
(2011) 01 AHC CK 0348

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33627 of 2008

Smt. Ram Beti

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 3 ADJ 664

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Prabhakar Awasthi, for the Appellant; Deepak Kumar Srivastava, C.S.C., for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Sri Prabhakar Awasthi, learned counsel for the petitioner, learned Standing Counsel for the respondent Nos. 1 to 3 and perused the record. The petitioner is aggrieved by the order dated 16th May, 2008 passed by the Principal, Arya Kanya Pathshala Inter College, Shahjahanpur, (Annexure 9 to the writ petition) whereby his appointment has been cancelled on the ground that transfer certificate submitted by the petitioner is reported forged by District Basic Education Officer, Shahjahanpur (hereinafter referred to as the "BSA") vide his letter dated 31st March, 2008, hence the petitioner is being terminated.

2. It appears that Class IV vacancy in Arya Kanya Pathshala Inter College, Shahjahanpur (hereinafter referred to as "the College") was advertised in 2002 pursuant where to petitioner applied and was selected after obtaining prior approval from the District Inspector of Schools vide his letter dated 13th August, 2002. A letter of appointment was issued to the petitioner on 16th August, 2002 (Annexure 2 to the writ petition) appointing him as Class IV employee in the College. It appears that one Shanti Tiwari made a complaint against appointment of the petitioner alleging that she has been wrongly appointed and thereafter also filed writ petition No. 14838 of 2004 which was decided on 12th April, 2008 permitting her to make a representation before the District Inspector of Schools who was directed to make an enquiry into the matter and pass appropriate order

in accordance with law.

3. The District Inspector of Schools (in short the "DIOS") made enquiry on the representation of Shanti Tiwari and passed an order on 18th November, 2004 (Annexure 4 to the writ petition) rejecting the representation and holding appointment of the petitioner valid. Thereafter a show-cause notice was issued to the petitioner on 16th April, 2008 by Principal of the College stating that B.S.A., Shahjahanpur has reported that transfer certificate submitted by petitioner was forged and therefore, the DIOS by letter dated 31st March, 2008 directed the Principal to take appropriate action for termination of petitioner's services. The petitioner submitted her reply dated 19th April, 2008 and thereafter the impugned order has been passed.

4. Initially when this matter was taken up on 17th July, 2008, this Court passed the following order:

Dispute raised in the present writ petition is confined to the issue as to whether transfer certificate (T.C.) obtained from Shish Evam Nari Kalyan Kendra, Junior High School, Shahjahanpur, and produced by the petitioner for seeking employment, is genuine or not.

For deciding the aforesaid controversy, it would be relevant to summon the original records from the said institution for examining the genuineness of the said certificate.

Learned Standing Counsel is directed to summon the Scholar Register/other register in pursuance thereof, the aforesaid transfer certificate has been issued to the petitioner by Shish Evam Nari Kalyan Kendra, Junior High School, Shahjahanpur through the office of Basic Shiksha Adhikari, Shahjahanpur and produce the same before this Court on the next date fixed.

A certified copy of this order may be issued by the learned Standing Counsel by Monday i.e. 21st July, 2008 for compliance.

List on 18th August, 2008 as unlisted matter.

5. Pursuant to the aforesaid order, the record of Shish Evam Nari Kalyan Kendra, Junior High School, Shahjahanpur was placed before this Court for its perusal on 18th August, 2008 and after perusing the same, this Court passed the following order:

Record is produced by learned Standing Counsel in pursuance of the order of this Court dated 17.7.2008, which has been brought by Sri J.K. Verma, District Basic Education Officer, Shahjahanpur. The Court has perused the same T.C. Register which has been produced in original as well as the High School Examination Mark Sheet Chart prepared by the Principal of the institution are very old and shows the name of the petitioner having maintained in routine course and there is no doubt about the correctness thereof. Learned Standing Counsel also could not dispute the same and submits that neither the mark sheet nor the T.C. can be

said to be forged. At this stage, he seeks and is allowed three days" time to file an affidavit of concerned Basic Education Officer explaining as to in what circumstances, he could submit the report that T.C. of the petitioner was forged.

List/put up this matter on 22.8.2008.

