
(2008) 01 AHC CK 0089
In the Allahabad High Court

Shri Narain Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Citation : (2008) 2 UPLBEC 86

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Shri Sanjeet Kumar Yadav, the learned Counsel for the petitioner, Shri Raj Narain Tiwari, the learned Counsel for respondent No. 5, Shri C.K. Rai for the Basic Shiksha Parishad and the learned Standing Counsel for the remaining respondents.

2. The Village Level Committee held selection proceedings for the post of Shiksha Mitra. In the Select List, it was found that the petitioner had obtained 112.1 quality point marks, whereas the respondent No. 5 had obtained 88.4 quality point marks. The petitioner possessed 7 years" experience as an Instructor, whereas the respondent No. 5 possessed 11 years" experience as an Instructor. It appears that the Village Level Committee selected the petitioner as a Shiksha Mitra on the ground that the petitioner had better quality point marks than respondent No. 5. This selection was made on 3rd January, 2006 and since then the petitioner is working on the post of Shiksha Mitra.

3. The respondent No. 5, being aggrieved by the "selection of the petitioner on the post of Shiksha Mitra, filed Writ Petition No. 66754 of 2006, which was disposed of finally with a direction to the District Magistrate to decide the controversy in accordance with law. The District Magistrate, by the impugned order dated 16th of January, 2007 decided the controversy, holding that since respondent No. 5 had more experience as an Instructor, he was liable to be selected as a Shiksha Mitra, and consequently, cancelled the appointment of the

petitioner on the post of Shiksha Mitra. The petitioner, being aggrieved by the aforesaid decision has filed the present writ petition.

4. The District Magistrate, while allowing the representation of respondent No. 5, has relied upon a Government Order dated 24th of April, 2006, which stipulated that in the event more than one Instructors are available, in that case priority would be given to that Instructor who had the longest period of service rendered as an Instructor. Since respondent No. 5 had more experience as an Instructor than the petitioner, the District Magistrate cancelled the appointment of the petitioner and directed respondent No. 5 to be appointed as the Shiksha Mitra. The whole controversy boils down to the provisions of Clause (4) of the Government Order dated 10th October, 2005, which has been clarified further by Government Orders dated 21st November, 2005 and 24th of April, 2006. For facility, Clause (4) of the Government Order dated 10th October, 2005, as translated into English, is quoted hereunder.

The minimum educational qualification for the Shiksha Mitra (men/-women) will be passing of the Intermediate Examination conducted by the Uttar Pradesh Madhyamik Shiksha Parishad (Higher Secondary Education Board of U.P.), or any other attainment of a qualification recognised by the State Government.

The candidates, who are disabled, widows, or divorced women, will be given 10% extra marks over and above the marks, which they obtain on the basis of their educational qualifications.

The minimum age of the Shiksha Mitra on 1st of July of the relevant year, will be 18 years and maximum 35 years. As far as the disabled persons, widows and divorced women are concerned, the upper age limit will be relaxable by further 5 years. As far as the Instructors/-Supervisors working in the non-formal educational Scheme are concerned, they will be given the relaxation in the upper age limit by 5 years and will be appointed on the basis of "Prathama Variyata (first priority)". All the other conditions of appointment and of eligibility will be applicable to the Instructors/-Supervisors as they are.

The aforesaid clause contemplated that Instructors would be given priority if they are otherwise eligible for the post of Shiksha Mitra. The Government subsequently issued a clarification dated 21st November, 2005, explaining what is meant by the words "Pratham Variyata", clarifying that in case an Instructor who had earlier participated in a non-formal education scheme and who fulfilled all other conditions of eligibility, and falls within the specified category of reservation, in that case, the said Instructor would be appointed even if the marks received by that Instructor was less. Subsequently, another clarification dated 24th April, 2006 was issued by the Government further clarifying the priority given to the Instructors. This circular further clarified that in case of more than two Instructors available for the post of Shiksha Mitra, priority would be given to that Instructor who had the longest period of service rendered on the post of Instructor. In the light of the aforesaid Government Orders and the

clarification issued by it, the learned Counsel for the respondents submitted that in view of the Government Order dated 24th April, 2006, respondent No. 5 clearly had more experience as an Instructor than that of the petitioner, and therefore, the impugned order was rightly passed cancelling the petitioner's appointment on the post of Shiksha Mitra and that the respondent No. 5 was rightly appointed on the same post. In my view, respondent No. 5 will not be entitled to avail the benefit of the Government Order dated 24th April, 2006. Admittedly, the petitioner was appointed as a Shiksha Mitra on 3rd of January, 2006. The Government Order dated 24th April, 2006 was issued subsequently to the petitioner's appointment. In the case of *Km Rita Yadav v. State of U.P. and Ors.* (2007) 2 ESC 788 a Division Bench has held that the Government Order dated 24th April, 2006 is only prospective in nature and cannot apply retrospectively. Consequently, the Government Order dated 24th April, 2006 cannot apply retrospectively in the case of the petitioner qua respondent No. 5. Learned Counsel for respondent No. 5 strongly placed reliance upon a decision of the Full Bench in the case of *Daya Ram Singh Vs. State of U.P. and Others*, . In my opinion, the said judgment is not helpful to the respondents' case. The Full Bench only interpreted the meaning of the words "Prathama Variyata" and explained the impact of the various Circulars, clarifying Clause (4) of the Government Order dated 10* October, 2005. The Full Bench does not give any finding as to whether the Circular dated 24th April, 2006 would apply prospectively or retrospectively. Consequently, in the opinion of the Court, the Division Bench decision in the case of *Km. Rita Yadav (supra)* still holds the field and is binding upon the learned Single Judge. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed. The petitioner would be entitled to continue as the Shiksha Mitra till the end of the academic session 2007-08. Thereafter, the Village Level Committee is directed to issue a fresh advertisement for the post of Shiksha Mitra. It is made clear that the petitioner's renewal on the post will not occur after the end of the academic session.