Board and further respondent No. 2 be directed to give residential quarters to the petitioners.

6. Civil Misc. Writ Petition No. 16566 of 1994 has been filed by the petitioners on the allegation that they were appointed for a fixed period and on a consolidated salary per month by the management and their services may be regularised with effect from 1st May, 1994.

7. I have heard Sri Amar Nath Tripathi, Advocate and Sri D.S.M. Tripathi, Advocate for the petitioners at length in their respective Writ Petitions and Sri S. M. Dayal, Advocate for the respondents.

8. It is admitted that the school is not getting grant-in-aid from the U. P. Basic Education Board or the State Government. It is, however, recognised under the provisions of 1975 Rules. Though the institution is unaided the service conditions of the teachers of the school shall be governed by the provisions of 1975 Rules inasmuch as the society has taken recognition from the U. P. Basic Education Board for the school.

9. Rule 9 provides for appointment of teachers and Rule 11 provides for dismissal and removal of teachers. Rule 9 reads as under :

"9. No person shall be appointed as teacher or other employee in any recognised school unless he possess, such qualification as are specified in this behalf by the Board and for whose appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. In case of vacancy the applications for appointment shall be invited by the concerned management through advertisement in at least two newspapers (one of them will be daily newspaper), giving at least thirty days time for submitting application. The date of interview may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post, giving them at least 15 days time from the date of issue of the letter. The Management shall not select any untrained teacher and if the selected candidate is trained one, he will be approved by the Basic Adhikari,"

Rule 9 provides that in case of vacancy the applications for appointment shall be

invited by the concerned management through advertisement in atleast two newspapers (one of the will be daily newspaper) giving at least thirty days time for submitting application. The date of interview may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post, giving at least 15 days time from the date of issue of the letter. The management is to select only trained teachers. The appointment letter shall be issued only after the management has obtained prior approval in writing from the Basic Shiksha Adhikari. The appointment, if any, made without approval of the Basic Shiksha Adhikari, a teacher appointed to such post cannot claim any right to function as teacher in a recognised school.

10. In *Arya Kanya Pathshala and another v. Smt. Manorama Devi Agmhotri and others*, 1971 ALJ 983, it was held that if an appointment has been made without prior approval of the Regional Deputy Director of Education as provided under Section 16F (1) of U. P. Intermediate Education Act, such appointment is no appointment at all in the eye of law and in case any order of termination of service is passed by the management, no prior approval is required under Section 15C (3) of U. P. Intermediate Education Act, 1921.

11. Admittedly the petitioners were not appointed with prior approval of the Basic Shiksha Adhikari in writing as provided under Rule 9 of Rules 1975. It is also not disputed that no regular selection had taken place as provided under Rule 9. The petitioners cannot, therefore, claim any right to continue on the post on the basis of appointment letter issued to them. They were appointed for a fixed term on a fixed salary. Their appointments will be governed by law of Contract.

12. Sri D.S.M. Tripathi, learned counsel for the petitioners, urged that the school has been upgraded to High School and therefore provisions of U. P. Intermediate Education Act is applicable and no order terminating the services of the teachers can be passed without prior approval of the District Inspector of Schools. He placed reliance upon Committee of Management Sri Sukh Devi Uccharat Madhyamik Vidyalaya v. Director of Education. U. P. and others, 1993 ALR 156.

13. In the present case it is admitted that appointment was not made either according to the provisions of Rules 1975 or U. P. Intermediate Education Act, 1921. The petitioners, therefore, cannot claim any right to continue on the post under the provisions of Rules 1975 or U. P. Intermediate Education Act, 1921 or Act No. 5 of 1982.

14. The next submission of the learned counsel for the petitioners is that the petitioners have been teaching in the institution regularly and there was artificial break in service. Petitioners should be treated as continuing in service without taking into consideration the break in service. He placed reliance upon *Rattan Lai v. State of Haryana*, AIR 1987 SC 478, and *Rabinarayan Mohapatra v. State of Orissa and others*, AIR 1991 SC 1286.

15. Even assuming that there was no break of service still the petitioners do not

get any statutory protection under the provisions of any law for regularisation of their services. They were appointed on a contract for a fixed period. They cannot claim to continue in service as permanent teacher.

16. Sri A. N. Tripathi, learned counsel for the petitioners, urged that the selection was bad. It is alleged that petitioner No. 1 in Writ Petition No. 21279 of 1994 appeared for selection. The first submission is that the advertisement was to be made in two daily newspapers but in Para 9 of the writ petition there is no averment that advertisement was not made in any daily newspaper. He has alleged that advertisement was published in a weekly newspaper. It does not mean that advertisement was not made in the daily newspaper. The petitioner has not alleged that the petitioner could not appear for selection as he had no knowledge. They had full knowledge of the advertisement and the selection proceedings.

17. The second submission is that the Committee of Management conducted written examination while under Rule 9 of the Rules of 1975 there is no provision for taking written test. There is no bar that the Committee of Management cannot take written test of the candidates. It is on the other hand better to conduct written test instead of only interviewing the candidates for the purpose of selection.

18. The third submission is that the date of interview was fixed for 3rd July, 1994 in the advertisement published in the newspaper but the date was changed to 10th July, 1994 by pasting a notice on the notice board of the school. It is not the case of the petitioners that they had appeared for selection in the written test but they were prevented from appearing in the interview only because of change in the dates. The selection which has been conducted by the school will be examined by the District Basic Education Officer before the grant of approval for making appointment.

19. The learned counsel for the petitioner assailed the selection conducted by the Committee of Management, Bina Project Primary School on the ground that the U. P. Legislature passed an Act known as U. P. Secondary Education Service Commission and Selection Board Act, 1992 being U. P. Act No. 1 of 1993, whereby Section 16 of U. P. Act No. 5 of 1982 was substituted. The amended provision provided that the appointment to a post shall be made by the Management only on the recommendation of the Board. The Act contemplates the appointments relating to High Schools and Intermediate Colleges and has no application to the appointments to Junior Basic Schools which are governed by the provisions of U. P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975.

20. It was further contended that Secretary had no authority to terminate the service of the petitioners. There is no denial that the appointment letters were issued by the secretary and secondly, the appointment letters were for a fixed term. It does not require any order of termination. After expiry of the period, the

petitioners have no right to continue to work as teachers in the institution.

21. The last submission of the learned counsel for the petitioners is that the petitioners are entitled to regularisation of their services under Section 33A of U. P. Secondary Education Services Commission and Selection Board Act, 1982 (Act No. 5 of 1982) (as amended from time to time). As stated above the appointments of the petitioners were not under the Rules 1975 or under the provisions of U. P. Intermediate Education Act, 1921 or U, P. Act No. 5 of 1982, the provision of Section 33A were on certain terms and conditions and they are not entitled to regularisation of their services on the facts and circumstances of the present case.

22. In Writ Petition No, 13881 of 1984 it has been urged that the petitioners should have been paid the salary which was payable to the teachers of U.P. Basic Education Board as provided under Rules, 1975. This provision is applicable only when the appointment is made in accordance with Rules, 1975. As the petitioners were not appointed under Rules, 1975 they cannot claim that they should be given salary which is payable to a teacher of U. P. Basic Education Board. They were appointed on fixed term and fixed salary of Rs. 700 per month. Every year they were being appointed and they had accepted the terms and conditions of the respondent. Subsequently they cannot claim a higher salary.

23. In view of the above, there is no merit in these writ petitions. The writ petitions are accordingly dismissed. The interim stay orders granted by this Court are hereby vacated. Parties, however, shall bear their own costs.