

(2014) 09 AHC CK 0217

In the Allahabad High Court

Case No : Special Appeal Defective Nos. 542, 544, 545, 546, 547 and 548 of 2014

State of U.P.

APPELLANT

Vs

Committee Management, Sarvodaya Inter College

RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(1)

Citation : (2014) 9 ADJ 297 : (2015) 2 ALJ 338 : (2014) 4 ESC 2392

Hon'ble Judges : Vineet Saran, J;Vijay Lakshmi, J

Bench : Division Bench

Advocate : Vivek Shandilya and Ramesh Upadhyaya, Advocate for the Appellant; Siddharth Khare, S.C. Tripathi, A.K. Shukla and S.B. Singh, Advocate for the Respondent

Judgement

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1. As all these intra Court appeals filed by the State, arise out of the same judgment dated 27.8.2014 passed by learned Single Judge, while deciding a bunch of a dozen of writ petitions together, they are being disposed of by this common judgment. We have heard Sri Ramesh Upadhyay, learned Chief Standing Counsel alongwith Sri Vivek Shandilya, learned Additional Chief Standing Counsel appearing on behalf of the State in all these appeals and Sri Ashok Khare, learned Senior Counsel alongwith Sri Siddharth Khare in Special Appeal Defective Nos. 542 of 2014 and 545 of 2014 and Sri R.K. Ojha, learned Senior Counsel alongwith Sri S.B. Singh appearing on behalf of the respondents in Special Appeal Defective Nos. 544 of 2014, 546 of 2014, 547 of 2014 and 548 of 2014 and perused the records.

2. Twelve writ petitions were filed by the various committees of management of respondents Junior high schools with prayer to quash the orders passed by the State Government through Secretary, Director of Basic Education, whereby the applications filed by the above said management committees for bringing their

schools in grant-in-aid list of the State Government, were rejected. Earlier an advertisement had been issued by the Government of U.P. for bringing 1000 privately managed junior high schools having permanent recognition, on the grant-in-aid list of the State Government. The petitioners had applied for the same, but when their applications were rejected by the State Government, on different grounds, they challenged the orders passed by the State by means of writ petitions before this Court as aforesaid.

3. The writ Court after hearing both the parties, divided the writ petitioners-schools and colleges into two categories. The first category consisted of applications of such schools, whose applications for grant-in-aid had been rejected by the State for the reason that the appointments of teaching and non teaching staff had been made in contravention of the provisions of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the "1978 Rules") and also against the provisions of U.P. Recognised Basic Schools (Junior High Schools) (Recruitment & Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984 (hereinafter referred to as the "1984 Rules"), because the appointments had been made prior to the grant of approval by the Basic Shiksha Adhikari. Due to this reason, those schools included in category "A" were found to have failed to satisfy the conditions contained in Clause 6 of the Government Order dated 7.9.2006.

4. Six writ petitioner-schools falling in the above said first category relate to Writ Petition No. 59940 of 2010, Writ Petition No. 24703 of 2011, Writ Petition No. 48835 of 2011, Writ Petition No. 62412 of 2010, Writ Petition No. 27126 of 2011 and Writ Petition No. 24704 of 2011.

5. The second category of the petitioner schools consisted of those, where apart from the aforesaid deficiency, certain other deficiencies were also found. For example some schools were found to have no facility of library and science laboratory. Some schools were running classes IX and X also, and some schools did not have their own land or building. In one case relating to Writ Petition No. 27533 of 2011, a document filed by the school, which was the photostat copy of the letter sent by the Principal of schools with respect to approval granted by District Basic Education Officer, was found to be forged, as Basic Education officer had denied his signature on the said document.

6. On the basis of the aforesaid deficiencies, the claims of all the writ petitioners institutions for being brought within the ambit of grant-in-aid scheme were rejected by the State, by the orders impugned in the writ petitions.

7. Aggrieved by the rejection order the management committees of schools approached this Court by means of several writ petitions as aforesaid. Learned writ Court after considering the submissions advanced by learned counsel for both the parties, allowed all the writ petitions and directed the State Government to pass appropriate orders in wake of the views expressed in the judgment of the

writ Court, and after providing adequate opportunity of hearing to the petitioners.