6. In compliance of order dated 18th August, 2008, a supplementary counter-affidavit was filed sworn by Sri Jay Karan Lal Verma posted as B.S.A., Shahjahanpur wherein he has said:

When the District Basic Education Officer received letter dated 16th October, 2007 regarding verification of transfer certificate of Class 8 of the petitioner, he wrote a letter dated 7.11.2007 directing Nagar Shiksha Adhikari, Nagar Kshetra Shahjahanpur to verify transfer certificate of the petitioner from the record of the institution namely Shishu Evam Nari Kalyan Kendra, Junior High School, Shahjahanpur and submit a report. The Nagar Shiksha Adhikari consequently directed the Headmaster of the institution concerned to place relevant record i.e. Scholar Register, School Leaving Certificate with admission form in the office of Nagar Shiksha Adhikari. The said record having not been produced by the Headmaster, Nagar Shiksha Adhikari personally went to the institution for verification of record but could find only Scholar Register. From perusal of the Scholar Register, he found that the petitioner was given admission directly on the basis of an affidavit filed by her guardian, which was contrary to the provisions of U.P. Basic Education Act, 1972. Thereafter the Nagar Shiksha Adhikari, Shahjahanpur sent a letter dated 23.2.2008 informing that the requisite documents were not produced before him by the Headmaster concerned and this shows the admission of the petitioner was done in violation of the provisions of U.P. Basic Education Act and in view of the above facts and law, the transfer certificate appears as forged, which could not be verified from the documents.

7. The exact words in which the BSA has given his defence as required by this Court's order dated 18th August, 2008, as contained in para 8 of his supplementary counter-affidavit, is reproduced as under:

That, thereafter vide letter dated 23.2.2008 Nagar Shiksha Adhikari, Shahjahanpur informed to the answering deponent that despite all efforts made by him for the verification of records, T.C., Admission Form, etc, were not produced by the Headmaster, which clarifies that initially the admission of the petitioner was done in violation of the provisions of U. P. Basic Education Act, 1972 hence in view of above facts and laws transfer certificate appears as forged, which could not be verified from the documents. The Photo-stat copy/ typed copy of the letter dated 23.2.2008 issued by Nagar Shiksha Adhikari, Shahjahanpur, is being annexed herewith and marked as ANNEXURE No. SCA-03 to this affidavit.

8. The BSA thereafter obtained a duplicate copy of school leaving certificate dated 17.12.1995 from the Head-master of the school concerned which shows that admission of petitioner in class VIII was done on 8.8.1989 on the basis of an

affidavit and earlier to that, the petitioner had never studied in the institution. He further refers to Rule 173 of UP. Basic Education Act, 1972 which reads as under:

9. He also says that result of Class-8 of Junior High School Examination 1990 containing statement of marks was not countersigned by Secretary of Junior High School Examination Committee, Shahjahanpur. He also mentioned in para 13 that at the time of admission of the petitioner, date of birth of petitioner was mentioned as 1.9.1968 (in Class VIII), meaning thereby in 1989 i.e. when she took admission in class VIII, the petitioner was about 20 years though the minimum age for admission to Class VIII is 14 years and therefore, the petitioner being of higher age could have appeared only as a private student. He also had appointed a three members committee to make enquiry against Shishu Evam Nari Kalyan Kendra, Junior High School, Shahjahanpur by letter dated 19th August, 2008 which is pending.

10. Whatever is said in the supplementary counter-affidavit by BSA, Shahjahanpur even if is taken to be correct, it means that BSA has not disputed admission of petitioner in the aforesaid school and also issuance of transfer certificate to the petitioner by Headmaster of the said institution. The question of forging the transfer certificate therefore is out of place in such circumstances. What actually BSA has tried to explain is that the petitioner's very participation in Junior High School Examination 1990 was not valid since she was allowed direct admission in Class VIII having not studied the institution earlier and therefore, her admission itself was bad. But the facts stated by him made it clear that he has not been able to justify allegation of forgery or fraudulent preparation of Transfer Certificate.

11. In the letter issued by BSA for verification of transfer certificate, he has not said that the petitioner's participation in Junior High School Examination 1990 was not valid and in accordance with law but what he has said is that transfer certificate is forged and fictitious. Therefore, it is clear that findings given by BSA is clearly perverse and based on no material. On the contrary his own affidavit proves that such a certificate was issued by the Head-master of the school concerned to the petitioner. The petitioner has actually appeared as a regular student of the said school in Junior High School Examination of 1990 and has passed therein.

