

(2007) 07 AHC CK 0162
In the Allahabad High Court

Saleem Ahamed

APPELLANT

Vs

State of U.P., District Industries Centre

RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 7 AWC 7204

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 10.10.1995 passed by the General Manager, District Industries Centre, Muzaffarnagar appended as Annexure 10 to the Writ petition besides a writ of mandamus commanding the respondents not to interfere in the working of the petitioner as Urdu Translator-cum-Junior Clerk under respondent No. 3 and pay his salary of the post Urdu Translator-cum-Junior Clerk month to month with arrears of salary w.e.f. 20.5.1995.

3. The petitioner was Urdu Translator-cum-Junior Clerk in the District Industries Centre, Muzaffarnagar. He was appointed on the post of Urdu Translator-cum-Junior Clerk by the General Manager, District Industries Centre, Muzaffarnagar vide order dated 20.5.1995. It appears that vide order dated 24.6.1995 the services of the petitioner were terminated on the ground that the State Government has fixed minimum qualification for the post to be Intermediate from the U.P. Board with Urdu subject which the petitioner is alleged to have not possessed. The said impugned order is as under:

dk;kZy; egkizU/kd ftyk m|ksx dsUnz fnukad eq0 uxj twu 24]95

Jh lyhe vgen] mnwZ vuqoknd] ftyk m|ksx dsUnz eqtQjuxj A

vkidks lwfpr djuk gS fd vkidk p;u ftykf/kdkjh eqtQjuxj ds Ik= la[;k 460 @ lkekU; lgk;d fnukad 29-3-95 }kjk mnwZ vuqoknd ds ij djds bl dk;kZy; dks fu;qDr gsrq Hkstk x;k Fkk ftlds vuqikyu esa mnwZ vuqoknd ds in ij vkidh fu;qfDr @ LFkk0 bl dk;kZy; ds vkns"k la[;k 1121?4?@ft0m0ds0@LFkk0ih0,Q0@95&96 fnukaad 20-5-95 ds }kjk dh xbZ Fkh A

bl lEcU/k es "kklu }kjk bl in ij fu;qfDr gsrq U;wure ;ksX;rk m0iz0 cksMZ dh b.VjehMh;V ijh{kk mnwZ fo"k; ls mRrh.kZ dh gqbZ fu/kkZfjr dh gS A ijUrq vki }kjk izLrqr ;ksX;rk&izek.kki=ks ls Kkr gS fd vki mDr ;ksX;rk dks iw.kZ ugh djrs gS vr% vkidks mDr fu;qfDr vkns"k rRdky izHkko ls jn~n fd;k tkrk gS A

"kklu ds vfxze vkns"kks rd vkidk osru Hkh fn;k tkuk laHko ugh gSA

g0 @ & viBuh; ?ih0,u0 feJ? egkizcU/kd ftyk m|ksx dsUnz eqtQjuxj A

4. From the record it appears that an advertisement dated 25.9.1994 was issued inviting applications for appointment on 79 posts of Urdu Translator cum Junior Clerk for which the qualification was Intermediate Examination from the Board of High School and Intermediate Education, U.P., Allahabad with Urdu as one of the subjects, or any other higher examination with Urdu as one of the subjects recognized by the State Government. It was further provided under a note that the certificate of Adeeb-e-Kamil from Zamia Urdu Aligarh has been recognized by the State Government as equivalent to B.A. The qualification as required in the aforesaid advertisement is as under:

"kSf{k d vgZrk,a

?,d? ek;/fed f"k{k ifj"kn m0iz0ls ,d fo"k; ds :Ik esa mnwZ ds lkFk b.VjehMh;V ijh{kk ;k

?nks? ljdkj }kjk ekU;rk izkIr dksbZ mPp ijh{kk ,d fo"k; ds :Ik es mnwZ ds lkFk vo"; mRrh.kZ gks A uksV%& mRrj izns"k ljdkj }kjk tkfe;k mnwZ vyhx<+ }kjk lapkfyR vnhc ,&ekfgj dks b.VjehMh;V rFkk vnhc&,&Qkfey dks ch0,0 dh led{krk iznku dh xbZ gS A

5. The State of U.P. has framed rules known as Uttar Pradesh Urdu Translator cum Junior Clerk Service Rules, 1994 (hereinafter referred to as the Rules). The qualification for appointment of a direct recruit is provided under Rule 11 of the Rules which are as under:

1. Intermediate Examination with Urdu as one of the subjects of the Board of the High School and Intermediate Education. Uttar Pradesh or an examination recognized by the Government as equivalent thereto, or (ii) any higher examination recognized by the Government with Urdu as one of the subjects.

Note: Clause (1) of Appendix 2 of the aforesaid rules provides that the State Government has recognized Adeeb-e-Mahir certificate of Zamia Urdu Aligarh as equivalent to the Intermediate and the certificate of Adeeb-e-Kamil as equivalent to B.A.

6. The petitioner submits that he has qualified the Adeeb-e-Kamil certificate of Zamia Urdu Aligarh which is recognized by the State Government as equivalent to B.A. and as such he possesses higher qualification as contemplated in Rule 11 (ii).

