

(2011) 02 AHC CK 0337
In the Allahabad High Court
Case No : Writ Petition No. 881 (S/S) of 2011

Sanjay Kumar Shukla and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Citation : (2011) 02 AHC CK 0337

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Devendra Kumar Arora, J.—In Writ Petition No. 881 (S/S) of 2011 notice on behalf of opposite parties No. 1 and 2 has been accepted by the learned Chief Standing Counsel, Sri A.M. Tripathi, learned Counsel has accepted notice on behalf of the opposite party No. 3 whereas Sri Prashant Arora, learned Counsel has put in appearance on behalf of the opposite party No. 4.

2. In Writ Petition No. 868 (S/S) of 2011 notice on behalf of opposite party No. 1 has been accepted by the learned Chief Standing Counsel, Sri A.M. Tripathi, learned Counsel has accepted notice on behalf of the opposite party No. 2 whereas Sri Avdhesh Shukla, learned Counsel has put in appearance on behalf of the opposite party No. 3.

3. In Writ Petition No. 898 (S/S) of 2011 notice on behalf of opposite parties No. 1 and 5 has been accepted by the learned Chief Standing Counsel, Sri A.M. Tripathi, learned Counsel has accepted notice on behalf of the opposite party No. 3 whereas Sri D.R. Mishra, learned Counsel has put in appearance on behalf of the opposite parties No. 2 and 4.

4. Heard Sri H.G.S. Parihar, Sri R.C. Tiwari and Sri Rakesh K. Chaudhary, learned Counsel for the Petitioners, learned Standing Counsel for the State and Shri A.M. Tripathi, Shri Prashant Arora, Shri D.R. Mishra and Shri Avadhesh Shukla learned Counsel for the opposite parties.

5. Since the facts and legal issues involved in the instant writ petitions are common, the same are being heard together and common order is being passed.

6. By means of present writ petitions, the Petitioners are seeking a writ of certiorari for quashing the orders dated 10.02.2011(Annexure-1), so far as it makes a provision for taking over charge of the post of Block Resource Coordinator by the Assistant Basic Education Officer as Ex-officio Block Resource Coordinator of the concerned Block. The Petitioners have also challenged the order dated 02.02.2011 (Annexure-2), so far as it makes provision for posting of Assistant Basic Education Officer as Ex-officio Block Resource Coordinator.

7. The submission of learned Counsel for the Petitioners is that Education for all Scheme was launched by the State Government in the year 1995-96 in ten districts of the State vide Government Order dated 02.06.1995. In pursuance of the said scheme, the State Government vide Government Order dated 01.09.2001 prescribed the procedure for appointment on the post of Block Resource Coordinator/ Assistant Block Resource Coordinator (NPRC) (here-in-after referred to as the BRC & ABRC). It has also been provided in the said government order that the post of BRC will be in the pay scale of Headmaster of a Junior High School and a person should have also worked as Headmaster of Primary School or Assistant Teacher of Junior High School or as Coordinator (NPRC) for atleast two years. The State Government subsequently vide order dated 29.06.2002 modified the earlier Government Order dated 01.09.2001 and provided that the term of the post of BRC/ ABRC (NPRC) shall be for a period of two years and after the expiry of the period of two years instead of selection of the same candidate, the new candidates shall be selected. The Government Order also provides that for the post of BRC, minimum teaching experience shall be eight years and the teachers, who are due for retirement within ten years, shall not be eligible for the post of BRC. The post of BRC was advertised in different districts and as the Petitioners were fully eligible, they applied for the post of BRC in their respective districts. After written examination, the Petitioners were required to appear before the Selection Committee and on the basis of recommendations of Selection Committee, all the Petitioners were selected and appointed on the post of BRC in the respective districts.

