
(2001) 01 AHC CK 0100
In the Allahabad High Court
Case No : C.M.W.P. No. 13309 of 1995

Shreepal Singh	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 810

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

A. K. Yog, J.—The petitioner, Shreepal Singh has approached this Court by filing present petition under Article 226, Constitution of India seeking to challenge order dated April 24, 1995, passed by District Basic Education Officer, Band a (Annexure-7 to the Writ Petition), whereby the said Officer decided the representation partly in favour and partly against the petitioner claiming selection grade as Head Master of a Junior High School (owned and managed by "Basic Education Board, U.P.") with effect from October 21, 1975, when he was given promotion as In-charge Headmaster.

2. Heard learned counsel for the parties and the learned standing counsel Shri P. K. Sharma, appearing on behalf of Respondent No. 2.

3. Petitioner was initially appointed on September 1, 1957 as Assistant Teacher of a Primary School. He became Headmaster of the Primary School on December 26, 1963. In due course, he was promoted as Assistant Teacher. Senior Basic High School (Junior High School) on July 5, 1969. One Ram Krishna. Headmaster of Junior High School. Pachnehi, Banda, was transferred to another Junior High School at Saimari. Petitioner was directed to join at Saimari and being senior most Assistant Teacher, he was also required to take charge of the office of the

Headmaster of the said school. Petitioner, thus, became In-charge Headmaster of the Junior High School. Pachnehi. Petitioner continued to act as In-charge Headmaster until District Selection Committee made regular selection promoted on regular basis as Headmaster of the same Institution.

4. It is admitted at the bar that a Government order dated August 29, 1989, was issued conferring benefit of selection grade subject to fulfilment of certain conditions. The said-Government order was partially modified vide Government Order dated December 26, 1989. A copy of the Government Order dated August 29, 1989, is neither on record nor the same has been placed for perusal of the Court. Only the amending Government Order dated December 26, 1989, has been placed for perusal of the Court, which shows that certain teachers and headmasters of Junior High School were granted selection grade on completing ten years" service as such. Entry No. 9 of the said Government Order clearly recites that to be eligible to claim selection grade, a teacher should be a regular (Niyamit) teacher/headmaster.

5. The learned counsel for the petitioner placed emphasis on the Hindi word "Niyamit" used in the Government Order and attempted to argue that in English it will mean "continuous". I am unable to agree with this submission and the interpretation. If the Government Order was to include officiating, in-charge, stop gap and other like teachers/head masters and count such ad hoc/stop gap working period (irrespective of nature, and status of working) it should have used the word "Nirantar" in Hindi (in English-Continuous).

6. Expression "Niyamit" used in the Government Order clearly means, Teacher/ Headmaster, appointed in law on "regular" (valid) basis. Petitioner accepted his promotion vide order dated September 30, 1983 (Annexure-2 to the Writ Petition). In the said order, petitioner has been addressed as Assistant Teacher. Learned counsel for the petitioner failed to show that this order of promotion was either accepted under protest or ever objected/challenged before any authority, forum or Court. This shows that petitioner accepted his position as Assistant Teacher on August 30, 1983.

7. In the wake of the Government Order issued in the year 1989, referred to above, petitioner, as Headmaster claimed selection grade on the ground that since becoming "in-charge headmaster" in October 1975, he had completed ten years" tenure as headmaster and consequently entitled to selection grade. Since the representation filed by him did not receive desired attention, he was constrained to file a writ petition in this Court, which was finally disposed of by a learned single Judge vide judgment and order dated February 1, 1995. This Court directed the District Basic Education Officer to decide the said representation by a reasoned order (Annexure-6 to the Writ Petition).

8. In compliance to the above direction issued by the Court, the District Basic Education Officer passed above mentioned impugned order dated April 24, 1995 and it is now challenged by the petitioner by means of the present petition.

9. Perusal of the impugned order shows that the District Basic Education Officer laboured to act beyond the scope of dispute inasmuch he had made several observations, which, in my opinion, are absolutely irrelevant and beyond the scope of "the controversy" to be decided by him. He has drawn certain presumptions against the petitioner because of some overwriting in the Service Book of the petitioner : and on its basis assumed some abatement, conspiracy between the petitioner and others including officials in the U. P. Basic Education Board.

10. Petitioner had no occasion to meet the above charge and such finding of the District Basic Education Officer is without basis and deserves to be quashed.

11. Again an adverse inference has been drawn against the petitioner on the ground of some part time appointment made in favour of the petitioner's own family member. This is also irrelevant inasmuch the concerned authorities ought to have initiated proceedings against the petitioner as and when such an illegality came to their knowledge. In case he is not guilty or even if some punishment is awarded, he cannot be denied selection grade. Petitioner had no opportunity to defend against this charge also. Such an objection is being raised at a highly belated stage without affording opportunity and in violation of principles of natural justice. The adverse observations made in the impugned orders against the petitioner cannot be sustained and deserves to be quashed.

12. Under impugned order in the end, petitioner has been granted "selection grade" with effect from December 19, 1993 (i.e., on completion of ten years" regular working as Headmaster, viz., continuing service as Headmaster with effect from December 19, 1983).

13. To this extent, I find no good ground for interference.

14. The learned counsel for the petitioner, however, next contended that the effect of the impugned order is that he has been denied selection grade as Assistant Teacher, though he had worked as such with effect from July 5, 1969, till he was regularly appointed as Headmaster on December 18, 1983, and became entitled to selection grade as Assistant Teacher.

15. It cannot be denied that respondent cannot deprive the petitioner of selection grade if he was entitled under relevant Government order on the ground of being regularly appointed and worked as Assistant Teacher (on regular basis), i.e., on completing ten years as regular Assistant Teacher as contemplated under relevant Government order.

16. As the record stands today and considering the scope of the present petition, this Court cannot allow the petition any further.

17. If the petitioner is entitled to selection grade, but denied by the order impugned in the present petition, the interest of justice requires that petitioner's claim of grant of selection grade as Assistant Teacher ought to be considered and arrears paid as a consequence thereof.

18. In view of the above, adverse observations made against the petitioner in the impugned order are hereby quashed.

19. The impugned order, to the extent it granted selection grade has been allowed to the petitioner as Headmaster of the Junior High School with effect from December 19, 1993, shall stand. It is further clarified that petitioner will be entitled to approach concerned authority for claiming arrears, if any, with respect to both for his selection grade as Assistant Teacher during 1979 to 1983, as mentioned above, as well as the arrears which he may become entitled by virtue of selection grade be given as headmaster with effect from December 19, 1983. For this purpose, the petitioner may approach the concerned authority by filing a certified copy of this judgment, who shall decide question of payment of arrears within three months and pay entire arrears within another two months.

20. Petition stands partly allowed, subject to direction and observation made above.