
(2010) 04 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 23749 of 2010

Smt. Beenish Jalal

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 30, 30(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 9

Citation : (2010) 5 AWC 4721

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Petitioner before this Court is working as L.T. grade teacher in Maulana Azad Intermediate College, Anjansheed, Azamgarh. By means of the present writ petition she has prayed" for quashing the order dated 5.9.2009 where under the Joint Director of Education has rejected the proposal submitted by the Committee of Management of the Institution for promotion of the petitioner, on the ground that in the institution, there are 6 sanctioned posts of Lecturers and having regard to Regulation 5 (2) of Chapter II of the Regulations framed under the Intermediate Education Act only 50% posts are required to be filled up by promotion. Since three persons by way of promotion are already working on the post of Lecturers, no further promotion can be provided. She has also challenged the advertisement dated 27.3.2010 published by the institution for making direct recruitment on the post.

2. Sri I. R. Singh, learned Counsel for the petitioner has submitted that there is no dispute that against six sanctioned posts of Lecturer three persons are already working which is 50% of the total sanctioned strength of Lecturer cadre. It is further not in dispute that under Regulation 5 (2) of Chapter II of the Regulations framed under the Intermediate Education Act, 50% of the posts alone are required to be filled by promotion. He, however, contends that

Regulation 5 of Chapter II violates Article 30 of the Constitution of India inasmuch as minority institutions, have a right to administer the minority institutions which within its ambit includes the right to make appointment on the posts in the manner the management decides. Only restrictions regarding the qualifications may be prescribed under the Regulations. He submits that State has no authority to restrict the right of appointment by promotion to 50% of the total cadre strength in respect of minority institutions. For the purpose reliance has been placed upon a judgment of Hon'ble Supreme Court in the case of N. Ammad Vs. The Manager, Emjay High School and Others, specifically paragraphs 15, 20 and 21 are quoted hereinbelow:

15. A Constitution Bench of seven Judges of this Court in Kerala Education Bill, 1957, Re has examined the constitutional validity of the Bill which was the precursor to the Act when the President of India had sought the advice of the Supreme Court under Article 143 of the Constitution. One of the propositions laid down by the said Constitution Bench in the said decision is this : the right guaranteed under Article 30(1) is a right that is absolute and any law or executive direction which infringes the substance of that right is void to the extent of infringement. But the absolute character of the right will not preclude making of regulations in the true interests of efficiency or instructions, discipline, health, sanitation, morality, public order and the like, as such regulations are not restrictions on the substance of the right guaranteed by the Constitution.

16. The aforesaid proposition was approved by another Constitution Bench of this Court in Sidhrajibhai Sabbai v. State of Gujarat and also by a nine-Judge Bench of this Court in Ahmedabad St. Xavier's College Society v. State of Gujarat.

20. The importance of the key role which a Headmaster plays in the school cannot be better delineated than that. The nine-Judge Bench in the Ahmedabad St. Xavier's College Society has highlighted the importance of the role of the Principal of a College. In support of majority view in that decision. K. K. Mathew, J., has observed thus : (SCC pp. 815-16, para 182)

182. It is upon the Principal and Teachers of a College that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the Principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.

21. H. R. Khanna. J., has adopted a still broader view that even selection of teachers is of great importance in the right to manage a school. Learned Judge has stated thus : (SCC p. 789, para 103)

The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment

without infringing Article 30(1).

I have heard learned Counsel for the petitioner and examined the record.

3. The scope of Regulation 5 has been examined by a Division Bench of this Court in the case of Jai Bhagwan Singh v. District Inspector of Schools, Gautambuddh Nagar (2006) 3 UPLBEC 2391 : 2006 (6) AWC 5842, and it has been explained that under Rule 5 only 50% of the total cadre strength can be filled by promotion, the remaining 50% posts are required to be filled by way of direct recruitment.

4. The issue to be examined by this Court is as to whether restriction imposed on number of posts to be filled by promotion under Rule 5, Chapter II infringes any right of the minority institutions or not.

5. It is no doubt that Hon''ble Supreme Court has repeatedly held that right to administer minority institutions includes within its ambit the right to make appointments, however, such right is subject to reasonable restrictions which may be placed namely qualifications etc. The Hon''ble Supreme Court has further explained that right to manage does not include a right to mismanage.

6. Posts in aided minorities institutions are created u/s 9 of U.P. Act No. 24 of 1971 under orders of the Director of Education. It is in respect of these posts alone that the State has taken the responsibility to make payment of salary. The power to frame the regulations flows from Section 9 of Intermediate Education Act. The Regulation 5 which provides for 50% seats to be filled up by way of promotion has been so framed in exercise of statutory powers. Such prescription of quota for promotion does not infringe the right of the Management to make appointment inasmuch as the power to appoint continues with the Management. Only the matter of selecting the candidates has been restrained for the purpose of appointment through promotion to 50% of total cadre strength.

7. So far as minority institutions are concerned, it is clear that by prescription of quota for promotion none of the rights of the Management to make the appointment is interfered with.

8. Such regulation is in conformity with Article 14 of the Constitution of India which permits persons from the open market to compete in the matter of appointment in aided minority institutions.

9. This Court has no hesitation to hold that the Regulation 5 (2) is reasonable and far and does not in any way violate the fundamental right guaranteed in favour of the minority institutions under Article 30 of the Constitution of India. Hon''ble Supreme Court of India in the case of P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537 : 2005 (4) AWC 3864, has specifically held that reasonable statutory regulations can always be framed for regulating the appointments in minority institutions.

10. The State Government for providing an opportunity to the public at large to

participate in the selection to be held for appointment as per Article 14 of the Constitution of India has taken a decision to restrict mode of appointment by way of promotion to 50% only in a recognized institution including minority institutions. Such prescription of 50% for promotion in the institution in conformity with the constitutional scheme.

11. This Court, therefore, hold that the right of minority institution to offer appointment by way of promotion against 50% of the total cadre posts does not infringe the constitutional right guaranteed under Article 30 of the Constitution of India. Challenge made to the validity of Regulation 5 is, therefore, repelled. Since 50% of the posts have already been filled by promotion no relief can be granted.

12. The writ petition is dismissed.