
(2016) 08 AHC CK 0013

In the Allahabad High Court

Case No : Special Appeal Defective No. 507 of 2016

State of U.P.

APPELLANT

Vs

Shere Azam

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 8 ADJ 288 : (2016) 6 AllWC 6200 : (2016) 119 ALR 285 :
(2016) 4 UPLBEC 2681

Hon'ble Judges : Dilip B. Bhosale, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Vivek Shandilya, Advocate, for the Appellant; J.P. Singh, Advocate,
for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Sri Vivek Shandilya, learned Additional Chief Standing Counsel for the appellants and Sri J.P. Singh for the respondent No. 3.
2. The State and the Department of Minority Welfare is in appeal questioning the correctness of a judgment rendered by the learned Single Judge dated 22 April 2015.
3. A writ petition was preferred by the opposite party No. 1 (the original petitioner) seeking a direction commanding the third appellant to pass appropriate orders for release of his salary without being fettered in any manner by clause 5 of a Government Order dated 29 October 2013. Clause 5 of the said Government order mandated that vacancies in the Class IV cadre of the employees of Madars as could be filled only by way of outsourcing. The original petitioner claims that he had been appointed by the second respondent as a peon on 27 March 2013. It was contended in the writ petition that since the petitioner has come to be appointed by the second respondent prior to the promulgation of the Government Order dated 29 October 2013, the approval to

his appointment could not be withheld.

4. From a reading of the judgment of the learned Single Judge, it further appears that reliance was placed upon an order passed on Ali Ahmad v. State of U.P., Writ A No. 51984 of 2014 which had been disposed of in the following terms:

"Petitioner claims to be selected as Peon in Madarsa Darul Uloom (Niswan) Mau, district Mau (for short, the "Institution"). The Committee of Management of the Institution sent the papers relating to selection to the District Minority Welfare Officer to consider the papers for approval of the selected person. The Inspector/Registrar, Board of Madarsa Education, U.P. Lucknow vide impugned order dated 19th September, 2014, has rejected the claim of the petitioner on the ground that appointment on Class-IV posts shall be made by the outsourcing in terms of the Government Order dated 06th January, 2011.

Learned Counsel for the petitioner submits that paragraph 2 of the Government Order dated 06th January, 2011 has already been set aside by this Court in the case of Committee of Management, Lala Babu Baijal Memorial Inter College and another v. State of U.P. and others, 2012 (4) ADJ 586. No other ground has been mentioned in the impugned order.

Learned Standing Counsel does not dispute the said legal proposition.

In view of the aforesaid facts and circumstances of the case, keeping this writ petition pending would not serve the purpose of either of the parties, therefore, with the consent of learned Counsel appearing for the parties, this writ petition is finally disposed of and the impugned order dated 19th September, 2014, passed by the Inspector/Registrar, Board of Madarsa Education, Lucknow, which is liable to be set aside, is set aside.

The Inspector/Registrar is directed to consider the matter afresh on the basis of the papers submitted by the Committee of Management for approval in accordance with law.

No order as to costs."

5. The learned Single Judge has proceeded to dispose of the writ petition with a direction that the claim of the petitioner be considered in light of the order passed in Ali Ahmad. Ali Ahmad Writ-A No. 51984 of 2014 Ahmad itself, it becomes relevant to note, had come to be disposed of noticing the judgment rendered by a learned Single Judge in Committee of Management, Lala Babu Baijal Memorial Inter College and another v. State of U.P. and others, 2012 (4) ADJ 586. The learned Single Judge in Lala Babu Baijal had struck down the provisions of a Government Order dated 6 January 2011, which mandated that the appointment on Class IV posts in Intermediate Colleges would be made only by way of outsourcing.

6. Shri Shandilya, learned counsel appearing for the appellants has submitted that neither the Government Order dated 6 January 2011 nor the judgment

rendered by the Court in Lala Babu Baijal was applicable inasmuch as both had been rendered with reference to the provisions of the U.P. Intermediate Education Act 1921 (1921 Act). It was his submission that Madarsas including the one in which the petitioner is stated to have been appointed were governed by the provisions of the Uttar Pradesh Ashashkiya Arabi Tatha Farsi Madarson Ki Manyata Niyamawali, 1987. It was further submitted that the Government Order dated 29 October 2013 had neither been challenged nor was the said Government Order struck down by the Court in Lala Babu Baijal. The learned counsel for the appellant therefore submits that the order passed in Ali Ahmad, which itself came to be rendered upon concession, was clearly not applicable. He further submitted that even otherwise the judgment in Lala Babu Baijal no longer holds the field consequent to the amendments effected to Regulation 101 framed under the provisions of the 1921 Act. It was his contention that the above change in the statutory regimen and its consequential impact on Lala Babu Baijal was duly noticed by a Division Bench of the Court in State of U.P. v. The U.P. Pradhanacharya Parishad, Lucknow and another, Special Appeal Defective No. 266 of 2015 decided on 13 July 2015 (Lucknow Bench).

