
(2010) 07 AHC CK 0114
In the Allahabad High Court

Smt. Pramila Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0114

Hon'ble Judges : S.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Chauhan, J.—This petition has been filed challenging the orders dated 24.09.2008 and 07.10.2008 inter alia on the ground that no opportunity was given to the petitioners before cancelling their appointments although they were duly selected candidates in pursuance to the advertisement issued by the opposite parties and by following the Government Order dated 06.05.2008, which was issued in pursuance to the judgment of the Division Bench of this Court dated 12.06.2007 passed in Special Appeal No. 786 of 2007, Parvati Devi v. State of U.P. and Ors.

2. The facts in question are in narrow campus that an advertisement dated 15.10.2007 was made by opposite party No. 3 in daily newspaper Amar Ujala for selection of Shiksha Mitra in various primary schools situated in different districts in Raebareli. In pursuance to the advertisement, the petitioners and others applied for the post of Shiksha Mitra having requisite qualification and the process for selection was completed. In the meantime, a Government Order dated 06.05.2008 was issued in pursuance to the order of this Court passed in Special Appeal No. 786 of 2007, Parvati Devi v. State of U.P. and Ors., in which this Court found that the earlier Government Order dated 10.10.2005 was not proper and legal and that only bonus marks can be allocated to the candidates, who have worked as Instructor/Supervisor in the Non-formal Education Scheme. It is stated that on account of the judgment dated 12.06.2007, the selection was stayed and could not proceed as the Government was considering the

implementation of the judgment of this Court dated 12.06.2007. The Government came out finally with the Government Order dated 06.05.2008 and ultimately the selection proceeded and the petitioners and other similarly situated persons were selected.

3. The controversy started after the appointments of the petitioners were cancelled and a fresh selection was made in pursuance to the Government Orders dated 10.10.2005 and 24.04.2006 only on the assumption that the advertisement contemplated the Government Orders dated 10.10.2005 and 24.04.2006, therefore, the selection was to be made on the basis of the said Government Orders. The petitioners' appointments were cancelled as a result thereof. Hence this writ petition.

4. Submission of learned Counsel for the petitioners is that the petitioners were not afforded any opportunity before cancelling their appointments. It is also submitted that in pursuance to the judgment dated 12.06.2007 passed by this Court in Special Appeal No. 786 of 2007, the Government Orders dated 10.10.2005 and 24.04.2006 came to an end and no Government Orders were existing thereafter. After the judgment, selection process was stayed by the opposite parties till the Government Order dated 06.05.2008 was issued. Submission is that since there was vacuum and the authorities were not sure as to in what manner the selection shall proceed, they waited U.P. to the time of the issuance of the Government Order dated 06.05.2008 and thereafter they proceeded in accordance with the said Government Order. It is submitted that the opposite parties committed gross blunder in making fresh selection by relying upon the terms of the advertisement and the Government Orders mentioned therein and by making fresh selection and thereby multiplying the proceedings and litigation and also putting the petitioners' future in jeopardy.

5. Learned Counsel for the opposite parties, on the other hand, has submitted that Government Order dated 06.05.2008 was not in existence before issuance of the advertisement on 15.10.2007, therefore, the said Government Order would not apply retrospectively and the opposite parties have committed no illegality in relying upon the Government Orders dated 10.10.2005 and 24.04.2006, which were specifically mentioned in the advertisement.

6. I have heard learned Counsel for the parties and gone through the record.

7. From the record, it is evident that the Division Bench rendered judgment in Special Appeal No. 786 of 2007, Parvati Devi (supra) on 12.06.2007 and in the said judgment the Government Orders dated 10.10.2005 and 24.04.2006 were quashed and it was provided that bonus marks be given. The advertisement in the present case was made on 15.10.2007 and in the advertisement the Government Orders dated 10.10.2005 and 24.04.2006 were mentioned to be relied while awarding the additional marks in lieu of the services rendered in the Non-formal Education Scheme as Instructor. The selection could not proceed on account of the judgment dated 12.06.2007 passed in the special appeal. The

Government waited for complying the judgment of this Court and therefore, the selection was stalled and did not proceed. Ultimately, on 06.05.2008 a fresh Government Order was issued in pursuance to the judgment of the Division Bench dated 12.06.2007 and thereafter the opposite parties proceeded with the fresh selection. In the fresh selection the petitioners were selected.

8. Once the petitioners were selected, their selection was not challenged by any person, what to say of by any unselected candidate but in fact the authorities themselves proceeded to create problems and thereby proceeded to make fresh selection on the assumption that the Government Orders dated 10.10.2005 and 24.04.2006 were to be followed and the selection of the petitioners was not valid and thereby they proceeded to cancel the selection of the petitioners and made fresh selection. The exercise of power by the authorities while making fresh selection were altogether illegal and without authority of law and once the selection has been finalized, the same ought to have been honoured and given effect to.

9. The argument of the learned Counsel for the opposite parties that the Government Orders dated 10.10.2005 and 24.04.2006 would be applicable cannot be accepted on account of the fact that the Government Orders dated 10.10.2005 and 24.04.2006 were quashed by means of judgment and order dated 12.06.2007 passed by the Division Bench in special appeal. Once the Government Orders were quashed, meaning thereby after 12.06.2007 no Government Order was in existence on the basis of which selection could have been made. The selection, which has been made by the authorities on the basis of the fresh Government Order dated 06.05.2008, cannot be faulted in any manner. Therefore, the petitioners were rightly selected and they were rightly given appointments and the selection which was made by the opposite parties at a subsequent point of time is wholly illegal and unwarranted under the facts and circumstances of the case.

10. Apart from it, no opportunity was given to the petitioners before cancelling their appointments, therefore, the order of cancellation cannot be sustained in law and is in violation of principles of natural justice.

11. In view of what has been indicated hereinabove, the writ petition succeeds and is allowed. A writ in the nature of certiorari is issued quashing the orders dated 24.09.2008 and 07.10.2008, contained in Annexure Nos. 1 and 2 to the writ petition. The opposite parties are directed to give effect to the selection of the petitioners and other similarly situated persons within a period of one month from the date a certified copy of this order is produced before the authority concerned.