8. Questioning the correctness and propriety of the order of learned writ Court and justifying the orders passed by Secretary, Department of Basic Education, whereby rejecting the claim of school and colleges for taking them in grant-in-aid list, in wake of Rules 1978 and Rules 1984 Sri Ramesh Upadhyay, learned Chief Standing Counsel has vehemently argued that there is nothing on the record to show that the post of teachers had ever been advertised, or the intimation regarding the vacancy had ever been sent to the Basic Shiksha Adhikari as contemplated by the Rules. Learned Chief Standing Counsel has further submitted that there is no constant scheme of Government of Uttar Pradesh for taking self financed institutions on the grand-in-aid list. These institutions are taken on grant-in-aid list from time to time by the Government, keeping in view the financial condition of the Government, and the availability of institutions in the locality, and at present, according to the norms of the Right to Education Act, 2009, the State Government has one basic junior high school at a distance of 3 kms. in the entire State of Uttar Pradesh. Today there is no fresh scheme for taking any further institution of basic junior high school on the grant-in-aid list. It has lastly been argued by him, that the financial burden on the State Government in taking one institution on the grant-in-aid list comes to around Rs. 30 lacs per year, and as such the State Government has to keep in mind the financial resources before taking any institution in grand-in-aid list.

9. Per Contra, learned Senior Counsel appearing on behalf of the respondents have contested the appeal by arguing, that appointments of teachers and non teaching staff were made long back, and all these appointments were duly approved by the District Basic Education Officer as required under 1978 Rules and the 1984 Rules. So it cannot be said that there were no regular teaching and non teaching staff in the schools. Learned counsel for the respondents have drawn our attention to Rule 10(5) of 1978 Rules. It provides that it is only when the District Basic Education Officer is satisfied that the candidates recommended by the selection committee possess the minimum qualifications prescribed for the post, and the procedure laid down in the Rules in selection has been followed, that he shall accord approval to the recommendations made by the selection committee. Learned counsel for the respondents has submitted, that even assuming that the appointments had been made prior to the grant of approval or deemed approval, it would not be illegal and would become effective from the date of approval or deemed approval as has been consistently held by Hon''ble Supreme Court and also by the Division Benches of this Court in *Lalit Mohan Mishra v. District Inspector of Schools*, 1979 ACJ 1025 and in *Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad* and another, and in the decision of a learned Single Judge of this Court rendered in Civil Misc. Writ Petition No. 13572 of 2003 (*Chandra Mohan Pandey v. District Inspector of Schools, Deoria and others*) decided on 23rd August, 2005. Learned counsel has further placed reliance upon a decision of the Supreme Court rendered in *Kunda Motiram Bodalkar v. Swami Vivekanand Shrikshan Sanstha and others*, (2010) 6

SCC 712, wherein the appointment of Headmistress was challenged on the ground that prior approval of competent authority had not been obtained, and the Apex Court has observed:

".....Admittedly, prior permission for her appointment was not obtained from the competent authority and that alone is the reason for which the High Court found the appointment illegal and struck it down.....

.....It is also not denied that later on the appellant's appointment was approved by the competent authority. We were also told that since her appointment the appellant is working as the Headmistress in the school.....

.....In those facts, we are of the view that the High Court was in error in interfering in the matter and setting aside the appellant's appointment. We, accordingly, set aside the High Court order and confirm the appellant's appointment to the post of Headmistress....."

10. Regarding second category of the schools, learned counsel for the respondents have argued that the orders in respect of the deficiencies found in those schools have been passed by the State Government in utter violation of principle of natural justice, as no opportunity was provided to the petitioners to explain the alleged deficiencies.

11. Learned writ Court, while placing reliance on the above cited case laws cited by the petitioner-schools falling in 1st category, and after holding that so far as the second category of schools are concerned, it was imperative for the respondents to have given an opportunity to those schools, to explain their position with regard to defects, before rejecting their applications for bringing them on the grant-in-aid list by the State Government, allowed all the writ petitions, and while setting aside the orders passed by the State Government on the applications of the schools, it directed the State Government to pass appropriate orders afresh in wake of the views expressed in the judgment, and after providing adequate opportunity of hearing to the petitioners.

12. We have considered the submissions advanced by learned counsel for the parties and have gone through the relevant records.

13. So far as the schools falling in 1st category are concerned, the only reason assigned for rejecting their applications, was that the teaching and non teaching staff were appointed prior to the grant of approval to their appointments by the Basic Shikha Adhikari, which was in contravention of the provisions of 1978 Rules dealing with the teaching staff and the 1984 Rules dealing with the non-teaching staff, and therefore these schools had failed to satisfy condition No. 6 of the Government Order dated 7.9.2006.

14. The relevant portions of the 1978 Rules and 1984 Rules are reproduced below:

1978 Rules

"(10) Procedure for selection.--(1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5)(i) If the District Basic Education Officer is satisfied that-

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

1984 Rules

"(15) Procedure for selection.--(1) The Selection Committee shall, after interviewing such candidates as appear before it on a date fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall as soon as possible forward such list, together with the minutes of the proceedings of the Committee to the Management.

(4) The Manager shall, within one week from date of receipt of the papers under clause (3), send a copy of the list to the District Basic Education Officer.

