

(2011) 01 AHC CK 0048
In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 13491 of 1991 and 26866 of 1992

Raghuveer Kumar and Another

APPELLANT

Vs

The District Basic Education Officer and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 ADJ 652 : (2011) 3 AWC 2448 : (2011) 128 FLR 1066

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—These two writ petitions pertain to appointment on Class IV post in Senior Basic Vidyalaya, Sultanganj, District Mainpuri and Junior High School Jyoti Khurd, Sultanganj, District Mainpuri. Both the writ petitions are being clubbed together and are being decided by this common judgment.

Facts in short are as follows:

Petitioners before this Court claim that they had been appointed by the Deputy Inspector of Schools, Mainpuri as per the appointment letter enclosed with the writ petition on 17.12.1988 as Class IV employee in Parishadiya Vidyalaya of District Mainpuri. The appointment of the Petitioners was cancelled under an order of the Deputy Inspector of Schools, Mainpuri dated 29.3.1989 after recording that the Basic Shiksha Adhikari has found the appointment to be illegal. The Petitioners were removed from service with immediate effect.

The order was subjected to challenge by the Petitioners before the U.P. Public Services Tribunal, Lucknow being Claim Petition No. 164/1/89. The Claim Petition was allowed vide order dated 21.12.1990 only on one short ground that the order has been passed without issuing any notice to the Petitioners and it was declared that the Petitioners shall be deemed to be in service. The Petitioners were not reinstated, therefore, they filed an Execution Application before the

District Judge being Execution Case No. 93 of 1991. An order was passed by the District Judge on 5.5.1992 on the Execution Application.

2. The judgment and order of the Tribunal has been subjected to challenge by the Basic Shiksha Adhikari, Mainpuri before this Court by means of Civil Misc. Writ Petition No. 13491 of 1991 wherein no interim order was granted. As a result whereof an order was issued by the Basic Shiksha Adhikari directing the Petitioners to be reinstated subject to the orders to be passed in the writ petition filed before the High Court. Thereafter the Up Nirikshak, Mainpuri issued another order dated 15.7.1992 whereunder the appointment of the Petitioners had been cancelled in terms of the direction issued under the letter of the Basic Shiksha Adhikari dated 7.7.1992. These two orders have been challenged by means of Civil Misc. Writ Petition No. 26866 of 1992 by the employees. No interim order has been granted in this second writ petition also and the employees are not in service from the date of the orders impugned.

3. The Petitioner employees before this Court claim that they had been appointed by a competent authority namely the Deputy Inspector of Schools, Mainpuri on Class IV post in Parishadiya Vidyalayas and, therefore, their appointment cannot be interfered with. Reference is made to the U.P. Basic Educational Staff Rules, 1973 which provides that the Deputy Inspector of Schools shall be the appointing authority in respect of Class IV post qua institution situate in rural areas. Reference has also been made to the judgment of the Hon'ble Tribunal which was passed in their favour, referred to above.

4. A counter-affidavit has been filed in the writ petition and in paragraph 2, it has been stated that the then Deputy Inspector of Schools namely Ram Swaroop Sagar had unauthorizedly made appointment of 330 persons as Class IV employees in Parishadiya Vidyalayas without following any procedure known to law and without there being any vacancy available on Class IV post in the District. In paragraph 3 of the counter-affidavit it has been again stated that there were no Class IV post in district Mainpuri available at the time the appointment are said to have been made by the then Deputy Inspector of Schools. By means of the supplementary counter-affidavit the order passed by the Basic Shiksha Adhikari dated 7.7.1992 has been brought on record.

5. Rejoinder affidavit has been filed on behalf of the Petitioner employees and the averments made in paragraphs 2 and 3 of the counter-affidavit have been vaguely denied by only stating that the Petitioners have been appointed in accordance with proper procedure by the competent authority and the Petitioners have nothing to do with the authority and lastly that all aspects of the matter have been considered by the Tribunal. The action now taken is an attempt to defeat the final order of the Tribunal.

