
(2010) 03 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 16995 of 1992

Ram Singh Katiyar

APPELLANT

Vs

Director of Education, U.P. and others

RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:

Citation : (2010) 125 FLR 715

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : J.N. Singh and A.K. Saxena, for the Appellant;

Judgement

Arun Tandon, J.—Petitioner before this Court seeks a writ of mandamus commanding the respondent Nos. 3 and 4 to pay salary to the petitioner w.e.f. 11.8.1991 and further to declare the ban imposed by respondent No. 1 on appointments as illegal.

2. The facts in brief are as follows:--

A substantive vacancy on the post of L.T. Grade Teacher became available in the B.N. Inter College, Bhagwant Nagar, Hardoi due to retirement of the earlier incumbent on 30.6.1989. The provisions of the Intermediate Education Act, 1921, U.P. Secondary Education Services Selection Board Act, 1982 and U.P. High School and Intermediate Colleges (Teachers and other Employees (Payment of Salary) Act, 1971 are fully applicable to the teachers of the institution. This vacancy according to the petitioner was requisitioned to the U.P. Secondary Education Services Selection Board and since the Selection Board failed to recommend a suitable candidate, the Committee of Management decided to make ad-hoc appointment on the said post. It is stated that a resolution was passed on 8.9.1991 offering appointment to the petitioner against the said vacancy on ad-hoc basis. This order according to the petitioner is referable to the powers vested in the Committee of Management u/s 18 of the Act No. 5 of 1982. With reference to the aforesaid appointment the petitioner has set up his plea for

salary. Reference has been made to the telegram issued by the State Government dated 29.6.1991, wherein ban on appointments has been imposed.

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

4. Admittedly the appointment of the petitioner was made when ban had been imposed and was in-force. This Court in the case of "Durgesh Kumari v. State of U.P. and others 1995 (3) U.P.L.B.E.C 1387 has specifically upheld the ban imposed on appointments against the substantive vacancies was legal and valid. The judgment of the Hon"ble Single Judge to the contrary holding that the ban will not apply to appointments u/s 18 in the case of "Kumar Prabhabati Dikshit v. U.P. Madhyamic Siksha Sezua Ayog, Allahabad 1992 (1) U.P.L.B.E.C 582 has specifically been over-ruled.

5. In view of the aforesaid judgments of the Division Bench the prayer for payment of salary or for quashing of the ban must fail. The writ petition is held to be devoid of merits and it is accordingly dismissed.

6. Learned Counsel for the petitioner referred to an interim order of the Division Bench of this Court in Special Appeal No. 1237 of 2009 and claims that in similar circumstance an interim order has been granted and therefore, the services of the petitioner may not be interfered with. On examination of the interim order of this Court it is found that none of the issues referred above have been considered, even otherwise it may be recorded that the judgment of this Court in the case of Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, deals with ad-hoc appointment against short term vacancy and not against substantive vacancies. It may be clarified that so far as short term vacancies are concerned, appointment was regulated by the Second Removal Order of 1981 which did not require any publication of advertisement. Therefore, the Full Bench in the case of Radha Raizada and others v. Committee of Management and others 1995 (25) ALR 383 (FB) : (1994) 3 UPLBEC 1551 laid down that even in respect of short term vacancies, advertisement in two news papers is must. However, with regards to substantive vacancies the same were to be filled as per 1st Removal of Difficulties Order, 1981 and it specifically required that on ad-hoc can be made only after the vacancies were advertised in newspaper.

7. Even otherwise, interim orders do not have any precedential value.