
(2011) 04 AHC CK 0403

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47179 of 2006

Smt. Harjindar Kaur and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Uttar Pradesh Intermediate Education Act, 1921 — Regulation 7(2)
Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 — Rule 10
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 18

Citation : (2011) 5 ADJ 734 : (2011) 5 AWC 5166 : (2011) 2 UPLBEC 1378

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard Sri Arvind Srivastava, learned Counsel for the Petitioners, Sri T.N. Tiwari, learned Counsel for Respondent No. 7 and learned Standing Counsel for State-Respondents.

2. Before advertng to the merits of the present writ petition, this Court may consider the challenge made to the vires of Section 18 of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the "Act, 1982").

3. Petitioner, by means of amendment application challenges the vires of Section 18 of Act, 1982, which regulates the mode and manner of ad hoc appointment on the post of principal/headmaster till a regularly selected candidate recommended by the U.P. Secondary Education Services Selection Board is appointed.

4. Learned Counsel for the Petitioner submits that the State Government merely because it provides financial assistance cannot interfere in the right of the private management to administer the institution, which includes a right to appoint ad hoc principal/headmaster/teacher.

5. Learned Counsel for the Petitioners has placed reliance upon the judgment of the Hon"ble Supreme Court of India in the case of Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others,

6. Contention so raised on behalf of the Petitioners is totally misplaced. It is not in dispute that the institution in question has obtained recognition as intermediate college under the provisions of U.P. Intermediate Education Act, 1921. The State legislature has enforced U.P. Act No. 5 of 1982, in order to regulate the mode and manner of appointment on the post of principal and teachers of such recognised institution, so as to ensure that qualified and eligible persons are appointed in the intermediate college, which are the backbone of the education system of the State. The procedure as prescribed in the matter of regular appointment shall necessarily take sometimes. The institution cannot remain without a head in the meantime. The State legislature, by means of Section 18 of Act, 1982, has made a provision for appointment on ad hoc basis on the post pending regular selection. The senior most qualified teachers of the institution has been directed to be so appointed. Such provision, in the opinion of the Court, does not infringe any of the rights of the Management to administer the institution, as may be referable to Article 19(1) of the Constitution of India.

7. It may be recorded that validity of the Act, 1982 has already been upheld by this Court in the case of Shiksha Prasara Samiti, Babhanan, District Gonda v. State of U.P. and Ors., 1986 UPLBEC 477

8. The judgment relied upon by the learned Counsel for the Petitioners is clearly distinguishable in the facts of this case, and even otherwise, deal with rights of minority institutions.

9. Petitioners, who are four in number, claim to be appointed in primary Sections attached to M.P.P. Arya Kanya Inter College, Gorakhpur, which is an aided and recognised institution under the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "institution"). The date of birth, date of appointment and qualifications of the Petitioners, as disclosed from the document enclosed as Annexure-3 (page-33 of paper book) to the writ petition are as follows:

Sl. No.	Names of teachers	Post/ Designation	Educational Qualification	Date of birth	Date of appointment	Permanent/ Temporary
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7.	Smt. Harjinder Panesher/Kaur	Assistant Teacher	M.A. B.T.C.	7.2.1949	7.2.1973	Permanent
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8.	Smt. Kiran/Kiran Srivastava	Assistant Teacher	M.A. B.T.C.	1.5.1950	27.7.1974	Permanent
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11.	Smt. Vandana Tripathi	Assistant Teacher	M.A.B. Ed.	30.6.1967	2.7.1990	
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Permanent

12. Smt. Saroj Srivastava Assistant Teacher MAB. Ed. 1.4.1957 25.10.1996
Permanent

10. Petitioners, by means of the present writ petition, seek quashing of the order dated 2nd August, 2006, whereby the Manager/Principal of the institution have offered compassionate appointment to Ragini Tiwari i.e. Respondent No. 6, on the recommendation of the Education authorities. He also seeks quashing of the order dated 17th July, 2006 and order dated 24th July, 2006 (Annexure-10 to the writ petition), letter dated 15th April, 2006 as also Advertisement dated 17th September, 2005 (Annexure-13 to the writ petition). Lastly, he prays for writ of mandamus directing the Respondent-authorities to treat the vacancies in question, as reserved for promotion for teachers working in the primary Section of the institution and to promote those, who satisfy the requirement of Regulation 7 (2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, U.P. Intermediate Education Act, 1921, as it stood prior to its amendment in the year 1992.

11. According to the Petitioners, under Regulation 7(2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, as it is stood prior to its deletion vide notification dated 8th October, 1992, it was provided that every teacher, who is working in J.T.C./B.T.C. grade, and has passed intermediate examination or equivalent examination or is trained graduate on completing five years of service shall be promoted in C.T. grade by the Management, information in that regard shall be immediately sent to the Inspector. According to the Petitioners, the Regulation will continue to apply to teachers, who were appointed in primary Section prior to the date of deletion. They are entitled to the benefits of the said provisions, even after its deletion in view of the judgment of this Court in the case of Asha Dass (Smt.) Vs. District Inspector of Schools and Others, which in turn relies upon the judgment of this Court in the case of Smt. Aruna Ghosh v. State of U.P. and Ors., (1995) 2 UPLBEC 763.

12. Learned Counsel for the Petitioners contends that on completing five years of service in B.T.C. grade and in view of the fact that they are possessed of a degree of graduation from an University, the Petitioners are entitled to be promoted as C.T. Grade teachers, which has now been merged with L.T. Grade. The vacancy, which has become available in the institution in L.T. Grade is within the said promotion quota as per Rule 10 of the U.P. Secondary Education Services Selection Board Rules, 1998.

