
(2011) 04 AHC CK 0001
In the Allahabad High Court
Case No : Writ Petition No. 930 (S/B) of 1997

State of U.P.

APPELLANT

Vs

Chhabi Nath Yadav and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 5 ADJ 501

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : J.C. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Standing Counsel, and Sri J.C. Srivastava learned counsel for the claimant respondents and also perused record. Present writ petition under Article 226 of the Constitution of India, has been preferred against the impugned order passed by the U.P. State Public Services Tribunal, dated 31.1.1997 by which the Tribunal has set aside the order by which the claimant respondents' promotional avenue was cancelled. Brief facts giving rise to the dispute, are discussed hereinafter.

2. Claimant respondent No. Chhabi Nath Yadav was appointed as Class-IV employee in the respondent Institution namely, Rajkiya Ashram Paddhati Vidyalaya Inter College, Rampur (in short the Institution). The claimant respondent No. 2 Munshi Singh Yadav was also appointed as Class-IV employee on 12.8.1995. The Institution falls in the Department of Social Welfare, Government of U.P. The qualification of claimant respondent No. 1 is, B. Sc., B. Ed., and that of claimant respondent No. 2 is, M.A., B.Ed. The Principal of the Institution promoted the claimant respondent No. 1 against the Cadre of H.T.C. Teacher, who teaches Science and Mathematics. The claimant respondent No. 2 was also promoted on the post of Assistant Teacher for English in Junior High School Classes.

3. When this fact came to knowledge of the Department that a Class-IV employee has been promoted on the post of Assistant Teacher/Teacher, by the order dated 14.11.1995, the promotional order was cancelled on the ground that a Class-IV employee straight way cannot be promoted to the Cadre of teacher. It is further pointed out that order of cancelling the promotional order, was passed on the ground that promotion of H.T.C. Teacher is done by the Director, Social Welfare Department on the basis of recommendation of U.P. Subordinate Service Selection Commission, The Rajkiya Ashram Paddhati Vidyalaya Inter College, Rampur i.e., the Institution, is a recognised Institution under the provisions of U.P. High School and Intermediate Education Act, 1921 (in short the Act). Accordingly, the provisions contained in the Act, are applicable.

4. Feeling aggrieved with the cancellation of promotional order, the claimant respondents approached the Tribunal with the plea that the Principal of the College is competent to promote the incumbent against Class-IV post in view of Regulations framed u/s 16 ka, kha and ga, of the Act.

It is pleaded by the learned Standing Counsel that Class-IV employee cannot be promoted in the Cadre of Teacher. It is also pleaded that the seniority list of LT Grade Teachers was also prepared under the Act.

5. A plea is raised by the learned counsel for the claimant respondents that before cancelling the order of promotion, no show-cause notice or opportunity of hearing was given. Hence the order of cancellation, suffers from substantial illegality.

6. During the pendency of claim petition, claimant respondent Chhavi Nath Yadav left the services and joined other Department.

7. In the written statement filed before the Tribunal, it was stated that disciplinary proceeding has been initiated against the Principal of the Institution for the illegal act and also on the ground that claimant respondents are his relatives.

8. Sri J.C. Srivastava, learned counsel for the claimant respondents refutes the submission of the learned Standing Counsel that the charge-sheet was served on the Principal. However, learned Standing Counsel submits that action after retirement was taken against him.

9. The argument advanced before the Tribunal, has been reiterated by Sri J.C. Srivastava with submission that power is conferred on the Principal under Regulation 104 of the Regulations framed u/s 16 ka, kha and ga, of the Act. The Tribunal observed that under Regulation 104, the claimant respondents could be promoted on the post of Class-III post in pursuance of the Government order. It was also observed that the post of Assistant Teacher is equivalent to Class-III post and in the interest of students of the Institution, the Principal of the Institution has rightly exercised power. Other finding recorded by the Tribunal is, non-compliance of principle of natural justice.

10. A plain reading of Regulation 104 contained in Chapter-III of the Act, reveals that it does not regulate the regular promotional avenues rather, it relates to power of the Principal and the District Inspector of Schools to make appointment on compassionate ground. The Regulation 104 is reproduced as under:

Thus, at the face of record, reliance placed by the claimant respondents counsel on Regulation 104, seems to be unfounded.

11. At no stretch of imagination, a Class-IV employee can be permitted to jump one step ahead to acquire promotional avenues. Even if a person is qualified and possesses certain degrees, under which he or she may be entitled for direct recruitment on the post of Teacher but keeping in view the fact that claimant respondents were working as direct recruits against Class-IV cadre, they could not have been promoted on the post of Teacher. The power conferred on the Principal under Regulation 104 of the Regulations, deal with different situation. The Principal had exceeded jurisdiction while promoting the claimants on the post of teacher. A person working in Class-IV cadre could have been promoted in Clerical Cadre, in case Principal has got power to do so but at no stretch of imagination, he could have exercised powers to promote a person from Class-IV cadre to the post of teacher. Needless to say that a post of Teacher is a different Cadre and cannot be filled up straight way from Class-IV by jumping one step ahead.

Accordingly, we are of the view that the Principal has exceeded his jurisdiction by promoting the claimant respondents on the post of Assistant Teacher from Class-IV Cadre.

12. Next limb of argument of learned counsel for the claimant respondent is that principle of natural justice has not been complied with, Learned Standing Counsel submits that since the Principal has passed the promotional order without jurisdiction and that too, de hors the Rules, hence compliance of principle of natural justice is not necessary. It has further been submitted by the learned Standing Counsel that a corrective measure was adopted by the Department immediately when the fact came to knowledge. The promotional order is of September, 1995 whereas, the impugned order cancelling the promotional order is dated 14.11.1995. Thus, the Government has taken immediately remedial measure while cancelling the impugned promotional order passed in favour of the claimant respondents.

13. Hon'ble Supreme Court in a case in Mohd. Sartaj and Another Vs. State of U.P. and Others, , has held that when an order is passed wholly without jurisdiction and some benefit is extended de hors the Rules, then ordinarily, in such a situation, the compliance of principles of natural justice shall not be necessary unless some prejudice is caused. Nothing has been brought on record by the learned counsel for the claimant respondents before the Tribunal with regard to right of Principal to pass the impugned order except that the Principal was competent to pass the promotional order, that too, on unfounded ground.

Since the claimant respondents were promoted de hors the Rules and that too, by exceeding jurisdiction, the non-compliance of principles of natural justice does not seem to be fatal. In view of the above, the Tribunal has failed to exercise jurisdiction vested in it. The writ petition deserves to be allowed. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 31.1.1997 with consequential benefits. However, in case Rules permit, it shall be open to the claimant respondents to apply against the vacancy of Assistant Teacher in due course of time which may be considered alongwith other eligible candidates. However, the appellant shall not make any recovery from the salary of the claimant respondents for the period during which they discharged their duty.

No costs.