
(2006) 08 AHC CK 0208
In the Allahabad High Court
Case No : Special Appeal No. 908 of 2006

Shardanand Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 101, 102, 103

Citation : (2006) 7 AWC 6613 : (2006) 3 UPLBEC 2715

Hon'ble Judges : Ajoy Nath Ray, C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : Abhishek Kumar, for the Appellant; Suresh Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ajoy Nath Ray and Ashok Bhushan, JJ.—Heard Sri Abhishek Kumar, learned Counsel for the appellant and Sri Suresh Singh, learned Standing Counsel, appearing for the respondents.

2. This is an appeal against the judgment and order dated 13th July, 2006 of learned Single Judge dismissing the writ petition of the appellant.

3. The appellant- writ petitioner was appointed as Peon on compassionate ground in the year 1993. It is alleged that the appointment as Peon was accepted by the appellant under protest since he was qualified to be appointed as Assistant Teacher. The writ petition was filed in the year 2005 by the appellant claiming appointment on the post of Assistant Teacher on compassionate ground. The learned Single Judge by the impugned judgment took the view that the writ petitioner having approached belatedly he is not entitled for any relief.

4. Learned Counsel for the appellant, challenging the said judgment, contended that the right to receive appointment on the post of Assistant Teacher accrued by virtue of the amendment dated 2.2.1995 in Regulations 101 to 103 of Chapter-III framed under the UP. Intermediate Education Act, 1921. He has placed

reliance on a judgment of learned Single Judge in Writ Petition No. 8638 of 2004 (Sanjeev Kumar Srivastava v. State of U.P. and Ors.) dated 4.3.2004. He submits that by the aforesaid judgment the learned Single Judge created an exception with regard to those compassionate appointees who have accepted appointment under protest prior to 2.2.1995. He further submits that in view of the above judgment dated 4.3.2004 the appellant was fully entitled for appointment as Assistant Teacher.

5. Learned standing counsel, refuting the submissions of counsel for the appellant, contended that appellant having once accepted the appointment on compassionate ground in the year 1993, he has no right to claim appointment on teaching post second time. He placed reliance on judgments of the Apex Court in 1995 S.C.C. (L & S) 10 ; State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma,

6. We have considered the submissions and perused the record.

7. The appellant accepted the appointment in the year 1993 on compassionate ground as Peon. Regulations 101 to 107 of Chapter-III, as existing at the relevant time, entitled any dependant of deceased employee to receive appointment on any non teaching post. Consequently the appellant was appointed on Class- IV post which was accepted by him. Much emphasis has been given by the counsel for the appellant on the fact that the appellant had accepted the appointment under protest, hence his right still survives to receive consideration for appointment on teaching post by virtue of amendment made in the regulations on 2.2.1995.

8. Before we proceed further, it is necessary to note the concept of accepting appointment under protest. The submission of the appellant is that the appointment as Peon was under protest. The word "protest" has been defined in Oxford Dictionary as "accepting something unwillingly".

9. The protest with regard to an action can only mean acceptance without giving up any of the rights of a person protesting to an action. The protest is a conscious act which is made after fully knowing the rights of the person making protest. The word "protest" would mean that the person protesting had knowledge of his rights on the date when protest was lodged. Coming to the facts of the present case, in the present case the appointment was accepted in the year 1993. Admittedly the amendment in the regulation was made on 2.2.1995 permitting compassionate appointment on a teaching post also. There being no such right with the appellant in the year 1993 to claim appointment on a teaching post, there cannot be any concept of accepting the appointment under protest claiming for a higher appointment. The submission of the appellant's counsel that appointment was made under protest is a submission without any substance. The protest prevents waiver of rights. In the year 1993 the appellant had no right for appointment on a teaching post, hence there was no question of any protest with regard to such right. Thus the protest as claimed by the

appellant was an empty attempt qua the right for appointment on a teaching post.

