

(2011) 09 AHC CK 0550

In the Allahabad High Court

Case No : C.M.W.P. No. 16406 of 2011 with C.M.W.P. No. 27992 of 2011

Prashant Kumar Katiyar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2012) 132 FLR 505

Hon'ble Judges : Sunil Hali, J; R.K. Agrawal, J; A.P. Sahi, J

Bench : Full Bench

Advocate : L.K. Trigunait in Writ Petition No. 16406 of 2011 and Ashok Khare in Writ Petition No. 27992 of 2011, for the Appellant; P.S. Baghel and Additional Advocate General, for the Respondent

Judgement

R.K. Agrawal, A.P. Sahi and Sunil Hali, JJ.—We have heard Sri L.K. Trigunait in Writ Petition No. 16406 of 2011 for the petitioner, Sri Ashok Khare learned Senior Counsel for the petitioner in Writ Petition No. 27992 of 2011 and Sri P.S. Baghel learned Senior Counsel for the other side. Sri Zafar Naiyar learned Additional Advocate General has appeared for the State. The reference made by the learned Single Judge vide order dated 7th April, 2011 is to the following effect:

(a) Whether a dependent can claim appointment against a post of teacher even after the post has been requisitioned to the Selection Board in view of the Regulations 101 to 106 of Chapter III of the Regulations framed under the Intermediate Education Act merely because he has qualifications for the same, specifically when on the date of requisition, no such application for compassionate appointment was pending.

(b) Whether Article 16 of the Constitution of India will be applicable to the teachers working in recognized Intermediate Colleges which are under the private management even if aided by the State Government.

(c) Whether the judgment of the Division Bench of this Court in the case of Ved

Prakash (supra) lays down the correct law.

While placing the matter before the Full Bench, Hon"ble the Chief Justice on 15th July, 2011 passed the following order:

Matter be referred to the Full Bench presided over by a D.B. presided over by R.K. Agrawal, J. and A.P. Sahi, J. on questions (a) & (c) only.

Sd/ Chief Justice 15.7.2011

2. Advancing his submissions, Sri Ashok Khare learned Senior Counsel pointed out that Question No. (c) refers to the correctness of the Division Bench decision in the case of Ved Prakash Vs. Hari Krishna Singh and Others , Special Appeal No. (30) of 2011, decided on 19th January, 2011. The said decision in turn refers to the decision of a learned Single Judge in the case of Raja Ram v. State of U.P. and others 2010 (78) ALR 118, decided on 30th November, 2009.

3. The judgment in the case of Ved Prakash (supra) by the Division Bench which is in conflict with the decision in the case of U.P. Secondary Education Service Selection Board Vs. State of UP and Others, , was decided on 21st January, 2011 upholding the decision of the learned Single Judge in the case of Raja Ram (supra). It is evident that this judgment came two days after the judgment in the case of Ved Prakash. These two judgements therefore have not noticed each other as the judgment in the case of Ved Prakash (supra) was delivered at Lucknow whereas the judgment in the case of U.P. Secondary Education (supra) came to be delivered at Allahabad within a short interval of a couple of days.

4. The subsequent judgment in the case of U.P. Secondary Education (supra) upholds the very same judgment of the learned Single Judge in Raja Ram's case (supra) which had been partly disapproved by the Division Bench in the case of Ved Prakash delivered a couple of days earlier.

5. Sr. Khare therefore submits that the aforesaid conflict having arisen, Question No. (c) referred to before the Full bench deserves to be reframed so as to resolve the issues raised on a wider canvas involving the interpretation of the relevant provisions of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and the U.P. Secondary Education Services Selection Board Rules, 1998, Rule 11 and Rule 13(5) thereof in particular, which have arisen on account of the aforesaid conflicting views expressed by the two Division Benches. He submits that this would fall within the scope of reference already made by the learned Single Judge and Hon"ble the Chief Justice, and accordingly the questions be reframed to the aforesaid extent.

6. Chapter V Rule 6 of the Allahabad High Court Rules, 1952 empowers Hon"ble the Chief Justice to constitute a Larger Bench to decide a case or a question formulated by a Bench hearing a case. The provision allows a Larger Bench to hear the matter to the extent of the reference formulated by the Bench hearing the case, and as such the scope of the reference cannot be expanded while hearing the reference. However, the question can be reframed if it falls within the

scope of the reference.

7. Having noticed what has been stated above we are of the opinion that the submission raised by Sri Khare deserves to be accepted to which Sri Zafar Naiyar learned Additional Advocate General on behalf of the State has no objection. This Bench while proceeding to answer the reference has to deal with all provisions touching the reference, including the judgments on the point that have been pronounced upto now either way. The question referred, therefore deserves a refraining as suggested and agreed to by the learned Counsel for the parties. Accordingly, with the consent of the learned Counsel for the parties, we reframe Question No. (c) as follows:

(c) Whether the judgment of the Division Bench of this Court in the case of Ved Prakash (*supra*) is in direct conflict with the Division Bench judgment in the case of U.P. Secondary Education (*supra*), and which of the two decisions lay down the law correctly.

The question having been reframed, learned Counsels request that the matter be adjourned for today to enable them to assist the Court accordingly.

List on 19th September, 2011 at 10 a.m.