
(2012) 07 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition No. 707 of 2009 (S/S)

Rajiv Kumar

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 41

Citation : (2013) 2 SCT 428 : (2012) 2 UC 1565

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Rajendra Dobhal, Assisted by G.D. Joshi, for the Appellant; Lalit Miglani, Learned Brief Holder for the State and Alok Mehra, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard the learned counsel for the parties. The petitioner was appointed as a Lecturer in Physics by the Parents Teacher Association on 3.7.2002 and was being paid the Honorarium by the Parents Teacher Association, but subsequently was being paid from the Government Exchequer. The State Government issued a Government Order dated 03.02.2009 whereby a decision was taken that a P.T.A. Teacher should be given an appointment as an ad hoc teacher subject to terms and conditions mentioned therein. Based on the said Government Order, the District Education Officer issued a Circular dated 09.03.2009, directing all the managements of aided institutions to furnish the requisite information regarding P.T.A. Teachers, so that their claim for grant of ad hoc appointment could be considered by the State Government. Since the management was not complying with the Circular dated 09.03.2009 and was not forwarding the name of the petitioner to the State Government, the present writ petition was filed praying that the Committee of Management of Janta Inter College, Rudrapur should be directed to comply with the direction of the District Education Officer dated 09.03.2009.

2. The State Government in its counter affidavit has contended that since the

management has not sent any response pursuant to the Government Order and the letter of the District Education Officer, no decision could be taken in respect of the petitioner. The respondents have, however, submitted that the petitioner is not a trained graduate, i.e., B.Ed., as provided u/s 24 of the Education Act, 2006, and consequently, cannot be considered for an ad hoc appointment.

3. The Committee of Management has also filed a counter affidavit and contended that pursuant to the Circular of the District Education Officer dated 09.03.2009 it was found that the petitioner was appointed without holding any process of selection nor any advertisement was issued in the newspaper. Consequently, since the appointment of the petitioner as a P.T.A. Teacher was not in accordance with the process of selection, his name could not be forwarded to the State Government.

4. Before proceeding further, it would be essential to highlight how the P.T.A. came into existence in government aided institutions. On account of pressure of work in the colleges, the existing teachers were unable to cope with the teaching pressure and, accordingly in every recognized intermediate college, a Parent Teachers Association was formed under the Parent Teachers Association Rules 1986 to ensure social support to the educational institutions in order to uplift the standard of instructions imparted in the institutions. Whenever it was felt that there was a need to make additional appointments, either as a stopgap arrangement on a sanctioned vacancy or otherwise, the Parent Teachers Association used to make the appointments. These appointments were made without reference to the District Inspector of Schools or any other authority of the Education Department nor any permission was sought while making appointments. Such appointments were against the statutory selection process as provided under the U.P. Intermediate Education Act, 1921, or the Regulations framed therein.

5. Initially the honorarium paid to the Lecturers were from the own resources created by the P.T.A. Subsequently, the State Government recognized the effort being made by the P.T.A. and the teaching performance of these P.T.A. teachers. A Government Order dated 20.09.2003 was issued wherein it was provided that P.T.A. teachers would be paid an honorarium @ 25/- per period, subject to a maximum of Rs. 4.000/- per month, from the public exchequer, Subsequently, School Education Act, 2006 was enacted, which replaced the Intermediate Education Act, Section 41 provided that P.T.A. Teachers would be given the ad hoc appointments. For facility, Section 41 of the said Act is extracted hereunder:-

41. Ad hoc Appointment of Part Time Teacher Acting P.T.A. Teachers by Committee of Management:- The Committee of management shall appoint on ad hoc basis such part time/P.T.A. teachers as were employed up to 5-9-2003 by the committee of management from its own resources, for which substantive posts were created at the time and who possessed qualification prescribed for the corresponding" posts and who were paid honorarium from the government funds.

6. The condition imposed under this section for appointment as a P.T.A. Teacher on ad hoc basis is that the P.T.A. Teacher should be employed on or before 05.09.2003 by the committee of management from its own resources and is working on a substantive post and that the candidate should possess the necessary qualification for the post on which he is working.

7. In the light of the aforesaid, the Court finds from a perusal of the counter affidavit of the State and of the Committee of Management that it is admitted by them that the petitioner was appointed as a P.T.A. Teacher prior to 05.09.2003 and that he was appointed on a substantive vacancy. Further, nothing has been indicated by the Committee of Management or by the State Government that the petitioner does not possess the requisite qualification.

8. In the light of the aforesaid, the conditions imposed u/s 41 of the Act is duly met by the petitioner. The contention of the State Government that the petitioner does not have a B.Ed degree is erroneous and is not required. The contention of the Committee of Management that the appointment of the petitioner was de hors the Rules, i.e., to say there was no advertisement, is patently misconceived. There is nothing to indicate that there was such a requirement for the purpose of appointment of a P.T.A. Teacher. The petitioner has contended that the vacancy and appointment of a P.T.A. Teacher was duly advertised on the notice board pursuant to which the petitioner had applied.

9. In the light of the aforesaid, the Court finds that the Committee of Management has not complied with the direction of the District Education Officer as per the Circular dated 09.03.2009. Consequently, the writ petition is allowed. A writ of mandamus is issued to the Committee of Management to forward the name of the petitioner for his appointment on ad hoc basis as per Section 41 of the School Education Act, 2006, pursuant to the Government Order dated 03.02.2009 and as per the Circular of the District Education Officer dated 09.03.2009, within six weeks from the date of production of a certified copy of the order.