

(1999) 10 AHC CK 0125
In the Allahabad High Court
Case No : C.M.W.P. No. 17734 of 1999

Prabhat Tandon

APPELLANT

Vs

Director of Technical Education, U.P. Kanpur and others

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 — Section 22(E), 22F, 23
Uttar Pradesh Pravidhik Shiksha Regulation, 1962 — Regulation 14, 14(6), 14(7)

Citation : (2000) 1 AWC 215

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant; Rahul Sripat and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and D. R. Chaudhary, JJ.—Heard Sri Ashok Khare learned counsel for the petitioner and Sri Rahul Sripat for respondent Nos. 2 and 3, and learned standing counsel for respondent No. 1.

2. By means of this writ petition, the petitioner has challenged the impugned order dated 17.3.99 and the order appointing respondent No. 3 as Principal/Director. Institute of Engineering and Rural Technology, Allahabad (hereinafter referred to as the Institute) copy of which is Annexure-CA 2 to the counter affidavit. It has also been prayed that the petitioner be appointed in place of the respondent No. 3 as the Principal Director of the Institute.

3. The Institute is a recognized institution governed by the provisions of the U, P. Pravidhik Shiksha Adhlniyam. 1962 (U. P. Act No. 17 of 1962) and It is recognized by the Board of Technical Education, U. P. The total funding of the Institute is by the State Government, and it Is an Instrumentality of State. Appointment of the Principal is made u/s 22E of the Act, and the procedure for appointment is given in Section 22F. These have been quoted in paragraphs 11 and 12 of the writ petition.

4. u/s 23 of the Act, the Board can make Regulations. The Regulations made u/s 23 have been notified on 14.7.97, copy of which is Annexure-1 to the petition. Regulation 14 of the said Regulations prescribes the procedure for direct recruitment of Principal and Teachers. Under Regulation 14 (2), a Selection Committee is constituted. This Committee has to Invite applications and call the candidates for Interview. Regulation 14 (6), with which we are concerned, states :

"The Selection Committee shall prepare a list of candidates in order of their proficiency as disclosed by the marks obtained by each candidate in the interview if, two or more candidates obtain equal marks, the candidate senior in age shall be placed higher in the list."

5. In para 25 of the petition, it is alleged that for holding regular selection of Principal/Director of the Institute, an advertisement dated 19.8.98 was issued by the Authorized Controller/Commissioner, Allahabad Division. Relevant extract of the same is Annexure-2. The petitioner applied in response to this advertisement, and after screening of the candidates, he was called for the interview on 30.1.99 on which date he appeared before the Selection Committee.

6. The select list prepared by the Selection Committee was then forwarded to the Director of Technical Education for approval, as required by Regulation 14 (7). On the papers so submitted, the Director of Technical Education passed an order on 17.3.99 according approval to the appointment of respondent No. 3. On the basis of this approval, the Authorized Controller issued the impugned order of appointment in favour of respondent No. 3.

7. In para 44 of the writ petition, it is alleged that the marks obtained by the petitioner in the interview and that obtained by respondent No. 3 are the same. It is also alleged that the petitioner is senior in age to respondent No. 3. The petitioner was born on 17.8.48. while respondent No. 3 was born on 20.12.58.

8. In paragraph 42 of the petition, it is mentioned that a circular dated 17.9.90, copy of which is Annexure-8 to the petition, was issued by the Director of Technical Education in which it was mentioned that for appointing a Principal, the criteria should be the computation of marks obtained in the interview and also marks awarded tn academic qualifications and experience. However, subsequently the Regulations of 1996 were framed which were notified vide notification dated 14.7.97 (copy of which is Annexure-1 to the petition). Under Regulation 14 (6) of the said Regulations, the selection is to be made on the basis of proficiency as disclosed by marks secured in the interview. Hence, in our opinion, the circular of 17.9.90 stands superseded by the aforesaid Regulations.

9. Counter-affidavits have been filed on behalf of respondent Nos. 2 and 3. In his counter-affidavit, respondent No. 3 has only stated that he was interviewed and appointed, and his appointment is legal. In the counter-affidavit of respondent No. 2. it is alleged in para 15 that the marks were awarded in accordance with the circular dated 17.9.90 (Annexure-8 to the petition). We have already held

that the circular dated 17.9.90 has been superseded by the Regulations of 1996 (notified on 14.7.97).

10. In para 15 of the counter-affidavit, it is admitted that the marks of the petitioner and respondent No. 3 are equal, except that respondent No. 3 has been given higher marks only because he obtained higher marks in the B. Tech/ B. E. examination. However, in our opinion, the marks in B. Tech/B. E. were to have been taken into consideration only if the circular of 17.9.90 had remained in force. The said circular had, in our opinion, been superseded by the Regulations notified on 14.7.97, and the said Regulations have statutory force as they amount to delegated legislation.

11. Since the petitioner was 10 years senior in age to respondent No. 3 and they had obtained the same marks in the interview, the Impugned order is clearly in violation of Regulation 14 (6).

12. In this circumstances, this writ petition is allowed. The appointment order dated 17.3.99 appointing respondent No. 3 as Director/Principal of the Institute of Engineering and Rural Technology, Allahabad, is quashed. The respondent No. 2 is directed to appoint the petitioner as Principal/Director of Institute of Engineering and Rural Technology. Allahabad forthwith.

13. Writ petition is allowed. No order as to costs.