
(1997) 03 AHC CK 0196
In the Allahabad High Court
Case No : C.M.W.P. No. 7173 of 1997

Smt. Ram Dulari Devi and Others

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

Date of Decision : 04-03-1997

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(2)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 17

Citation : (1999) 3 UPLBEC 2069

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : Ashok Khare and Sunil Kumar Srivastava, for the Appellant; S.A. Tripathi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This writ petition was filed challenging the order dated 20.1.1997 passed by the Joint Director of Education, Vth Region, Varanasi at Annexure 22 to the writ petition with other claims of the Petitioners.

2. The only contention raised by the Petitioners at the time of argument is that appointment of the Petitioners in course of their selection process initiated by the publication of advertisement in one newspaper does not disentitle the Petitioners from financial approval. It is stated that publication in this case in the daily newspaper "AaJ" is sufficient particularly in view of the fact that the said newspaper has a very wide circulation within the State and this satisfies sufficiently the requirement of law. Learned Counsel for the Petitioners refers to the judgment of the Supreme Court in the case of J.A.S. Inter College, Khwja and Ors. v. State of U.P. and Ors. 1996 (3) ESC 151 and the judgment in the case of Chatur Singh and Anr. v. Regional Deputy Director of Education, Agra and Ors. dated 3.12.1996 in Civil Misc. Writ Petition No. 37497 of 1996 a copy whereof has been Annexed as Annexure 23 to the writ petition.

3. The learned Counsel for the Respondent No. 4 the Committee of Management

contends that in view of the law explained by the Full Bench in the case of *Km. Radha Raizada v. Committee of Management* (1994) 3 UPLBEC 1551, such appointment of the Petitioners without there being publication in two newspapers as required by law is not liable to be entertained. It is stated by the learned Counsel for the Respondents that the law clarified in the aforesaid Full Bench case has been again affirmed by the Supreme Court in the case of *Prabhat Kumar Sharma and Ors. v. State of U.P. and Ors.* (1996) 3 UPLBEC 1959. Reference has also been made to the judgments in the case of *Surendra Kumar Dixit v. District Inspector of Schools, Agra and Ors.* AIR 1995 601; *Sanjeev Kumar v. District Inspector of Schools, Ghaziabad and Ors.* AIR 1996 3; *Ameer Khalid v. State of U.P. and Ors.* (1994) 1 UPLBEC 45; *Prabhat Kumar Sharma and Ors. v. State of U.P. and Ors.* 1996 (2) ESC 257.

4. After hearing the respective contentions of the parties, I find that the law has been provided in this respect very clearly in Section 16E(2) of U.P. Intermediate Education Act, 1921. Regulation 17 of the Regulations framed under the U.P. Intermediate Education Act also provides for the procedure for direct recruitment in the post of teachers and head of the institution after advertisement in atleast one Hindi and one English newspaper having adequate circulation in the State. Similarly, paragraph 5 of the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 provides for publishing advertisement atleast in two newspapers having adequate circulation in U.P. Such requirement of advertisement has been held to be a compulsory prerequisite for any appointment by the Full Bench In the case of *Km. Radha Raizada* (supra) which has since been approved by Hon'ble the Supreme Court in the case of *Prabhat Kumar Sharma and others Vs. State of U.P. and others*, .

5. It has also been held clearly in the case of *Surendra Kumar Dixit* (supra) that such advertisement must be in well known newspapers having wide circulation.

6. After considering the aforesaid, I am of the opinion that the intention of the Legislature and its explanation by the Court of law is consistently for wide circulation of the proposed recruitment to enable the institution concerned to get the services of the best possible candidates. The expression is "atleast one Hindi and one English Newspaper having adequate circulation in the State." This indicates that the Legislature thought it fit that unless advertisement is published in atleast two newspapers having adequate circulation in the State, selection process will not be proper. Keeping in view such expression used by the Legislature. I do not feel that publication in one newspaper can be treated as sufficient compliance of the legal requirement.

7. With regard to the judgments referred to by the learned Counsel for the Petitioner, I find that the case of *Chatur Singh and Anr.* (supra) has actually followed the findings of the Supreme Court in the case of *J. A. S. Inter College*. The case of *J. A. S. Inter College* is apparently at the stage of interim order when the writ petition would remain pending. The said case is to be taken as making of an interim arrangement in the facts of that case without laying down any law by

the Hon''ble Supreme Court in that case. This finding gets support from the fact that when the law was considered in detail by the same Bench and after two days of passing the order in the case of J. A. S. Inter College, the provisions of law as also the findings of the Full Bench in the case of Km. Radha Raizada (supra) was considered in details and on such consideration of the said judgment as also the relevant provisions of law prevailing in the State of U.P. relating to appointment of teachers in educational institutions, the findings of the Full Bench in the case of Km. Radha Raizada were approved impliedly.

8. Therefore, the law when came into consideration has been explained by the Full Bench and the Hon''ble Supreme Court in a manner which justifies a finding that compliance of the legal requirement of publication of advertisement atleast in two newspapers having wide circulation in the State is compulsory.

9. Moreover, accepting the contention of the Petitioner as publication in one newspaper as sufficient will amount to less publicity of the proposed filling up the vacancy which means less chance of getting better candidates having more qualifications for the purpose of appointment. As the educational institutions are serving the nation by teaching the students of the country, the requirement of better candidate cannot be disputed. Any other interpretation will amount to a compromise in respect of quality of the teachers. In view of the requirement of the country in the field of education of the future citizens, such compromise with procedure making it open for less qualified persons to be appointed "is not" desirable under any circumstance. I find no justification in holding an appointment to be valid when advertisement was made in one newspaper only though the law requires atleast two newspapers publication. In the aforesaid background, the contention of the Petitioner cannot be accepted.

10. With regard to the other contention of the Petitioner about approval, I find that when the appointment of the Petitioner itself is illegal, there is no question of granting any relief to the Petitioner. Mere passage of time will not put the Petitioners' claim on a higher pedestal when original appointment itself is bad.

11. In the aforesaid background, the writ petition fails and is hereby dismissed.