7. In pursuance of the aforesaid advertisement the petitioner applied for the post and was selected by the selection committee for the post of Urdu Translator-cum-Junior Clerk and was appointed as such vide appointment letter dated 16.3.1995 and joined the post on 20.5.1995. However, vide impugned order dated 24.6.1995 the services of the petitioner were terminated on the ground that the State Government has fixed the minimum qualification for appointment on the post of Urdu Translator as Intermediate Examination with Urdu as one of the subjects in Intermediate which the petitioner did not possess.

8. In paragraph 5 of the counter affidavit it is averred that the appointment of the petitioner was made on the post of Urdu Translator that too on ad-hoc basis and not on the post of Urdu Translator-cum-Junior Clerk. It is further averred in paragraph 9 of the counter affidavit that by a telex order of the State Government dated 20.5.1995 ban was imposed on making appointment on the post of Urdu Translator-cum-Junior Clerk.

9. It has come on record that the State Government vide Government Order dated 14.8.1995 has made amendment in the Rules with regard to qualification for the post providing that passing of Intermediate Examination from U.P. Board is essential. From a perusal of the appointment letter issued to the petitioner it is evident that the appointment of the petitioner was made earlier to the amendment in the Rules vide order dated 14.8.1995.

10. The learned Counsel for the petitioner has filed a supplementary affidavit and has annexed thereto two decisions of this Court rendered in Writ Petition No. 30567 of 1995. Abdurrahman v. District Magistrate. Siddharth Nagar and Ors. & Writ Petition No. 4218 of 1999, Ziauddin Khan v. District Magistrate and Ors.

11. In Writ Petition No. 30567 of 1995 it has been held:

It is settled law that a validly appointed candidate cannot be thrown out of the employment of the supposed change to the qualification in the recruitment rules for such posts if those changes are made inapplicable after the appointment has been made. Since the petitioner was duly selected by the Selection Committee and appointment letter was issued to him on 10.4.1995 (Annexure 1) to the writ petition the cancellation order dated 31.8.1995 placing reliance on the order of the District Magistrate dated 24.8.1995 cannot be sustained on that ground.

12. The judgment rendered in Writ Petition No. 4218 of 1999 is based upon the judgment rendered in the aforesaid Writ Petition No. 30567 of 1995.

13. Per contra, the learned Standing Counsel has contended that the petitioner was appointed on ad-hoc basis as Urdu Translator and is out of employment since 24.6.1995, as such the petitioner has no right to the post. In support of his

contention he has relied upon the decision rendered by the Hon"ble Supreme Court in State of Madhya Pradesh Vs. Santosh Kumar,

14. He has further contended that the petitioner has not passed Intermediate Examination with Urdu subject which is the requisite qualification prescribed for Urdu Translators. The petitioner has passed the examinations of Adeeb and Adeeb-e-Mahir in the year 1990-91 which are not equivalent to the Intermediate Examination of the U.P. Board of High School and Intermediate Education, Allahabad with Urdu, as such the petitioner has no right to the post of Urdu Translator inasmuch as the certificates of Adeeb and Adeeb-e-Mahir have not been recognized by the National Council for Teacher Education Act, 1993. In support of his contention he has relied upon the decision of this Court rendered in Shailendra Kumar Singh v. State of U.P. and Ors. (2004) 2 U.P.L.B.E.C. 1716 wherein it has been held:

though the degree of Shiksha Visharad awarded by Hindi Sahitya Sammellan. Allahabad is a recognised degree by U.G.C. and holders of which are eligible for appointment as Assistant Teachers in the Basic schools run by the Parishad. but it is not valid qualification for appointment as Assistant Teacher in basic schools run by the Parishad under the provisions of N.C.T.E. Act, 1993.

15. He has further relied upon the decision of Hon"ble Supreme Court rendered in Mohd. Sartaj and Anr. v. State of U.P. and Ors. 2006 (1) ESC 56 wherein it has been held:

In the present case, the appellants' case fall within the exception laid down in S.L. Kapoor's case (supra) and other supporting cases, as admittedly, the appellants were not qualified and they did not possess the B.T.C. Or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognized by the State Government as equivalent thereto at the time of their initial appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and, therefore, no hearing was required before the cancellation of their services. In the present case, the cancellation order has been issued within a very short span of time giving no probability for any legitimate expectation to the appellants regarding continuation of their service.... The contention of the learned Counsel for the appellants is that State by various orders had given equivalence to the degree of Moallim-e-Urdu granted by Jamia Urdu, Aligarh with that of Basic Teacher's Certificate, is not correct.... It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallim-e-Urdu, Jamia Urdu, Aligarh with that of B.T.C. in the year 1994 would not entail the benefit to the appellants on the date they were appointed.

16. It is not disputed that the appointment was made against a sanctioned post and appointment letter was also issued to him and further that on the date of appointment he was qualified for the post.

17. I see no reason to interfere with the impugned order under Article 226 of the Constitution.

18. The writ petition is accordingly allowed. The impugned order dated 10.10.1995 is quashed. However, the parties shall bear their own costs.