13. It is explained that as against 23 posts of L.T. Grade teacher, as available in the institution, 25% posts have to be filled by promotion. On the relevant date 13 persons by direct recruitment were working, therefore, the vacancies now available in L.T. Grade in the subject of drawing had to be filled by promotion and no compassionate appointment against the vacancy would be made. Reference

has been made to the judgment of the Supreme Court in the case of Hira Man Vs. State of U.P. and others, wherein it has been laid down that compassionate appointment can be made only against a vacancy, which is within the direct recruitment quota.

14. Learned Counsel for the Respondent disputes the contentions so raised and submits that the Petitioners are not qualified for the post of L.T. Grade teachers in the subject of drawing.

15. I have considered the submissions made by the learned Counsel for the parties and have examined the records of the present writ petition.

16. Issue with regard to the applicability of Regulation 7 (2) of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921 has been considered by this Court in the case of Asha Dass (Supra), in the background of law laid down in the case of Aruna Ghosh. It has been specifically held that irrespective of the deletion of Regulation 7(2), the rights of a primary Section teachers for being promoted to C.T. Grade, which stood conferred on completing five years of service in B.T.C. will not be lost because of deletion of Regulation 7 (2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. It has been held that such teachers in C.T. Grade, who have completed five years of service, on or before the date of deletion of Regulation 7 (2) of Chapter II i.e. 8th October, 1992, on being possessed of the requisite qualifications would be entitled to be promoted in C.T. Grade by the Committee of Management automatically. Accrued rights will not be diverted because of such deletion of Regulations 7 (2) of Chapter II.

17. Judged in the aforesaid legal principles, this Court finds that so far as the Petitioner Nos. 3 and 4 are concerned, they have been appointed as Primary Teachers only on 9th July, 1990 and 25th October, 1996, therefore, they are not within the zone of consideration for being granted promotion in L.T. Grade in accordance with Regulation 7 (2) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, as they had not completed requisite number of five years service on or before the date the said provision was deleted i.e. 8th October, 1992. In fact, Petitioner No. 4 had not even been appointed upto that date.

18. So far as the Petitioner No. 1 is concerned, it is admitted that she has already retired. She can have a claim for being considered for notional promotion as L.T. Grade teacher and consequential increase of salary because of such notional promotion. Issue in that regard is left to be agitated on a proper application to be made before Respondent No. 1.

19. So far as the Petitioner No. 2, namely, Kiran is concerned, her case appears to be covered by the judgment of this Court in the case of Asha Dass (Supra) and therefore, she is permitted to make an application seeking benefit of the said judgment in the matter of promotion in L.T. Grade from the date it had become due and for such further benefits to which she should be entitled under law.

20. The challenge made to the orders impugned may now be examined by this Court. It is stated by the learned Counsel for the Petitioner that the relief prayed for quashing of the orders dated 17th July, 2006, dated 15th April, 2006 as also the order dated 2nd August, 2006 have become infructuous because of subsequent developments.

21. So far as the order dated 24th July, 2006 is concerned, this Court finds that under the impugned order, Respondent No. 7 has been directed to be appointed on compassionate ground as Art teacher in the said institution. It is admitted to the Petitioners before this Court that they are not possessed of the prescribed minimum qualifications for being appointed as Assistant Teacher in the subject of Art in a recognised intermediate college.

22. This Court is not required to enter into the issue, as to whether the vacancy falls within the quota for direct recruitment or within the quota for promotion on the asking of a person not qualified for the post. The cause for challenging the appointments made by direct recruitment in excess of the direct recruitment quota, if any, arose, for the Petitioners, when a person was appointed to a post in L.T. Grade by direct recruitment beyond the prescribed quota in a subject in which the Petitioners were qualified. Such challenge has not been made by the Petitioners, for the reasons best known to them nor any person has been impleaded as party, who can be said to be wrongly appointed by way of direct recruitment, so as to defeat the rights of the Petitioner for promotion in L.T. Grade.

23. The arguments advanced for challenging the order of appointment of Respondent No. 7 by way of compassionate appointment as Art teacher in which the Petitioners have absolutely no claim for being promoted for lack of essential qualification has to be repelled by this Court. No effective relief can be granted to the Petitioners as no direction can be issued in favour of a person, who is not possessed of the prescribed minimum qualification for the post.

24. Sri T.N. Tiwari, learned Counsel for Respondent No. 7 has rightly pointed out that under Rule 10 of Rules, 1998, it has been specifically provided that if no teacher working in the institution is available for being promoted on a post, which is within the promotion quota for lack of essential qualification, then such post is required to be filled by direct recruitment. It is, therefore, clear that the challenge made to the appointment of Respondent No. 7 on compassionate ground as Art teacher in the institution by the Petitioners is hopelessly misconceived.

25. It is not disputed that recognition has been granted to the institution in the subject of Art and it is not the case of the Petitioners that any other teacher eligible to teach the said subject Arts, is available in the institution. In view of the said facts, this Court finds that the challenge made by the Petitioner to the appointment of Respondent No. 7 on compassionate ground as L.T. Grade teacher in the subject of Art has no legs to stand. The relief in that regard is

therefore, refused.

26. The relief for quashing of the Advertisement dated 17th September, 2005 is also repelled for the reasons recorded above.

27. In view of the aforesaid, the present writ petition is disposed of by holding that the Petitioner Nos. 1 and 2 may represent their grievance in the matter of grant of L.T. Grade before Respondent No. 1, by way of representation, supported by such documents, as they may be advised, within four weeks from today, alongwith a certified copy of this order. On such representation being made, Respondent No. 1, after calling for original records, shall consider and decide the same, in accordance with law by means of a reasoned speaking order, preferably within ten weeks thereafter. All consequential action be taken immediately without any delay. The other reliefs prayed for in the present writ petition are refused.

28. Interim order, if any, stands discharged.