

(2013) 09 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13918 of 1996

Ram Awatar Mishra

APPELLANT

Vs

U.P. Basic Shiksha Parishad

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 4 ADJ 492

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned counsel for the petitioners and perused the record. The petitioners admittedly were not trained upto 1981 and claimed that they were sent for inservice training in 1983 though such training was meant for only those teachers who were validly appointed at the time when statutory rules providing minimum qualification including training were not existed.

2. This aspect has been considered in the light of relevant Government order by a Division Bench of this Court (in which I was a member) in Special Appeal No. 10 of 2007, State of U.P. and others v. Shailesh Kumar Dwivedi and others, decided on 17.12.2008. This Court held as under:

In view thereof, this appeal is disposed of directing the competent authority to consider the case of the petitioners-respondents in the light of two conditions provided in the judgment of the Hon'ble Single Judge, impugned in this appeal, as well as in the light of the conditions provided by the Division Bench in its judgment in the case of Kali Charan Singh Arya (supra). Further, if the petitioners have been appointed after the enforcement of 1975 Rules of 1970 Rules in Junior Primary School or Junior High School, as the case may be, in violation of the provisions thereof and without possessing training qualification, such petitioners cannot be allowed to undergo training pursuant to the Government Order dated 6.9.1994. Thus, only those petitioners-respondents, who fulfill all the aforesaid

requirement and directions, shall be allowed to complete their training and their result shall also be declared.

3. Thereafter a recall application was also filed in the aforesaid appeal which was heard at length and decided vide order dated 4.9.2009. With reference to statutory rules this Court noticed contentions of Sri. Ashok Khare, learned Senior Advocate and held as under:

Thus, under the Rules, there is a clear mandate that a person who does not possess requisite qualification shall not be appointed. Therefore, after the enforcement of the above two set of Rules, any appointment, if made on the post of Assistant Teacher in a Primary School governed by the aforesaid Rules, without adhering to the above Rules, is clearly in the teeth of the aforesaid Rules. In the absence of any provision empowering the State Government or any other authority to relax any of the provision pertaining to qualification etc. under the rules, such appointment cannot be said to be valid in law. However, since the appointment of none of the petitioners-respondents were under challenge before us, we did not quash their appointments but while considering the question of the applicability of the Government Order dated 6.9.1994, we have to read the aforesaid Government Order in order to make it valid, consistent with the aforesaid Rules. It is well-settled that an executive order which is inconsistent with a statutory rule is invalid and cannot be acted upon. We, therefore, by making the observation that the Government Order dated 6.9.1994 permitting training to such Assistant Teacher, who are working and were appointed before the enforcement of 1975 and 1978 Rules, as the case may be, in the institution governed by the aforesaid Rules respectively, would only be governed by the said Government Order dated 6.9.1994, have tried to harmonize the Rules as well as the said Government Order. The aforesaid Government Order cannot be read in a manner so as to validate appointments made in the teeth of the statutory rules particularly when the Rules do not confer any power of relaxation either on the State Government or any other authority.

The contention that the State Government has not raised any such plea in earlier matters or that during the pendency of the appeal the judgment of the Hon"ble Single Judge has been implemented pursuant to the order passed in the contempt proceeding initiated by the petitioners-respondents would not render the appeal infructuous. We are not impressed that the said subsequent proceeding would amount to rendering the appeal infructuous, inasmuch as, the intra Court appeal has been preferred against the judgment of the Hon"ble Single Judge and the correctness thereof has to be judged by this Court. Merely for the reason that no interim order was passed by this Court and, therefore, during the pendency of the appeal, under the compulsion of the proceeding of contempt initiated by the petitioners-respondents, the appellants acted to implement the judgment of the Hon"ble Single Judge would not deprive the appellants of their right to assail the judgment of the Hon"ble Single Judge before this Court in such manner and to such extent as they find expedient. Any

action of compliance in a pending matter, neither would render the statutory remedy meaningless nor the doctrine of res judicata has any application in such cases. The issue raised before this Court by the learned Standing Counsel while arguing the appeal was legal and it has to be decided by us in the light of the statutory provisions and the exposition of law applicant in this regard.

The correctness of legal principle observed by us in the judgment could not be disputed by the learned counsel for the applicants. He could not say or argue that the said Government Order if tried to be applied to all the teachers, who have been appointed in contravention of 1975 or 1978 Rules, as the case may be, would be in the teeth of the relevant rules and, therefore, the observation of this Court that in such case the said Government Order will not apply legally is neither erroneous in law nor otherwise can be assailed. But he argued that in view of the subsequent events this Court should refrain from passing any order which may affect the petitioners-respondents otherwise, which submission is not acceptable since this Court is more concern with maintaining rule of law and not to confer whimsical benefit upon certain individuals in breach of law. No other point has been argued and despite having given full opportunity to the learned counsel for the applicants, he failed to point out any error crept in our judgment dated 17.12.2008. We, therefore, do not find any reason to recall the same.

The application is, accordingly, rejected.

4. In view of above decision of Division Bench, after promulgation of statutory rules, mandating that no appointment shall be made if a person does not possess requisite minimum educational qualification including training, the question of engagement of an untrained person after promulgation of rule and thereafter directing him to sent for training, does not arise.

5. In view of above discussion the relief sought cannot be granted. The writ petition lacks merit. Dismissed. Interim order, if any, stands vacated.