

(2009) 08 AHC CK 0143

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39969 of 2009

Principal, Adarsh Inter College, Umari, Bijnore

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Chapter 3, 101

Citation : (2009) 08 AHC CK 0143

Hon'ble Judges : Arun Tandon, J

Judgement

Arun Tandon, J.—Principal, Adarsh Inter College, Umari, District Bijnor has filed this writ petition challenging the letter of the District Inspector of Schools dated 25.7.2009. Facts in short are as follows.

2. Adarsh Inter College is an aided and recognized Intermediate College. The provisions of the Intermediate Education Act and those of U.P. Act No. 24 of 1971 are applicable to the teachers and staff of the said institution. One Vinod Kumar who was working on Class IV post in the institution was granted promotion as Class III employee resulting in a vacancy on Class IV post in the institution. The vacancy was advertised in Hindi newspaper Dainik Jagran and Amar Ujala on 2.6.2009 and 3.6.2009 respectively by the Principal of the Institution who is the appointing authority. A Selection Committee was constituted and after selections one Km. Lakshmi Devi was empanelled at Serial No. 01 and one Bhupendra Kumar was empanelled at Serial No. 02. The selection proceedings under the letter of the Principal of the institution dated 20.6.2009 were forwarded to the District Inspector of Schools for grant of necessary approval to appointment as required under Regulation 101 of Chapter III of the regulations framed under the Intermediate Education Act. The District Inspector of Schools with reference to the Government Order dated 19.12.2000 transmitted the papers for approval to the Regional Level Committee.

3. The State Government however issued the Government Order's dated 20.10.2008 and 31.10.2008 providing for surplus staff being adjusted against

subsequent vacancies before any fresh recruitment in aided institutions. The Regional Level Committee accordingly returned the papers qua the selections on the ground that they are not in conformity with the Government Orders issued. The District Inspector of Schools has accordingly informed the decision vide letter dated 25.7.2009. It is against this decision that the present writ petition has been filed.

4. At the very outset it is recorded that the Government Orders referred to above, are not under challenge. However what has been stated is that appointment on Class IV post in Intermediate Colleges are made under Regulations 101 to 107 of the Intermediate Education Act and therefore, the Government Order cannot override the statutory regulations.

5. The Standing Counsel however brought to the notice of the Court that the entire selections held by the petitioner on Class IV post are in clear violation of the Government Order dated 11.5.2001 as communicated to all the Regional Joint Director of Education vide letter of the Director of Education dated 1.6.2001. Under the aforesaid Government Order it has specifically been provided that since for appointment on Class IV post no procedure for appointment by direct recruitment has been laid down in the Regulations framed under the Intermediate Education Act, the Rules applicable qua appointment on Class IV post in the Government employment will be applicable, to be precise U.P. Direct Recruitment to Group D Post Rules 1986 will be applied. He submits that under the aforesaid Rules, Selection Committee has to be constituted which is to comprise of a nominee of District Magistrate. He submits that selections have not been held in accordance with the Government Order/in accordance with the Rules of 1986. Entire selections set up by the Principal are illegal and therefore, the Court may not interfere on the asking of the writ petitioner with respect of such illegal selections.

6. In reply counsel for the petitioner has placed reliance upon a judgment in the case of Smt. Shikha and another v. state of U.P. and others reported in 2008(4) ADJ 573:2008(3) ESC 1584 (All) and it is contended that this Court has held that the provisions of U.P. Direct Recruitment to Group D Post (inclusion of a member nominated by the District Magistrate in Selection Committee) Rules, 2006 would not be applicable qua appointment of Class IV employee in recognized intermediate colleges.

7. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

8. For our purposes it would be appropriate to reproduce the letter of the Director which in turn refers to be Government Order dated 11.5.2001 which reads as follows:

"Upyukt Vishay Ki Ore Aapka Dhyan Akarshit Karte Hue Nivedan Hai Ki Shasan Ne Apne Patra Sankhya 693/1512/20011601/(793)/2000 Dinank 11.5.2001 Dwara Yah Nirdesh Diya Hai Ki Madhyamik Shiksha Sanshodhit Adhiniyam, 1921

Ke Adhyaya Teen Viniyam 2(1)Mein Yah Vyavastha Di Gai Hai Ki Ashaskiya Sahayta Prapt/Sahayata Prapt Uchhtar Madhyamik Vidyalayaon Mein Chaturtha Shreni Karmchariyon Ki Nyuntam Shaikshik Yogyata Vahi Hogi, Jo Rcjkiya Uchhtar Madhyamik Vidyalayon Ke Samkakshiya Karmchariyon Ke Liye Samay Samay Per Nirdharit Ki Gayi Hai Kintu Adhiniyam Mein Chaturtha Shreni Karmchariyon Ke Rikt Padon Ko Bharne Ki Prakriya Spasht Roop Se Varnit Nahi Ki Gayi"Hai. Yah Spasht Hai Ki Asaskiya Sahayataprapt Madhyamik Vidyalayon Mein Shasan Ki Ukt Adhisuchna SankhyaKarmik220171986Karmik2(1), Lucknow 8th September, 1986 Dwara Prakhyapit Samuh "Gha" Karmchari Sewa Pratham Sanshodhan Niyamawali, 1986 Se Pravidhan Prabhavi Hai.

Atah Shasan Ke Patra Sankhya 693/1512/20011601/(793)/2000 Dinank 11.5.2001 Mein Diye Gaye Ukt Nirdeshanusar Karyavahi Ankit Karayen Tatha Prashnagat Niyamawali Mein Diye Gaye Pravidhano Ke Vipreet Ki Gai Niyuktiyon Ko Kisi Bhi Dasha Mein Manya Na Kiya Jave Tatha Niyamawali Ka Ullanghan Karke Niyukti Kame Vale Prabandhak/Pradhanacharya Ke Virudh Karyavahi Sunishchit Ki Jaye."

9. The Government Order dated 11.5.2001 is referable to Section 9 of the Intermediate Education Act and the power of the State Government in that regard stands well recognized under the Division Bench judgment of this Court reported in Durgesh Kumari v. State of U.P. and others, 1995(3) UPLBEC 1387. It is nobody's case that any procedure for appointment on Class IV post in aided and recognized Intermediate Colleges has been provided for under the Intermediate Education Act or under the Regulations framed thereunder. Therefore, this Court has no hesitation to hold that the Government Order dated 11.5.2001 which provides for the procedure qua appointment on GroupD Post in state employment to be applied to the appointment on Class IV post in recognized and aided Intermediate Colleges is strictly in accordance with law.

10. In the opinion of the Court by reference the provisions of GroupD Post Rules, 1986 have been made applicable to appointment on Class IV post in Intermediate Colleges which is a known method of legislation by reference.

11. Admittedly the procedure prescribed has not been applied qua the selections held by the Principal, this Court is of the opinion that no mandamus for consideration such appointment is required to be issued under Article 226 of the Constitution of India.

12. So far as the judgment relied upon by the counsel for the petitioner in the case of Shikha (supra) is concerned, this Court may point out that the said judgment has not taken note of the Government Order dated 11.5.2001 quoted above and has proceeded to examine the amending Rules of 2006 which were framed under Article 309 of the Constitution of India only and, therefore, it has been held to be inapplicable qua appointment in Intermediate Colleges. In the opinion of the Court the amendments made in the Group D Rules in the year 2006 have to be read alongwith the Government Order dated 11.5.2001 and not

in ignorance thereto.

13. The Hon"ble Supreme Court in the case of Bhavnagar University v. Palitana Sugar Mills (Pvt.) Ltd. and others, reported in 2003(2) SCC 111, has held as follows:

"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

14. The said judgment has been followed in the recent judgment of the Hon"ble Supreme Court in the case of Dr. Rajbir Singh Dalai v. Chaudhari Devi Lal University, Sirsa and another, reported in AIR 2008 SCW 5817.

15. In view of the aforesaid the present writ petition is dismissed.