(5)(i) If the District Basic Education Officer is satisfied that--

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Ministerial staff and Group "D" employees, as the case may be, has been followed, he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

15. From a perusal of records it is evident that the appointments of the teaching/non-teaching staff in many of these schools falling in the first category were made long back. The appointments in Writ Petition No. 59940 of 2010 relate from 1989 to 2004; the appointments in Writ Petition No. 24703 of 2011 relate from 1979 to 1980; the appointments in Writ Petition No. 48835 of 2011 relate from 1982 to 1992; the appointments in Writ Petition No. 62412 of 2010 relate from 1973 to 1993; the appointments in Writ Petition No. 27126 of 2011 relate from 1984 to 1987 and the appointments in Writ Petition No. 24704 of 2011 relate from 1976 to 1990. It also transpires that some of the appointments of the teaching staff were made even prior to 1978 and of the non-teaching staff prior to 1984 when the Rules had not been framed but what is important is that the District Basic Education Officer had granted approval to all these appointments. This implies that the candidates possess the minimum qualifications prescribed for the post and the procedure laid down in the Rules for selection has also been followed. It is also important to note that the approval granted by the District Basic Education Officer to these appointments has not been cancelled so far.

16. A Division Bench of the Court in Ashika Prasad Shukla (supra) has examined the nature of such appointments made prior to the grant of approval by the Competent Authority, and after placing reliance on the earlier Division Bench judgment of the Court in Lalit Mohan Mishra (supra) it has observed:

"16. Paragraph 2(3)(iv) of the Second Removal of Difficulties Order is not phrased in a prohibitory language as was the language used in Section 16-F(1) of the U.P. Intermediate Education Act, 1921. The words "prior approval" have been used in sub-clause (ii) of paragraph 2(3) of the Second Removal of Difficulties

Order and a conjoint reading of sub-clauses (ii), (iii), and (iv) of clause (3) of paragraph 2, no doubt, leads to an inescapable conclusion that the appointment would be issued under the signature of the Manager only on the approval having been communicated by the District Inspector of Schools within seven days of the receipt of the papers or where the approval is deemed to have been accorded as visualised by sub-clause (iii) of clause (3) of paragraph 2 of the Second Removal of Difficulties Order. However, appointment if made prior to approval or deemed approval, would become effective from the date of approval or deemed approval as held by the Division Bench of this Court in Lalit Mohan Mishra's case."

17. This Court in Chandra Mohan Pandey's (supra) case has observed as follows:

".....any appointment made prior to the approval or deemed approval would become effective only from the date of approval or deemed approval, and that the appointment made prior to the approval or deemed approval would not be held to be illegal. Court In view of the aforesaid, the authority was not justified in rejecting the case of the petitioner on this ground."

18. Thus, in view of the aforesaid decisions, it cannot be said that the appointment of the teaching/non-teaching staff was not regular, because even if the appointments were made prior to the approval of the District Basic Education Officer, they would become effective from the date of approval or deemed approval.

19. With respect to second category of schools, it has not been disputed by the learned Chief Standing Counsel that no opportunity was provided to the writ petitioners/respondents to explain about the alleged deficiencies on the basis of which their applications were rejected.

20. Principle of natural justice requires that no one should be condemned unheard.

21. In a catena of judgements it has been consistently held by the Apex Court as under:

...Adherence to the principles of natural justice is mandatory for all the authorities, Courts Tribunal or Administrative bodies discharging such functions. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem..... Manohar Anchule Vs. State of Maharashtra and Another,

In Indu Bhushan Dwivedi Vs. State of Jharkhand and Another, , the Apex Court has observed:

".....one of the basic canons of justice is that no one can be condemned unheard and no order prejudicially affecting any person can be passed by a public authority without affording him reasonable opportunity to defend himself or represent his cause. An authority is duty bound to act in consonance with the basic rules of natural justice including the one that material sought to be used

against the concerned person must be disclosed to him and he should be given an opportunity to explain his position. This unwritten right of hearing is fundamental to a just decision."

22. As learned Chief Standing Counsel has not disputed this fact that opportunity of hearing was not given to the schools before rejecting their claims on the ground of deficiency, all the other arguments advanced by learned Chief Standing Counsel appear loose importance and to be without any force. Considering the facts and circumstances of the case, we are of the firm view that at least opportunity was to be given to the school management committees to put forth their case before the authorities, about the deficiencies pointed out against them before their claims were rejected. Learned Single Judge has also expressed the same view while allowing the writ petitions and there appears no good ground to interfere in the judgment passed by him.

23. We do not see any merit in all the appeals which are liable to be dismissed and are hereby dismissed accordingly. The appellants are directed to reconsider the claims of respondent-schools and pass fresh orders according to law on their applications for bringing them in the grant-in-aid list after giving them proper opportunity of hearing. A copy of this judgment be kept on the record of each special appeal.