7. On the other hand, learned counsel for the original petitioner, apart from reiterating the submissions advanced on the writ petition, has further contended that the Uttar Pradesh Non-Governmental Arabic And Persian Madarsa Recognition, Administration and Services Regulation, 2016 (2016 Regulations) which have been recently promulgated on 22 July 2016, themselves do not impose any restriction on Class IV posts being filled only by way of outsourcing.

8. Upon a consideration of the rival submissions as also the material placed for consideration before the learned Single Judge, we find that Lala Babu Baijal had struck down the Government Order dated 6 January 2011 which had stipulated that all future appointments on Class IV post in institutions governed by the 1921 Act would be only by way of outsourcing.

9. The Court in Lala Babu Baijal had found that the appointments to class IV posts were governed by the regulations framed under the 1921 Act and in the absence of any such restriction having been imposed under the regulations, the right to make an appointment to a Class IV post could not have been fettered by issuance of a mere Government Order. However after the judgment had been rendered in Lala Babu Baijal, Regulation 101 was amended imposing certain restrictions under the 1921 Act. The Governor granted prior approval for the amendment of Regulation 101 on 4 September 2013. The amended regulation was published in the official gazette on 24 April 2014.

10. It becomes relevant to note that on 18 December 2013, a learned Single Judge had stayed the communication of the Governor dated 4 September 2014. However, the amended regulation as notified on 24 April 2014 was not stayed. It is this position which was noticed by the Division Bench in Pradhanacharya Parishad. The Division Bench has held as follows:

"It is not possible to subscribe to this submission for the simple reason that amended Regulation 101 was notified on 24 April 2014, which was subsequent to the interim order of the learned Single Judge dated 18 December 2013. At the stage when the interim order was issued on 18 December 2013, all that had happened, was that a communication was issued on 4 September 2013 indicating the prior approval of the Governor. Regulation 101 as amended was notified much later. As a matter of fact, several writ petitions have been filed, as stated by the learned Standing Counsel, to challenge the vires of Regulation 101, which are pending adjudication at Allahabad. The State has filed its counter affidavit in those writ petitions so as to facilitate a final hearing and disposal.

The respondents filed a writ petition before the learned Single Judge on 29 August 2014, which was after amended Regulation 101 had come into force. Unless they were to challenge amended Regulation 101 and were in a position to obtain an interim order or, as the case may be, a final order, it would not be possible for them to obtain relief merely on the basis of the judgment in the earlier writ petition filed by Committee of Management Lala Babu Baijal Memorial Inter College. That judgment was rendered in the context of the second paragraph of the Government Order dated 6 January 2011 and much before Regulation 101 was amended by the issuance of a gazette notification on 24 April 2014.

Hence and for these reasons, the mandamus which has been issued by the learned Single Judge by the impugned judgment and order dated 16 September 2014 is unsustainable. The learned Single Judge has not had regard to the provisions of amended Regulation 101 or to the admitted position that there was no challenge thereto in the writ petition."

11. The other important aspect of which mention must necessarily be made is that admittedly the services of the original petitioner as also the administration of the Madarasa in question is governed by the U.P. Board of Madarsa Education Act 2004 and the Uttar Pradesh Ashashkiya Arabi and Parsi Madarson Ki Manyata Niyamawali, 1987 and not the 1921 Act. In fact, the learned counsel for the original petitioner has also placed before us the 2016 Regulations which have been promulgated and published in the official gazette on 22 July 2016.

12. We are, therefore, of the opinion that the ends of justice would merit a remand of the matter to the appellant No. 3 before whom the rival contentions noticed above are placed and the respective parties permitted to assert the same and for the third appellant to take a considered decision thereon. This is necessitated not just on account of the submissions urged on behalf of the appellants but also in order to enable the third appellant to consider the submission of the original petitioner in respect of non-applicability of the Government Order dated 29 October 2013 as also the issue of a nonexistence of a prohibition under the 2016 Regulations.

13. We accordingly dispose of the Special Appeal and modify the judgment

rendered by the learned Single Judge with the following substituted directions:

14. The original petitioner shall within a period of two weeks from today, submit his representation with respect to the grant of approval to his appointment as peon in the Madarsa in question. The appellant No. 3 shall thereafter and after putting the Madarsa as also other concerned parties to notice proceed to consider and dispose of the said representation by way of a reasoned and speaking order within a period of eight weeks therefrom. All rights and contentions of the parties are left open for adjudication by the appellant No. 3.