

(2011) 11 AHC CK 0442

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 65521 of 2011

Sri Nath Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 4(2), 5

Citation : (2012) 3 ADJ 179 : (2012) 132 FLR 983

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Arun Tandon, J.—Heard Sri Siddharth Khare, learned counsel for the petitioner, Sri K.S. Kushwaha, learned counsel for respondent Nos. 4 and 5 and learned Standing Counsel for the State-respondents. Petitioner before this Court submits that he was appointed as a temporary assistant teacher in Janta Purva Madhyamik Vidyalaya, Manapur Chateri, Thatra, Varanasi on 10th July, 1987. It is his case that an additional section was sanctioned for each of Class 6th, 7th and 8th to be run in the institution under the order dated 11th December, 1989. Under the order of the Director of Education (Basic) dated 20th February, 1993 three posts of assistant teachers were sanctioned for the institution raising the strength to one head-master and 7 assistant teachers. Petitioner was offered permanent appointment as assistant teacher on 10th October, 2001 and such appointment of the petitioner after selection was approved by the District Basic Education Officer vide order dated 22nd July, 2002. According to the petitioner the institution has been taken on grant-in-aid list under the Government Order dated 2nd December, 2006 w.e.f. 1st December, 2006. Petitioner has not been paid his salary from the State exchequer. He, therefore, made a representation, which has not been considered. He has approached this Court for a writ of mandamus directing the respondents to pay him salary.

2. So far as the appointment claimed by the petitioner as assistant teacher under order dated 10th July, 1987 is concerned, the same is not of much relevance, inasmuch as such appointment of the petitioner was never approved by the District Basic Education Officer nor it was made against any available vacancy duly created in the institution. At least relevant facts in that regard have not been stated in the present writ petition.

3. From paragraphs Nos. 6 to 9 of the present writ petition, it is apparently clear that the petitioner claims to have been appointed on permanent basis in the institution with the approval of the District Basic Education Officer dated 22nd July, 2002, a copy whereof has been enclosed as Annexure-4 to the present writ petition. From perusal of the approval order, it is apparently clear that the qualifications possessed by the petitioner are disclosed as B.A., B.Ed.

4. Minimum qualifications prescribed for assistant teacher to be appointed under Rule 4 (2) Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "Rules, 1978"), in recognized junior high school is a training certificate such as Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate etc.

5. Petitioner is admittedly not possessed of any such" qualifications prescribed under Rule 4 (2) of Rules, 1978.

6. Rule-5 of Rules, 1978 categorically provides that no teacher can be appointed in a recognized junior high school unless he is possessed of the prescribed minimum qualifications.

7. This Court may further record that the Hon"ble Supreme Court of India in the case of Mohd. Sartaj v. State of U.P. and others, JT 2006 (1) 331, has held that B.Ed, degree is not equivalent to Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate etc., It has been laid down that essential qualifications for recruitment on the post are to be seen/satisfied on the date of recruitment and not on any later point of time. Reference is also made to the judgment of the Hon"ble Supreme Court of India in the case of Pramod Kumar v. U.P. Secondary Education Services Commission and others, 2008 (4) ALJ 207, wherein the case of Mohd. Sartaj (Supra) has been approved and it has been further recorded that essential qualifications for recruitment to a post, if any, are not satisfied at the time of recruitment, the same cannot be condoned, such act cannot be rectified. Appointment contrary to the Statute/statutory Rules would be void and any illegality in that regard cannot be regularized by merely working of years on the basis of void appointment.

8. What has been held by the Hon"ble Supreme Court of India in the aforesaid two judgments and in view of essential qualifications prescribed under Rule 4 (2) of Rules, 1978 and the prohibition contained under Rule-5 of Rules, 1978, as were applicable on the date of appointment of the petitioner, this Court finds that the appointment of the petitioner is de hors the statutory Rules applicable and

therefore, no mandamus as prayed for can be issued for salary being paid to the petitioner from State exchequer. The present writ petition is accordingly dismissed.