

(2008) 12 AHC CK 0461
In the Allahabad High Court
Case No : Special Appeal No. 1573 of 2008

Raja Ram Yadav and

APPELLANT

Vs

District Inspector of Schools, Azamgarh and others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2009) 121 FLR 540

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Advocate : Indra Raj Singh, for the Appellant; R.P. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—This appeal is directed ainst(sic) the judgment and order of the Hon''ble Single Judge dated 17.10.2008 ssed(sic) in Civil Misc. Writ Petition No. 53637 of 2008, Raja Ram Yadav v. District pector of Schools, Azamgarh and others; whereunder the stay application made the Appellant has been rejected.

2. The facts relevant for deciding this special appeal are that the post of principal(sic) in Peerpur Sarvajanic Inter College, Mittupur, Azamgarh was adverd(sic) by the U.P. Secondary Education Selection Board, Allahabad vide advertisement No. 1/2000. The Appellant at the relevant time claimed to be the senior-most teacher of the institution. A letter was issued calling upon him to participate in the process of interview for the said post on 15.6.2001. However, another letter dated 13.6.2001 was issued to the Petitioner whereby he was informed that the interview has been postponed. Thereafter no other letter is said to have been issued to the Appellant to participate in the process of selection. However, on 6.9.2003 a select penal in respect of the post of Principal of various institutions including that of the post of the institution was notified. The Appellant individually filed Civil Misc. Writ Petition No. 13447/2000 for stay of the process of selection. The writ petition was dismissed on 14.2.2001.

Thereafter he filed Special Appeal No. 283/2001 which was decided by the Division Bench of this Court vide judgment and order dated 29.9.2003 in terms of the judgment and order passed in Special Appeal No. 159/2001 whereby the selection penal was quashed on the ground that the qualifications mentioned in the advertisement were not in conformity with Appendix-A to Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. The leading judgment of the High Court was subjected to challenge before the Hon''ble Supreme Court by way of special leave to petition and the Apex Court by means of the judgment and order dated 16.5.2008 in the case of Balbir Kaur and Anr. v. U.P. Secondary Education Services Selection Board, Allahabad and others, 2008 (3) ESC 409 (SC) held that the selection made by the U.P. Secondary Education Services Selection Board was in accordance with law and there was no inconsistency between the qualifications mentioned in the advertisement and qualifications prescribed under Appendix-A. Accordingly the Respondent No. 5 who was selected for the post of principal was directed to be appointed as Principal in Peerpur Sarvajanik Inter College, Mittupur, Azamgarh vide the order of the District Inspector of Schools dated 2.9.2008. At this stage of the proceedings the Appellant filed Civil Misc. Writ Petition No. 53627 of 2008 alleging therein that the select penal prepared by the U.P. Secondary Education Services Selection Board, Allahabad was illegal inasmuch as there had been violation of Rule 11 (2) (b) of the U.P. Secondary Education Services Selection Board Rules, 1998 as the senior-most teacher of the institution was not permitted to participate in the said selection. Along with that writ petition the Appellant also made an interim stay application for stay of the appointment letter of the Respondent No. 5 as principal in the institution, on the plea that the Appellant was working as ad hoc Principal in the said institution since July, 1999 and was entitled to continue till legal selection are held. The Hon''ble Single Judge after considering the various facts rejected the stay application on the ground that the selection of the Respondent No. 5 has been affirmed by the Hon''ble Supreme Court.

3. The learned Counsel for the Appellant submits that the selection of the Respondent No. 5 by the Services Selection Board may be justified or may be held to be valid but his empanelment for the institution is illegal, inasmuch as under Rule 11 (2) (b) of the 1998 Rules two senior most teachers of the institution are to be permitted to participate in the process of selection held for the post of Principal of the institution, which has not been so done. The recommendation made for the post of principal in the institution is therefore rendered illegal. Appellant therefore submits that the Hon''ble Single Judge should have granted an interim order as prayed in favour of the writ Petitioner (Appellant herein).

4. We are not required to finally enter into the merits of the claim set up by the Appellant inasmuch as any observation made by us may adversely affect the rights of the parties in the pending writ petitions.

5. We will only examine the prima facie case of balance of convenience and reparable loss and injury which would be caused to the Appellant in case interim order is not granted, for finding the correctness of the order of the hon''ble(sic) Single Judge inasmuch as interim orders are to be granted in writ jurisdiction broadly on these principles only.

6. So far as the prima facie case is concerned, Hon''ble Apex Court has affirmed the selection of the Respondent No. 5 for the post of Principal of a recognised intermediate college in terms of advertisement No. 1/2000. Only issue remains(sic) for consideration is as to whether the empanelment of the Respondent No. for the post of Principal of the institution is in accordance with law or not as much as according to the Appellant two senior teachers have not been permitted to participate in the selection. So far as the balance of convenience is concerned(sic) we may record that since the Respondent No. 5 is a regularly selected candidate,(sic) he has a better right than the Appellant who is only working as an ad hoc principal and only claims a right for consideration. So far as irreparable loss and(sic) injury is concerned we may record that the Appellant would continue to work as lecturer of the institution even if he is granted an interim stay. What would be the compensation in case his writ petition is finally allowed can always be considered by the Writ Court at the stage of granting final relief.

We record that in the facts and circumstances of the case where a regularly selected candidate for the post of principal is available for the institution, it is in his(sic) interest of justice as well as in the interest of the institution that the regular selected Principal be permitted to join as he has a better claim than the Appellant, instead of asking him to sit on the fence and watch out one of writ proceedings initiated(sic) by an ad hoc appointee.

7. In the facts and circumstances of the case we do not find any justification(sic) to interfere with the impugned judgment and order of the Hon''ble Single judge. (sic) However, it is provided that the Appellant is at liberty to make an application before the Hon''ble Single Judge for an early hearing of the writ petition, Appointment of the Respondent No. 5 shall be subject to the final decision of the Hon''ble Single Judge in the writ petition.

8. This appeal is dismissed subject to the observations made.