10. The submission of learned standing counsel that once compassionate appointment is accepted the right is exhausted, and there cannot be any second consideration for the same right is well founded. The judgment of the Apex Court in State of Rajasthan (supra) fully supports the said submission. The Apex Court in paragraph 8 of the said judgment has laid down that once the right to be considered for appointment on compassionate ground was consummated there cannot be any further consideration. Paragraph 8 of the said judgment is extracted below:

8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14.12.1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion". Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

11. Another judgment relied by the learned standing counsel in State of M.P.'s case (supra) also supports the submission that person claiming compassionate appointment has no right to any particular post of his choice. Following was laid down in paragraph 3 of the said judgment:

Learned counsel for the appellants has contended that under the instructions in question the respondent is not entitled to a higher post of his choice merely because he fulfils the requisite eligibility qualifications. Learned Counsel for the respondent has attempted to defend his case by citing the illustration of another applicant - Rajiv Dwivedi -who, according to him, was appointed in similar circumstances as APP, Grade II. The fact relating to Rajiv Dwivedi are not on record and it is the mere assertion of the respondent that the circumstances are identical. Even assuming that Rajiv Dwivedi's case was similar to that of the respondent, the applicant has no right to any particular post of his choice, he can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the two cases. If a mistake was committed in an earlier case, that cannot be a ground for directing the State to perpetuate the error for all times to come. Learned Counsel for the respondent has not been able to show before us any rule or Government instructions under which the respondent can claim the post of APP, Grade II.

12. The judgment on which learned Counsel for the appellant has laid much emphasis is Sanjiv Kumar Srivastava's case (supra), Copy of the said judgment has been enclosed along with the stay application filed in support of the appeal. In the said judgment learned Single Judge considered the amendment dated 2.2.1995 and took the view that the object of the note does not appear to reconsider all the appointments made before 2.2.1995. Learned Single Judge, however observed that it only gives rights to those employees who did not receive appointments before 2.2.1995 and those who had accepted the appointment under protest. Following observations made by the learned Single Judge are extracted below:

In the present case the dependants of employees dying in harness after 1.1.1981, have been made eligible for appointments on teaching posts. In case the note is made retrospective, all those who received appointment before 2.2.1995, shall be entitled, if they were eligible on teaching post. The object of the note does not appear to reconsider all the appointments made before 2.2.1995. It only gives rights to those employees, who, did not receive appointments before 2.2.1995 and those who had accepted the appointments under protest.

13. Learned Counsel for the appellant has also referred to Regulation 103 of Chapter- III in which a note has been made that this regulation and Regulations 104 to 107 would apply in relation to those employees who have died on or after 1st, January, 1981. The regulations 101 to 107 were inserted in Chapter-III on 30th July, 1992. Prior to 30th July, 1992 there was no provision in the U.P. Intermediate Education Act, 1921 or the regulations framed thereunder with regard to giving of appointment to dependant of deceased employee on compassionate ground. However, the appointments on compassionate ground were being given to dependant of deceased employees by virtue of Government order which permitted appointment on compassionate ground with effect from 1st January, 1981. This is the reason why the note has been made in Regulation 103 of Chapter-III that this regulation and Regulations 104 to 107 would apply in relation to employees who have died on or after 1.1.1981. Thus the appointment on compassionate ground to the employees who died on or after 1.1.1981 has been protected but the effect of the note is not that any person who has received compassionate appointment prior to 2.2.1995 can claim appointment on another post after the amendment in the regulations. The observations of learned Single Judge in Sanjiv Kumar Srivastava's case (supra), as quoted above, cannot be supported on the basis of Regulations. It is well settled that nothing in a statutory provision can be added by a judicial pronouncement. The Courts do not legislate but only interpret the legislation as it exists. The observations of learned Single Judge that those employees who did not receive appointments before 2.2.1995 and those who had accepted the appointments under protest can claim appointment on teaching posts do not commend ourselves. We are of the view that the said observations do not lay down correct law and the judgment of learned Single Judge in Sanjiv Kumar Srivastava's case (supra) up to that extent is not a good law.

14. The view of the learned Single Judge in the impugned judgment that the writ petitioner was not entitled for any relief since he has belatedly approached the Court is fully approved by us because the appellant had belatedly approached the writ Court. The writ petition was filed by the appellant in the year 2005 whereas he received the appointment on Class-IV post in the year 1993 and the amendment in the Regulations 101 to 107 was made on 2.2.1995. The writ petition was rightly dismissed on the ground of laches.

15. In view of the foregoing discussions, we do not find any merit in the appeal and the same is dismissed.