
(2011) 04 AHC CK 0168
In the Allahabad High Court
Case No : Writ A No. 58577 of 2009

Shiv Charan Lal Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (2011) 04 AHC CK 0168

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—List revised. None appeared on behalf of Petitioner. However, I have perused the record.

2. Petitioner has sought a writ of mandamus commanding the Respondents to release his salary for the post of Assistant Teacher L.T. Grade. Petitioner asserts that vacancy occurred in Sri Krishna Inter College, Gokul, Mathura which is an institution recognized by Board of High School and Intermediate Education under the provisions of U.P. Intermediate Education Act, 1921, and, U.P. Secondary Education Service Selection Board Act, 1982 (hereinafter referred to as "1982 Act") and U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as "1971 Act") are applicable to it. Vacancy of six teachers were requisitioned to U.P. Secondary Education Services Selection Board and, thereafter, the Management appointed the Petitioner. From the averments, it is clear that appointment on ad hoc basis ought to have been made in accordance with procedure prescribed u/s 18 of 1982 Act read with Removal of Difficulties Order issued thereunder, but there is nothing on record to show that the said procedure was followed.

3. In the counter affidavit in para 3 Respondents have detailed the facts showing as to how the Management made illegal appointment and, therefore, Petitioner is

not entitled for salary. Having gone through the same as also the pleadings and grounds taken in the writ petition, since Petitioner's appointment has not been made in accordance with law, he is not entitled for payment of salary. Apex Court in Prabhat Kumar Sharma and others Vs. State of U.P. and others, held that procedure laid down in Removal of Difficulties Order is mandatory and has to be observed in words and spirit. An appointment made inconsistent with the said procedure is void ab initio and will not confer either any right upon the incumbent to hold the post or to continue in service or to claim salary from State exchequer. The relevant observations made by the Apex Court in Prabhat Kumar Sharma (supra) is as under:

Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees.

4. Again in para 11 of the judgment the Court held as under:

Any appointment in violation thereof is void. As seen prior to the Amendment Act of 1982 the First 1981 Order envisages recruitment as per the procedure prescribed in para 5 thereof. It is an inbuilt procedure to avoid manipulation and nepotism in selection and appointment of the teachers by the Management to any posts in aided institution.

5. This decision has been followed and reiterated recently by the Apex Court in Shesh Mani Shukla v. District Inspector of Schools Deoria and Ors. J.T. 2009 (10) SC 309 wherein the Apex Court has held as under:

It is true that the Appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the Appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ Petitioner must establish a legal right in himself and a corresponding legal duty in the State.

6. In the circumstances, it cannot be said that the appointment of Petitioner is validly made and hence he was entitled for payment of salary. I, therefore, find no reason to pass any order enabling Petitioner to claim salary from the State Exchequer.

7. The writ petition, therefore, lacks merit and is dismissed. No costs.