

(1998) 04 AHC CK 0121
In the Allahabad High Court
Case No : C.M.W.P. No. 41564 of 1997

Sanjeev Kumar Dubey

APPELLANT

Vs

District Inspector of Schools, Etawah and others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(2)
Constitution of India, 1950 — Article 14
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(2)
Constitution of India, 1950 — Article 14
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(2)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 1

Citation : (1998) 2 AWC 1570 : (1998) 2 UPLBEC 1393

Hon'ble Judges : M. Katju, J

Bench : Single Bench

Advocate : Yogesh Kumar Saxena, for the Appellant;

Final Decision : Disposed Of

Judgement

M. Katju, J.—This writ petition has been filed for quashing the Impugned order dated 30.9.97 Annexure-18 to the writ petition and for a mandamus directing the respondents to appoint the petitioner on the post of Science Demonstrator in Sri Radha Vallabh Inter College, Phaphund, district Etawah.

2. The petitioner's father was a confirmed Science Demonstrator in the Institution in question and he died in hamess on 31.12.93 leaving behind his widow, four sons and one daughter. The petitioner claims to be his eldest son.

3. The petitioner made an application to respondent No. 2 Committee of Management for appointing him under the Dying-in-Harness Rules. True copy of

the petitioner's application dated 24.7.95 is Annexure-3 to the writ petition. The petitioner has alleged that he has done his B.Sc. and hence is qualified for being appointed as Science Demonstrator. The petitioner has relied on the Government Order dated 2.2.95 copy of which is Annexure-7 to the writ petition. This Government Order provides that when teacher in a recognised Institution dies in-harness, then one member of his family who is not below 18 years of age can be appointed on a teaching post for trained graduate.

4. In paragraph 7 of the petition, it is stated that the District Inspector of Schools, Etawah, on 5.2.96 wrote a letter to the Manager of the Institution seeking some information and documents. True copy of the said letter is Annexure-8 to the writ petition. In paragraph 8 of the petition. It is stated that the Committee of Management of the Institution passed a resolution on 10.3.96 for appointing the petitioner under the Dying-in-Harness Rules. True copy of the resolution is Annexure-9 to the writ petition. Thereafter. It appears from paragraphs 10 to 12 of the writ petition that certain correspondence followed between the District Inspector of Schools, the Committee of Management and the petitioner vide Annexures-11 to 16 to the writ petition. However, by the impugned order dated 30.9.97 Annexure-18 to the writ petition, the District Inspector of Schools informed the petitioner that since he had not received training as a teacher and was only B.Sc. hence he cannot be appointed on the grade of trained graduate teacher. Aggrieved this petition has been filed in this Court.

5. When this writ petition was Initially argued before me on 12.12.97 after hearing learned counsel for the petitioner and learned standing counsel, I passed the following order :

"The petitioner is claiming appointment as a Teacher (Demonstrator) under Dying-in-Harness Rules. In my prima facie opinion, no appointment under Dying-in-Harness Rules can be made on the post of teachers. There are many cases where the father is very intelligent and learned but the son is not, and there are cases vice versa also.

Hence the appointment of a teacher done under Dying-in-Harness Rules is arbitrary and Illegal since if a person who is Incompetent and not deserving to be a teacher is appointed as a teacher the result will be that the lives of thousands of children may be ruined because if the teacher is not learned it is obvious that students will also not get good education. Hence, prima facie. In my opinion, no appointment under the Dying-in-Harness Rules can be made on the post of teacher and such appointment should be made only on merit.

Put up on Monday, i.e., 15.12.97 before me. Learned Standing Counsel and learned counsel for the petitioner may address/argue on this. Sri Pradeep Kumar Gupta, learned Additional Chief Standing Counsel will Inform learned Advocate General about this order. The validity of the relevant provisions in the Act and Rules will also be decided."

6. The case was listed before me on 9.3.98 and I heard learned counsel for the petitioner and learned standing counsel.

7. Learned counsel for the petitioner submitted that the eligibility qualification for appointment as Science Demonstrator is only B.Sc. vide Appendix-A, item 34 of Chapter II, Regulation 1 of U. P. Intermediate Education Regulation, while training is only a desirable, not necessary qualification. Hence, he submitted that the Impugned order is illegal and the petitioner should be appointed as Science Demonstrator.

8. In this connection, reference may also be made to the proviso to Section 16 [2] of the U. P. Secondary Education Service Commission Act, 1982, which has been Inserted by U. P. Act No. XV of 1995 with effect from 28.12.94. The said proviso states as follows :

"Provided also that the dependent, of a teacher or other employee of an Institution dying-in-harness, who possesses the qualifications prescribed under the Intermediate Education Act, 1921 may be appointed as teacher in Trained Graduate's Grade in accordance with the regulations made under sub-section (4) of Section 9 of the said Act."

9. In my opinion, both the proviso to Section 16 (2) of U. P. Secondary Education Service Commission Act, 1982 as well as Government Order dated 2.2.95 are arbitrary and violative of Article 14 of the Constitution.

10. As stated in my order dated 12.12.97, if a person who is incompetent is appointed as a teacher, the result will be that the lives of thousands of children may be ruined because if the teacher is not learned and competent, it is obvious that the students will also not get good education. In my opinion, it is absolutely necessary that high standard education is imparted to the children. Hence, the appointment of a teacher is not simply a matter of giving a job to one individual. It necessarily also Involves the claims of the thousands of students to get good quality education. In my opinion, the appointment of teachers should be made only on merit and on no other considerations, otherwise good education will not be possible. Merely because a person has the minimum qualification does not necessarily mean that he is competent to be appointed as a teacher. There may be applicants who may be much more competent and may have a much better academic record, and, in my opinion, the person who is best in merit should be appointed as a teacher.

11. The time has come when in our country we must emphasise merit in jobs Involving Intellectual work, otherwise the nation cannot progress. As observed by the Supreme Court in St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., , "the teacher alone could bring out the skills and intellectual capabilities of the students. He is the engine of the educational system. He is a principal Instrument in awakening the child to cultural values."

In the same decision the Supreme Court also observed :

"The teacher plays a pivotal role in moulding the career, character and moral fibre and aptitude for educational excellence in Impressive young children. Formal education needs proper equipment by the teachers to meet the challenges of the day to Impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and Intellectual capabilities of the students in their pursuit. The teacher is adored as Gurudevobhava. next after parents, as he is a principal Instrument to awakening the child to the cultural ethos, intellectual excellence and discipline."

12. It is settled law after the landmark Judgment of the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , that arbitrariness violates Article 14 of the Constitution. For the reason given above, I am of the opinion that the G.O. dated 2.2.95 as well as the proviso to Section 16 (2) of the U. P. Secondary Education Service Commission Act, 1982, are arbitrary, and are hence invalid.

13. In the circumstances, I am of the opinion, that the Government Order dated 2.2.95 as well as the proviso to Section 16 (2) of the U. P. Secondary Education Service Commission Act, 1982, are ultra vires. Hence the petitioner cannot be appointed as a teacher under the Dying-In-Harness Rules. In my opinion, no appointment to the post of a teacher can be made under the Dying-In-Harness Rules and any rule which permits this is unconstitutional. Merely because a person's father was a teacher does not entitle the son to get appointment as a teacher under the Dying-in-Harness Rules. However, I direct that the petitioner shall be offered a job as Class III employee within a month of the production of the certified copy of this order before respondent No. 1.

14. With these observations, this petition is disposed of finally.