

(2018) 01 AHC CK 0053
In the Allahabad High Court
Case No : 60094 of 2011

Smt. Shaheda Bano And Another	Vs	APPELLANT
State Of U.P. And Others		RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Citation : (2018) 01 AHC CK 0053

Hon'ble Judges : Vivek Kumar Birla

Bench : Single Bench

Advocate : Syed Mahmood,Rahul Jain

Judgement

1. Heard learned counsel for the petitioners and the learned Standing Counsel appearing for the respondents. Counter and rejoinder affidavit have been exchanged and with consent of learned counsel for the parties this writ petition is being disposed of at the admission stage itself.

2. Present writ petition has been filed seeking quashing of the impugned order dated 25.7.2011 passed by the Director of Education, respondent no. 2 and the order of the Regional Committee as contained in the letter of the Joint Director of Education, Azamgarh Region, Azamgarh filed as Annexures 4 and 2 respectively to the writ petition. A further prayer in the nature of mandamus commanding the respondent no. 4, the District Inspector of Schools, district Azamgarh to give approval to the selection of the petitioners has also been made.

3. The petitioner applied for the post of Lecturer in the minority institution. Assertion is that they were duly selected by the selection committee, however, approval was incorrectly refused by the District Inspector of Schools as well as Regional Level Committee. Earlier the petitioners filed Writ A No. 39888 of 2006, Smt. Shaheda Bano and another Vs. State of U.P. and others challenging the aforesaid orders dated 10.3.2006 passed by the Regional Level Committee and the order dated 17.3.2006 passed by the District Inspector of Schools, Azamgarh declining approval to the petitioners' appointment on the post of

Lecturer in Madarsa Niswan Inter College, Paharpur, Azamgarh on the ground that the above selection was held illegally. The aforesaid writ petition was disposed of and the matter was remanded back with a direction to the Director, Secondary Education to look into various evidence and also examine the individual concerned, if necessary and may give his findings on these factual aspects.

4. Several questions were framed by the Hon'ble Single Judge of this Court. Relevant paragraphs are quoted as under: "The matter involves seriously disputed questions of fact, as to whether selection committee held any selection on 13.10.2003, whether one of the member was present therein and whether a three members selection committee was a validly constituted selection committee when it ought to have five members. In the fitness of things I am of the view that this matter may be enquired into by Director, Secondary Education who may look into various evidence and also examine the individual concerned, if necessary and may give his findings on these factual aspects. In the circumstances, I dispose of this writ petition permitting the petitioners to approach the Director, Secondary Education by making representation for ventilation of their grievance and in case such a representation is made by petitioners within two weeks from today, Director, Secondary Education shall look into the matter and after giving due opportunity of hearing to all concerned parties shall pass a reasoned order within two months from the date of receipt of representation alongwith a certified copy of this order. The orders impugned in this writ petition shall be subject to order passed by Director, Secondary Education, as directed above."

5. Pursuant to the aforesaid order the Director, Secondary Education issued notices to the parties concerned, however, an objection was by the petitioners that two persons, namely, Haji Barkat Ullah and Zamal Ahmad were liable to be invited and no notices have been issued to them. The District Inspector of Schools submitted his report that there was defect in the selection proceedings as the advertisement was issued prior to the approval given by the District Inspector of Schools for advertising such vacancies and the selection committee so constituted was not in accordance with law as the selection proceedings were undertaken only by the Manager and Principal of the institution. It was also pointed out that the Committee of Management was superseded in the year 1999 and the advertisement was not published in the English newspaper and both the advertisements were in Hindi Newspapers and therefore, the advertisement is also not proper.

6. Submission of learned counsel for the petitioners is that the notices were not issued to Haji Barkat Ullah and Zamal Ahmad whereas the affidavit of Hazi Barkat Ullah filed in the earlier writ petition alongwith the rejoinder affidavit which was taken note of by this Court and thereafter the matter was remanded back and therefore, there was defect in the enquiry conducted by the Director, Secondary Education while passing this order.

