
(2007) 02 AHC CK 0065
In the Allahabad High Court

Smt. Madhubala Upadhyay	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 2 ADJ 610 : (2007) 6 AWC 6584

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri S.P. Pandey, learned Counsel for the petitioner, Sri B.P. Singh, Advocate and Sri Raju Singh, Advocate and learned Standing Counsel for the respondents.

2. Mahabir Prasad Balika Vidyalaya Junior High School, Khuldabad, Allahabad is a recognized Junior High School within the provisions of U.P. Basic Education Act, 1972. It is not in dispute that the provisions of U.P. Recognized Basic Schools (Junior High Schools)(Recruitment and Conditions of Service of Teachers) Rules, 1978 are fully applicable to the teachers of the said institution. The institution is also aided and the provisions of U.P. Act No. 6 of 1978 are also applicable.

3. Under an advertisement dated 30th August, 1998 one post of Headmaster and two post of Assistant Teacher in the said institution were advertised. The Selection Committee, constituted in accordance with the rules, vide recommendation dated 23.2.1999 recommended appointment of petitioner along with one Bandana Jaiswal as Assistant Teacher against the advertised vacancies. Relevant papers qua the appointment so offered were transmitted to District Basic Education Officer for necessary approval.

4. Since no orders were passed by the District Basic Education Officer, Writ Petition No. 22635 of 2000 was filed before this Court. The Hon'ble Single Judge vide judgment dated 17.5.2000 held that since no decision has been

communicated qua the papers submitted within the time specified, it shall be deemed that the appointment of the selected teachers has been approved under Rule 10(5)(III) of 1978 Rules. The Court therefore directed the Finance Officer to take necessary action for payment of salary to the teachers, if she is working and is eligible for the payment.

5. The papers transmitted qua the appointment of the petitioner were objected to by the District Basic Education Officer, Allahabad vide order dated 30th June, 2000 on the ground that the reservation applicable has not been applied as well as on the ground that quality point marks have not been awarded. This order of the District Basic Education Officer was challenged by means of Writ Petition No. 30207 of 2000. The writ petition has been allowed vide judgment and order dated 31st August, 2005. This Court held that the appointment of the petitioner shall be deemed to have been approved under Rule 10 of the aforesaid Rules, 1978. It has further been held that the objection with regard to non-fulfillment of the reservation applicable stands cured in view of the subsequent advertisement made by the Committee of Management in respect of the other existing vacancies. The Court after quashing the order dated 30th June, 2000 required the District Basic Education Officer to consider the matter with regard to payment of salary, preferably within the time specified under the order.

6. In compliance of the order of this Court, referred to above, the District Basic Education Officer by means of order dated 15.4.2006 has refused payment of salary to the petitioner after recording a finding that since the reservation provided for has not been fulfilled while offering appointment to the petitioner, she is not entitled for such salary. This order of the District Basic Education Officer, Allahabad has been challenged by means of the present writ petition.

7. On behalf of the petitioner following grounds have been raised (a) the issue with regard to the objection taken in respect of reservation having not been fulfilled stands concluded against the respondents in view of the judgment of this Court dated 31st August, 2005, wherein this Court held that the said defect stands cured because of the subsequent advertisement (b) This Court has already held that the appointment of the petitioner shall be deemed to have been approved under Rule 12 and therefore it is no more open to the respondent to withhold the salary payable to the petitioner because of such deemed approval.

8. In response to the aforesaid contention raised on behalf of the petitioner, Sri B.P. Singh, counsel for the respondent submits in view of the subsequent judgment of the Hon''ble Supreme Court that the petitioner is not possessed of the prescribed minimum qualification inasmuch as the petitioner has a degree of B.Ed., she is not possessed of any training certificate referable to Rule 4 of 1978 Rules. Therefore, the appointment offered to petitioner in absence of essential qualification is a nullity. Such appointees cannot claim payment of salary. Reliance has been placed upon the judgment of the Hon''ble Supreme Court reported in Mohd. Sartaj and Another Vs. State of U.P. and Others,

9. In rejoinder affidavit it is contended by the counsel for the petitioner that throughout the State of U.P. till the date of the judgment delivered by the Hon"ble Supreme Court in the case of Mohd. Sartaj (Supra), appointments as Assistant Teachers possessed of B.Ed. as Training Certificate have been approved by the District Basic Education Officers and as a matter of fact in the present institution itself one Bandana Jaiswal, who was selected through the same process of selection along with the petitioner/and in whose favour there is similar judgment of this Court directing payment of salary to her is working and is being paid salary. Said Bandana Jaiswal is also possessed of a degree of B. Ed. and does not possess a training certificate referable to Rule 4 of 1978 Rules. Further all the teachers, who are at present working as Assistant Teacher in the institution are possessed of a B. Ed. degree and no other training certificate, they are being paid salary without any objection.