6. A supplementary affidavit is stated to have been filed on behalf of the Petitioners enclosing a copy of the notice dated 28.10.1988 which according to the Petitioners was the notification of the vacancy available in Parishadiya

Vidyalayas at District Mainpuri. A copy of the supplementary affidavit so filed whereof has been produced by the Petitioner employees before the Court today, which is taken on record.

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

8. So far as the writ petition filed by the Basic Shiksha Adhikari is concerned, suffice is to record that on the said petition, notices have yet not been issued nor it has been admitted. It has been pending before this Court for the last 19 years as such. This Court thinks it proper to examine the writ petition filed by the employees concerned wherein affidavits have been exchanged on merits.

9. At the very outset, it may be recorded that the counsel for the Petitioner employees as well as the counsel for the Basic Shiksha Adhikari referred to the Rules of 1973 for the purposes of pointing out that the appointing authority on Class IV post in Parishadiya Vidyalayas is the Deputy Inspector of Schools. Standing Counsel however clarifies that if no rules have been framed for providing the procedure for appointment on Class IV post in Parishadiya Vidyalayas under the Basic Education Act, then the provisions of U.P. Group "D" Employees Service Rules, 1985 would apply in the matter of appointment of Class IV posts.

10. It is not necessary for this Court to enter into the aforesaid aspect of the matter inasmuch as the Basic Shiksha Parishad has been constituted under the Basic Education Act, 1972. The institutions commonly known as Parishadiya Vidyalayas are run and managed by the Basic Shiksha Parishad being a statutory body. The salary of the staff of such Vidyalayas is paid from funds allocated by the State Government, therefore, if no statutory rules have been framed in the matter of appointment in such institutions, the appointment being in the nature of public appointment must precede an advertisement in newspaper so that all eligible candidates may apply. In absence of any advertisement being published, the appointment would be rendered arbitrary and hit by Article 226 of the Constitution of India. It is but necessary for the Petitioners to establish that an advertisement was published in newspapers inviting applications for the post in question and it is in pursuance thereto they had applied.

11. From the notice which has been enclosed alongwith supplementary affidavit filed by the employees, referred to above, filed in the year 2010, it is apparent that it is not an advertisement in the newspaper. At least there is no averment in the writ petition, rejoinder affidavit or in the supplementary affidavit filed on behalf of the Petitioners that the vacancies were advertised in newspapers. On this short ground alone the entire claim set up by the Petitioners would fall to ground and the appointments claimed by them are to be held to be illegal. Secretary, State of Karnataka and Others Vs. Umadevi and Others, and in the case of Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, This Court may further notice that in the appointment letters issued to

the Petitioners, it has specifically been mentioned that the appointment was purely temporary and the same could be terminated at any time without notice. The Petitioners have admittedly accepted the terms and conditions of the appointment as provided for in the appointment letter with open eyes. It is not open to the Petitioners to now contend before this Court that their termination did require a notice. Reference: L.P.A. No. 678 of 2004; Terminated Full Time Temporary LIC Employees Welfare Association v. Life Insurance Corporation of India and Ors.

12. Even otherwise this Court may record that there is absolutely no denial to the stand taken in the counter-affidavit (paragraphs 2 and 3) that 330 appointments were made by the then District Inspector of Schools without there being any post available on Class IV post in District Mainpuri. There being no denial to the said fact by way of any rejoinder affidavit, it has to be taken as correct.

13. Thus, for the reasons recorded above, no interference under Article 226 of the Constitution of India is warranted.

14. Writ Petition No. 26866 of 1992 lacks merit and is accordingly dismissed.

15. In view of the aforesaid order the Writ Petition No. 13491 of 1992 filed by the Basic Shiksha Adhikari does not survive and the same is also disposed of in terms of the findings recorded above.