
(2009) 05 AHC CK 0558

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28825 of 2009

Santosh Kumar Singh

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 29-05-2009

Acts Referred:

Citation : (2009) 05 AHC CK 0558

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K.Shukla, J.

Present writ petition has been filed for following relief which is being quoted below:

(i) Issue a writ order or direction in the nature of mandamus directing the respondents to regularize the services of petitioner on the post of Assistant Teacher(Vyayam) in Ratsar Inter College, Ratsar, Ballia with all consequential service benefits.

(ii) to issue a writ order or direction in the nature of mandamus directing the respondents to pay the entire arrears of salary of petitioner from the date of his initial appointment and further to pay his regular salary as and when it became payable.

(iii) issue any other and further order which this Hon"ble Court may deem fit and proper under the circumstances of the case.

Brief background of the case is that in the district of Ballia there is institution known as Ratsar Inter College, Ratsar Ballia. Said institution is duly recognized under the provisions of U.P. Act No. II of 1921 and the provision of U.P. High Schools & Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act 1971 and U.P. Act No. V of 1982 and the Rules 1998 framed thereunder are fully applicable to the said institution. Petitioner claims that in the

institution concerned one Krishna Chandra Singh, who was working as Assistant Teacher (Vyayam), was suffering from Asthama, as such he was not able to work since January, 1998, as such on 25.06.1998 meeting of Managing Committee of the institution was held wherein decision was taken to appoint part time teacher. Petitioner submits that pursuant to the same advertisement was issued on 23.07.1998 and he has been appointed. Petitioner further submits that appointment letter dated 14.08.1998 was issued by providing therein that he is liable to function till regularly selected candidate from the U.P. Secondary Education Services Selection Board comes and joins. It has been stated that thereafter said Krishna Chandra Singh retired on 30.06.2002. Managing Committee of institution passed resolution for extension of his services. At this juncture present writ petition has been filed with the relief quoted hereinabove.

Learned counsel for the petitioner, Sri Rajendra Pratap Singh, contended with vehemence that in the present case petitioner claims that he has been validly appointed as such he is entitled for salary and he is also entitled for his claim being regularized, as such writ petition deserves to be allowed.

Countering said submission learned Standing counsel on the other hand contended that petitioner's appointment is nothing but an outcome of manipulation and manoeuvring and no credibility could be attached to the same.

After respective arguments have been advanced factual position which is emerging in the present case is that Managing Committee of the institution on 25.06.1998 passed resolution for making arrangement of part time Physical Training Instructor and the resolution to the said effect was passed by the Managing Committee of the institution and advertisement in question has been published in one newspaper on 23.07.1998 Anant Varta which is insignificant newspaper. Most surprising feature is that entire proceedings which had been undertaken qua the same it has been stated that selection committee was constituted and interview was held and based on the interview selection was made. In the present matter, selection were to be made under the provision as contained in U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order 1981 and in the aforesaid provision there is no provision of interview being provided rather selection has to be made on the basis of quality point marks. Selection on the face of it, is thus, in breach of said provision as contained under U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order 1981. Once appointment of the petitioner is dehors the statutory provisions without following procedure provided under the law, then no direction can be issued by this Court for ensuring salary to the petitioner from State Exchequer.

Petitioner also claims for his regularization. Such claim of the petitioner can also not be considered as various provision has been incorporated in U.P. Act No. V of 1982 for extending the benefit of regularization and the claim of the petitioner doesn't fit in within the said criteria.

Consequently in the facts of the case no relief can be accorded to the petitioner as such writ petition is dismissed. However it is made clear that in case Committee of Management of the institution has taken work from the petitioner then petitioner would be entitled to realize his salary from the Managing Committee of the institution by filing suit, if any.