

(1995) 10 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 16597 of 1995

Rafique

APPELLANT

Vs

Dy. Director of Education, Vth Region and Another

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Citation : (1995) 10 AHC CK 0012

Hon'ble Judges : A. Chakrabarti, J

Bench : Single Bench

Advocate : M.M. Sahai, for the Appellant;

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—The factual background, as appears from the writ petition, is that the petitioner was initially appointed on 9.2.1982 as L.T. grade teacher in Anglo Oriental Muslim Inter College, Lallapura, Varanasi and is discharging duties. The erstwhile Principal of the Institution retired on 31.6.1994 resulting in vacancy in the post of Principal, and as such the vacancy was published in the newspaper. Upon successful participation in the interview, the petitioner was not offered the appointment and the committee of management illegally sent the name of one Zavid Alam Azami before the Respondent No. 1 for financial approval. Such approval was illegally granted on 29.7.1994. The petitioner made several representations to get the appointment of Zavid Alam Azami cancelled and having not succeeded, the petitioner moved Civil Misc. Writ Petition No. 31722 of 1994. The counter-affidavit by the Respondent No. 2 in the said writ petition admitted that the petitioner was placed at serial No. 2 in the panel of selected candidates. The said Zavid Alam Azami resigned from the post on 6.11.1994. The Manager appointed Sri Zafruslam as the Acting Principal of the institution as he was the senior most teacher, the Writ Petition No. 31722 of 1994 though was fixed but ultimately could not be finally disposed of. The petitioner came to know that an advertisement dated 4.6.1995 was published for fresh appointment in the post of Principal. The Petitioner, being at serial No. 2 of the

select list, became entitled to be appointed as Principal after the candidate at serial No. 1 resigned particularly when such resignation was within a period of one year when panel was still alive. So, challenging the said advertisement, the present writ petition was moved.

2. The Respondents contested the proceeding and filed counter-affidavit. The petitioner filed rejoinder affidavit. The parties agreed that the writ petition may be disposed of finally at the time of admission as affidavits have already been exchanged.

3. The learned Counsel for the petitioner mainly relied upon the Government order dated 4.5.1984 at annexure No. 8 to the writ petition and contended that upon resignation of Zavid Alam Azami, the Respondents were required to give appointment to the petitioner in the post of Principal as the petitioner was at serial No. 2 in the panel. The vacancy having arisen within a period of one year from the date of preparation of the panel and the panel being still alive, the Respondents could not go for fresh selection overlooking the claim of the Petitioner. The Respondents in their counter-affidavit denied the applicability of the said Government order in the present case but have not made out any specific case as to why the said Government order is not applicable. The Respondents have also failed to show any reason for not appointing the petitioner in the post of Principal from the panel although he was at serial No. 2 therein and the vacancy occurred within validity period of the panel. The contention of the Respondents is that when the selected persons join, the panel stands exhausted.

4. Upon considering the relevant contentions of the parties, I find that in the interest of administration the principle contained in the said Government order at Annexure 8 to the writ petition is to be followed. When a panel is prepared after completing selection process and the candidate at serial No. 1 of the panel after being selected resigns or in any other manner the vacancy occurs, there is no need of any further selection process. The person in the next position having been selected by the authorities themselves could not be refused appointment. The only exception could be, had there been expiry of the life of panel. In that case there will be no alternative but to hold fresh selection process. But, here, when admittedly, a panel was prepared and within a period of one year from such preparation the vacancy arose, there is no ground for refusing the claim of the petitioner for appointment. The Respondents, though denied the claim of the Petitioner, have not been able to show any reason for refusing the appointment of the petitioner and for taking up a fresh process of selection.

5. In the aforesaid circumstances, the writ petition succeeds and is allowed. The Respondents are restrained from taking up any fresh selection process in the matter of appointment of Principal in Anglo Oriental Muslim Inter College, Lallapura, Varanasi. The Respondents are also to complete the process of appointment of the petitioner in the post of Principal in Anglo Oriental Muslim Inter College, Lallapura, Varanasi.

There will be no order as to costs.