10. I have heard counsel for the parties and have gone through the records of the writ petition.

11. It is not in dispute that the provisions of U.P. Recognized Basic School (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 are fully application to the institution. It is also not in dispute that Rule-4 of the aforesaid Rules of 1978 lay down the minimum qualification prescribed for appointment on the post of Assistant Teacher in a recognized Junior High School,

12. For the institution, one post of Headmaster and three posts of Assistant Teachers were advertised. In pursuance to the advertisement so published, petitioner, Smt. Madhubala Upadhyaya and Vandana Jaiswal applied and both were selected. It is further admitted on record that the training qualifications possessed by the petitioner as well as Smt. Vandana Jaiswal is B.Ed. It is also admitted that neither the petitioner nor Smt. Vandana Jaiswal are possessed of any Training Certificate referable to Rule-4 of 1978 Rules, which lays down the minimum qualification essential for appointment as Assistant Teacher in a recognized Junior High School.

13. The Hon"ble Supreme Court of India in the case of Mohd. Sartaj and Another Vs. State of U.P. and Others, has held that a higher qualification cannot be said to be equivalent to Basic Training Course required under the Rules. It has been clarified that the possession of a higher qualification cannot be the basis for upholding the appointment of a teacher not possessed of the prescribed training certificate as provided in the Rules.

14. In view of the aforesaid, the petitioner and Smt. Vandana Jaiswal were not possessed of the prescribed essential training certificate referable to Rule-4 of 1978 Rules on the date they have been offered appointment.

15. The Hon"ble Supreme Court of India in the case of Mohd. Sartaj and Anr. (Supra) has further held that cancellation of appointment on the ground that the candidate was not possessed of the prescribed minimum qualification, as provided for under the Statutory rules, cannot be permitted to be questioned on

the ground that there has been violation of principles of natural justice or that the candidate has subsequently acquired the essential training certificate, after such appointment.

16. The Hon''ble Supreme Court of India in the case of Mohd. Sartaj and Anr. (Supra) specifically in paragraphs 11, 19 and 21, has held as follows:

11. ...Thus under the Rules, the basic qualification for the post of Assistant Teacher, apart from the education qualification, was the training qualification of the Basic Teacher's Certificate or Hindustani Teacher's Certificate or Junior Teachers Certificate or Certificate of Teaching or equivalent training course recognised by the State Government. It is an admitted position by both the parties that these qualifications are required for appointment to the post of Assistant Teacher. It is also not the case of the appellants that the academic qualifications were amended at the time of their appointment. Thus, admittedly on the date of appointment the appellants did not hold the training qualification to be appointed to the post of Assistant Teachers as prescribed under Rule 8.

19. In the present case, the appellants' case falls within the exception laid down in S.L. Kapoor Case and other supporting cases, as admittedly, the appellants were not qualified and they did not possess BTC or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognised by the State Government as equivalent thereto at the time of their initial appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and''' therefore no hearing was required before the cancellation of their services....

21. ...It is settled law that that qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of Moallim-e-Urdu granted by Jamia Urdu, Aligarh with that of BTC in the year 1994 would not entail the benefit to the appellants on the date they were appointed....

17. In view of the aforesaid, this Court may record that the petitioner being not possessed of the essential qualifications, as prescribed statutorily, could not have been appointed nor she has any right to continue in the institution. Consequently, no interference is warranted against the impugned order of the District Basic Education Officer refusing salary to the petitioner.

18. So far as parity claimed by the petitioner with Smt. Vandana Jaiswal is concerned, Article 14 of the Constitution of India declares that the law laid down by the Hon''ble Supreme Court of India shall be binding upon all the Authorities, Courts and the State. The discrimination pleaded by the petitioner with reference to the illegal continuance of Smt. Vandana Jaiswal has necessarily to be rejected, inasmuch as shelter of Article 14 of the Constitution of India cannot be taken for the purposes of obtaining illegal orders from the Court.

19. The writ petition is accordingly dismissed.