12. The marks sheet of Junior High School, 1990 examination has also been placed on record by BSA, Shahjahanpur though according to him it is not countersigned by Secretary of Examining Committee, which is a irregularity in the matter. The fact remains that this mark sheet shows that the petitioner has actually appeared in Junior High School Examination, 1990 and passed therein having obtained 293 marks out of 650 i.e. in second division.

13. Now, coming to the question as to whether petitioner could not have been allowed to take admission directly in class VIII, this Court required the learned Standing Counsel to place relevant provision contained in the Basic Education

Act, 1972 as stated by the BSA, Shahjahanpur in his supplementary counter-affidavit; paras 7 and 8.

14. The learned Standing Counsel expressed his inability to show any such provision. He also admits that para 10 has wrongly referred to Rule 173 of U.P. Basic Education Act, 1972, inasmuch as, the alleged Rule 173, which has been referred to by BSA in para 10 of his supplementary counter-affidavit, (a copy of which has been placed on record as SCA-5) is in fact not a provision made under Basic Education Act, 1972 but an extract from the Education Code, which contains administrative orders available since much before the enactment of the Basic Education Act, 1972.

15. Learned counsel for the petitioner on the contrary placed before this Court paras 190 and 192 of the Education Code which are applicable to recognized Junior Basic (Primary & Senior Basic) (Junior High School) of Girls Student which reads as under:

16. Copy of the aforesaid provisions has been placed on record as Annexure R.A. 1 to the rejoinder-affidavit.

17. Sri Awasthi submits that Rules are specifically made for Girls School separately and hence the Rules applicable to boys school shall not be applicable. Para 173 is in fact relates to Primary Schools of boys and not that of girls. BSA, Shahjahanpur in fact has tried to mislead this Court by placing a provision, which was not applicable to a girls school. Learned Standing Counsel having gone through paras 190 and 192 of the Education Code could not dispute that thereunder a girl student could be allowed admission in any class for which the Headmaster of the School finds her suitable. This shows that the admission of the petitioner in Junior High School cannot be said to be in contravention of any statutory provision and therefore finds substance in the contention of the learned counsel for the petitioner.

18. Even otherwise, the only question up for consideration before BSA, Shahjahanpur was whether the transfer certificate issued by the school concerned to the petitioner was genuine or not, which the Head-master verified that it was actually issued from the said institution. The petitioner had passed Junior High School Examination 1990 from that institution. The BSA once having found that the petitioner had passed such an examination and such transfer certificate was issued, it was not open to him to make a fishing and roving enquiry into the matter which was not required to be performed by him and that too without giving any opportunity of hearing to the petitioner. The enquiry before the BSA, Shahjahanpur was limited but it appears that he misdirected himself, misread the report for reasons best known to him and when his finding was found contrary to the record by this Court after examination of the original record, he had tried to justify his inference by raising doubt over the very examination of Junior High School 1990 in which the petitioner appeared and that too by placing provisions which are not applicable to the institution in which

the petitioner had studied in 1989-90 session. This is really a very serious matter. The BSA was not expected to behave in a manner. It shows that his approach, in the case in hand, is short of bona fide and travels in the realm of malicious act.

19. In the circumstances, I do not find any justification in the impugned order cancelling appointment of petitioner on the ground that the transfer certificate was forged when it was also verified that the petitioner has actually passed Junior High School Examination in 1990 from the said institution.

20. The writ petition therefore is allowed. The impugned order dated 16th May, 2008 passed by respondent No. 4 (Annexure 9 to the writ petition) is hereby quashed. The petitioner shall be entitled for all consequential benefits.

21. However, considering the manner in which the then BSA, Shahjahanpur has acted in this matter and has tried to mislead this Court also, his conduct has to be deprecated. This amounts to harassment of a petty employee of an educational institution and that too for reasons other than bona fide. This is a serious lapse on the part of the said official constituting a serious misconduct. The Secretary, Basic Education, shall look into the matter and initiate appropriate disciplinary proceedings against the concerned BSA in the matter in accordance with the relevant Rules and pass appropriate order so that such attitude in future by other similarly placed officers may be checked.

22. A copy of this order shall be furnished to the Secretary, Basic Education within a week for information and compliance. The petitioner shall be entitled to cost which is quantified to Rs. 25,000/- which shall be paid at the first instance by the respondent No. 1 but it shall have the liberty to recover the same from the concerned official on account of whose illegal Act, the Government has to suffer it.