8. In district Hardoi certain complaints were made against the selection of BRC and the District Magistrate, Hardoi vide order dated 28.02.2010 cancelled the said selection. The said order of the District Magistrate, Hardoi was challenged before this Court by means of Writ Petition No. 1325 (S/S) of 2010, which was disposed of finally with the liberty to the opposite parties to cancel the selection of those candidates who had worked earlier as BRC and ABRC and proceed with the fresh selection in that regard. The rest of the candidates were to be allowed to continue to work and be paid salary regularly every month. The judgment and order of learned Single Judge dated 05.08.2010 was challenged before the Division Bench by means of Special Appeal No. 585 of 2010 and the special appeal was disposed of vide judgment and order dated 20.08.2010 with the

directions to the Respondents to allow the Appellants to join on the post in question forthwith. Another Special Appeal No. 615 of 2010 was also disposed of on 27.08.2010 in terms of earlier judgment and order dated 20.08.2010. In pursuance of the order of the special appeals, the appointment orders were issued to the Petitioners in the month of August and September, 2010 for a period of two years.

9. The Petitioners are presently working on the post of BRC. All of sudden, the State Government has taken a decision on 02.02.2011 for reorganization of NPRC and Block Resource Centres. In the said order, it has been provided that Sankul Prabhari were to work as Nyay Panchayat Resource Centre Coordinator and, thus, the Headmaster of the concerned Junior High School are to work as NPRC Coordinator. So far as BRC is concerned, it has been provided that the Assistant Basic Education Officer/ Nagar Shiksha Adhikari will be posted as Ex-officio BRC.

10. The further submission of learned Counsel for the Petitioners is that though in the aforesaid government order a decision has been taken to make a selection and appointment on the post of ABRC, but for the post of BRC no provision has been made for selection from open market rather the Assistant Basic Education Officer has been posted as Ex-officio BRC. It is also submitted by the learned Counsels for the Petitioners that so far as the Assistant Basic Education Officers are concerned, they discharge the duties of administrative in nature, as such, their posting as Ex-officio BRC would not be in the interest of Sarva Shiksha Abhiyan and the entire purpose of scheme will be frustrated, even otherwise Assistant Basic Education Officer posted at Block level has to inspect and supervise the Junior High Schools and Primary Schools of entire Block and also has responsibility to conduct the examination and payment of salary etc. and thus, he will not be able to perform extra responsibilities of BRC Coordinator and as a result of the same, it will be impossible to achieve the goal of Sarva Shiksha Abhiyan.

11. It is also submitted that since the Petitioners have been appointed for a period of two years and, therefore, they have right to continue for two years, if there is nothing against them. Till date, nothing has been found against the Petitioners and no order has been passed for discontinuance of the Petitioners. The State Project Director by means of order dated 10.02.2011 provided that upto 21.02.2011 the concerned Assistant Basic Education Officer will take charge on the post of BRC, which would result in ouster of the Petitioners without there being any order issued by the authorities concerned.

12. On a query put to Sri A.M. Tripathi, learned Counsel for the opposite party No. 3, he submitted that till date no order has been passed for removal / termination/ repatriation of the services of the Petitioners. However, the perusal of the circular of the State Project Director dated 10.02.2011 indicates that all the Ex-officio BR Cs have to take charge on 21.02.2011 and admittedly that will adversely effect the appointments of the Petitioners, whereas in pursuance of the

appointment orders, Petitioners are entitled to continue for the period of two years subject to the condition that if there is any irregularities found in their functioning, their appointments can be cancelled on a short notice.

13. Admittedly till date, no order has been passed terminating the services of the Petitioners and, as such, they are entitled to continue in pursuance to their appointments for a period of two years subject to the condition mentioned in the appointment order.

14. In view of the above, prima-facie a case for interim relief is made out. Accordingly, the operation and implementation of the order dated 10.02.2011, so far as it relates to taking over charge of the post of Block Resource Coordinator by the Assistant Basic Education Officer as Ex-officio Block Resource Coordinator is concerned, is hereby stayed against the posts on which the Petitioners are working and opposite parties are directed to allow all the Petitioners of the instant writ petitions to continue in accordance with the terms and conditions of their appointment orders.

15. As prayed, all the opposite parties are granted two weeks" time to file their respective counter affidavits. Rejoinder affidavit, if any, may be filed within a week thereafter.

List immediately there after.