7. Submission of learned counsel for the petitioners is that the selection committee was duly constituted and in any case any defect in constitution of the selection committee would not affect the selection of the petitioners in view of Section 16-F (6) of the Intermediate Education Act (hereinafter referred to as the Act). During the course of argument, he further submitted that the finding that the selection committee was superseded in the year 1999 is also incorrect as it is continuing on the strength of the interim order granted by this Court and therefore, even this defect would not come in way of selection of the petitioners. In support of his submissions, learned counsel for the petitioners has placed reliance on various judgments of this Court being (i) Lal Sohan Prasad and another Vs. District Inspector of Schools, Ballia 1978 (4) ALJ 20 (ii) Smt. Anjana Kumar Vs. State of U.P. 2006 (4) AWC 3326 and (iii) Dr. Mehendi Hasan and another Vs. State of U.P. and others 2014 (3) ADJ 437 (DB) and the judgment of this Court passed in Writ A No. 5373 of 2010, Amit Kumar Dubey Vs. State of U.P. and others

8. Per-contra, learned Standing Counsel has supported the impugned order and submitted that the selection committee was not duly constituted and therefore the selection was rightly not approved by the District Inspector of Schools and the Regional Level Committee. It was further submitted that at present the sanctioned strength of the institution is only two posts of Lecturer on which Lecturers are working and therefore, no interference is warranted. I have heard the rival submissions and have perused the record.

9. In paragraph 9 of the writ petition itself it has been stated that on 13.10.2003 when the selection committee met two members were absent and only three members of the selection committee, namely, Sri Fakhrey Alam, the Manager, Smt. Ali Bano, the Principal and Sri Haji Barkat Ullah, the Member took interview of the petitioners. A notarized affidavit of Haji Barkat Ullah was filed alongwith the rejoinder affidavit in the earlier Writ A No. 39888 of 2006 to the effect that he had participated in the selection proceedings. There is no dispute about the fact that as per Section 16-FF (6) selection committee of five members is required. The same is the position in so far as member of selection committee is concerned as provided in Section 16 (F) of the Act. There is nothing on record to indicate that the Committee of Management so superseded in the year 1999 was working, as orally alleged, on the strength of the interim order when the advertisements were made or proceedings for selection by sending letter to the District Inspector of Schools for permitting the Committee of Management to advertise the post were authorized, to continue to function as Committee of Management. Apart from that the defect was that there were only two members namely, Manager and the Principal in selection proceedings. Even assuming that Haji Barkat Ullah was also present only three members constituted the selection committee and admittedly, the selection committee did not consist of five members and they were not present. This defect is fundamental in nature and would not be saved by the provisions of Section 16-F (6) of the Act, which only cures the defect in its constitution or vacancy among its members which are not

so fundamental in nature.

10. In such view of the matter, when the defect, as noted above, was so fundamental and even the advertisement was published in only two Hindi Newspapers whereas requirement of law is that advertisement should have been published in one English Newspaper also and even this advertisement was published without prior approval of the District Inspector of Schools, in the opinion of the Court this alone would be sufficient to disapprove the selection and in any view of the matter defect in selection committee consisting of less than five members is fundamental in nature and such defects would not be cured by Section 16- F (6) of the Act.

11. The facts of the case relied on, particularly that of Lal Sohan Prasad reported in 1978 ALR 20 the defect was only that the Chairman of the Selection Committee was allegedly not nominated by the Committee of Management in a resolution, are clearly distinguishable. Admittedly, there were not more than three persons, even taking the presence of Haji Barkat Ullah into account, whereas the selection committee must constitute five persons (including its Chairman) nominated by the Committee of Management.

12. In view of such fundamental defects in the selection procedure and the constitution of the selection committee I am not inclined to interfere in the order impugned herein. This writ petition is, accordingly, dismissed. No order as to costs.