
(2009) 04 AHC CK 0394

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20794 of 2009

Shree Krishna

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0394

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

Final Decision : Allowed

Judgement

V.K. Shukla, J.

Present writ petition has been filed by the petitioner, questioning the validity of order dated 07.03.2009 passed by the District Magistrate, Etah, cancelling the candidature of petitioner and asking to appoint Avnish Kumar as Shikshamitra.

Brief background of the case is that selection proceedings were undertaken for the post of Shikshamitra and in the said selection so held, petitioner was offered appointment, who has been performing and discharging duties as such. Avnish Kumar, claiming that his merit status was much higher; he had applied well within the time prescribed, and illegally ignoring his claim, petitioner was offered appointment, filed writ petition No.63986 of 2008, wherein this Court on 11.12.2008 asked the District Magistrate to consider and decide the matter. Thereafter, the District Magistrate considered the matter, rejected the claim of petitioner and allowed that of Avnish Kumar.

Sri Nitinjay Pandey, learned counsel for the petitioner contended with vehemence that in the present case no opportunity had been afforded to the petitioner and coupled with this the application form of Avnish Kumar was incomplete, as his character certificate and other certificates were prepared on 02.08.2007 and 03.08.2007, and incomplete application form could not have been accepted, as such the candidature of the petitioner was not liable to be cancelled and Avnish Kumar was not entitled to be offered appointment.

Countering the said submission, learned Standing Counsel as well as Sri Ajendra Kumar, contended that rightful view has been taken and no interference be made.

After respective arguments have been advanced, factual position which emerges in the present case is that claim of Avnish Kumar had been accepted on the ground that his application form was received by the Head Master, the Secretary of the Gram Shiksha Samiti on 30.07.2007 and his merit status was higher to the merit status of the petitioner, as such he was entitled to be offered appointment. The District Magistrate while taking decision, at no point of time, endeavoured to see as to whether the application form of Mr. Avnish Kumar was complete in all respects or not. As per terms and conditions of the advertisement, all the requisite certificates/documents were to be appended along with the application form at the time of its submission before the competent authority. Documentary evidence has been sought to be produced before this Court in the shape of caste certificate dated 01.08.2007 and the character certificate dated 03.08.2007, and all these documents were admittedly issued after the last date of submission of application form. In this view of the matter the District Magistrate was under obligation to examine this aspect of the matter as well as to whether when academic session in question was already over, could even then Avnish Kumar could have been offered appointment. In the present case decision making process is faulty for nonconsideration of aforesaid important aspect of the matter, as such the order passed by the District Magistrate is not sustainable.

Consequently, writ petition succeeds and the same is allowed. The matter is remitted back to the District Magistrate to be decided afresh preferably within a period of eight weeks from the date of receipt of a certified copy of this order, after affording opportunity of hearing to the petitioner, Avnish Kumar and the Head Master of the institution concerned.