
(2012) 01 AHC CK 0306
In the Allahabad High Court
Case No : Special Appeal No. 732 of 2008

State Of U.P. and Others

APPELLANT

Vs

Mohammad Safiq

RESPONDENT

Date of Decision : 20-01-2012

Acts Referred:

Citation : (2012) 3 ADJ 571

Hon'ble Judges : Rakesh Tiwari, J;Dinesh Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties and perused the record.
2. Challenge in this special appeal is to the judgment and order dated 28.9.2006 passed by the learned Single Judge in Civil Misc. Writ Petition No. 26130 of 2006, Mohammad Safiq versus State of U.P. and others, whereby the aforesaid writ petition was allowed quashing the order dated 25.4.2006 passed by the Additional Director of Education (Basic), U.P. Allahabad. By order dated 25.4.2006 the claim of respondent no.1 was rejected.
3. Brief facts of the case are that Mohd. Shafiq, respondent no.1 an urdu teacher claiming himself to be appointed under the Triple Language Formula Scheme had approached this Court by filing the aforesaid writ petition seeking regular continuance in service and for payment of salary and arrears of salary from April, 1997 when the same was abruptly stopped. He then preferred Civil Misc. Writ Petition No. 8540 of 2006, Mohd. Shafiq versus State of U.P. & others, which was disposed of vide order and judgment dated 13.2.2006 by the High Court with a direction to the appropriate authority i.e. Director, Basic Education to look into the matter and pass appropriate orders within three months. In compliance of the aforesaid judgment, the Additional Director, Basic Education U.P. disposed of the representation of respondent no.1 on 25.4.2006.
4. Learned Standing counsel appearing on behalf of appellants submits that

respondent Mohd. Shafiq was appointed by the Management under three language formula to teach Urdu in Sarowar Junior High School, Lakhwaya Rasoolpur, Meerut on 11.12.1996 whereas the post of Urdu language under the three language formula was created with effect from 26.11.1997 under the order of Assistant Director Ist Region, Meerut. It is stated in the aforesaid circumstances that the entire process of selection, approval and appointment of Mohd. Safiq was completed much before the actual creation of the post under three language formula and therefore, is vitiated in law.

5. He also submits that the learned Single Judge has omitted to see the effect of selection made by the Committee of Management of a candidate on a post which was neither created nor sanctioned on the date of selection; that one post of teacher in Sanskrit language was already accorded in the institution after implementation of the three language formula and the institution in question received grant from time to time in respect of a teacher teaching for Sanskrit language, hence the appointment of respondent no.1 as a teacher in Urdu language under three language formula is therefore, contrary to the scheme itself, which permitted only one post in any of the two languages in the institution.

6. It is also stated that neither the Basic Shiksha Adhikari nor the Assistant Director Ist Region, Meerut was competent to grant sanction for creation of additional post of teacher in Urdu language in the institution in question at the time when the appointment of respondent no.1 was made in the institution, the power to create the post completely vests with the Director of Education (Basic),U.P. Lucknow/Allahabad and the same have not been delegated to any of the two authorities; that the Assistant Director Ist Region, Meerut subsequent to the passing of the order by the Director of Education (Basic) dated 25.4.2006 cancelled the sanction vide order dated 23.11.2006.

7. He next submits that the order passed by the learned Single Judge is not sustainable in law, inasmuch as the claim of the respondent cannot be looked into within the provisions of the Government Orders issued from time to time and providing appointments of teachers under three language formula.

8. It is lastly submitted by the Standing counsel that in any view of the matter, the appointment of respondent Mohd. Safiq in view of the facts stated in the preceding paragraphs of the affidavit filed in support of the stay application was liable to be rejected being contrary to the provisions of the scheme besides his appointment was made much before the creation of the post in the institution in question.

9. Learned counsel for respondent no.1 has supported the judgment and order dated 28.9.2007 of the learned Single Judge and submits that respondent no.1 was regularly appointed as Urdu teacher in the institution on 11.12.1996 against one of the four sanctioned posts to which the Basic Shiksha Adhikari, Meerut had already granted approval to his selection and appointment vide order dated

3.12.1996.

10. He also submits that under the Scheme of Basic Shiksha Act and the Rules, the approval of the Basic Shiksha Adhikari is a condition precedent for inducting a teacher in the institution and one post of Assistant teacher in Urdu was created in the institution by the Assistant Director, Ist Region, Meerut vide order dated 26.11.97. Out of the four posts of Assistant teachers which were already available in the institution one post was earmarked for appointment of Assistant teacher in Urdu. There is no illegality or infirmity in the judgment of the learned Single Judge.

11. It appears from the record that respondent no.1 was appointed as an Urdu teacher in the aforementioned Junior High School on 11.2.1996. Approval to the selection/appointment was accorded by the Basic Shiksha Adhikari, Meerut vide order dated 2.12.1996. On 11.12.1996 respondent no.1 joined the institution and he has been teaching Urdu to the students of the college since then.

12. Learned Single Judge came to the conclusion that there were already four sanctioned posts of Assistant Teacher in the institution in question and the petitioner has been appointed against one of the posts as Assistant teacher in Urdu subject. Thereafter a post of Assistant teacher came to be created under the three language formula scheme and respondent no.1 was already working on the post of Assistant teacher vide order dated 26.11.97. The Assistant Director Education Basic, Meerut Region, Meerut informed the District Basic Education Officer, Meerut that one of post of Assistant teacher in Urdu subject may be converted into three language formula scheme and that post may not be treated separately. Accordingly, the post of respondent no.1 was converted into three language formula scheme for which the petitioner has also received salary. Therefore, the contention raised on behalf of the appellant that one post of Assistant Teacher under Three Language Formula Scheme was created in 1997 whereas respondent has been appointed in 1996 is incorrect inasmuch as four posts of Urdu Teachers were created on 11.12.1996 upon one of which the respondent was appointed. This post was converted by the Assistant Director, Ist Region, Meerut vide order dated 26.11.1997 on which the petitioner was already working. Therefore, there is no illegality or infirmity in the judgment and order of the learned Single Judge, hence no interference is called for by this Court.

13. We therefore, find no illegality and infirmity in the order impugned as the post which has already been sanctioned on which the petitioner has been working since 1996 was converted by the Government under the Three Language Formula Scheme, therefore, the contention of learned counsel for the appellant that the petitioner was appointed earlier on the said post whereas it has been created later on is misconceived and incorrect.

14. For all the reasons stated above, the special appeal is dismissed. No order as to costs.