

(2009) 03 AHC CK 0097
In the Allahabad High Court
Case No : Special Appeal No. 401 of 2004

State of U.P.and Others

APPELLANT

Vs

Shiv Dutt Sharma (Shastri) and Another

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(10)

Citation : (2009) 03 AHC CK 0097

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—Heard Dr. Y.K. Srivastava, learned Standing Counsel for the appellants and Mr. P.K. Jain, learned counsel appearing for respondent no.1.

2. The respondentsappellants aggrieved by order dated 15th December, 2003 passed by a learned Single Judge have preferred this special appeal under the Rules of Court.

3. The short facts giving rise to this special appeal are that respondent no.1Shiv Dutt Sharma filed a writ petition for quashing the order dated 13.7.1983 of the Director of Education and the consequential order dated 18.8.1983 of the District Inspector of Schools, Mathura, whereby he was declined the payment of salary in the Lecturer's Grade. He also prayed for quashing of the consequential order dated 9.9.1983 of the Principal, Akroor Inter College, Mathura, denying payment of salary in the Lecturer's Grade from 17.7.1972.

Respondent no.1Shiv Dutt Sharma was appointed as a Lecturer in Sanskrit by order dated 16.7.1972 in the scale of pay of Rs.215550 plus usual Dearness Allowance and other Allowances. The approval to his appointment was granted by the District Inspector of School by communication dated 24.2.1973. Besides, respondent no.1's approval by the said communication, approval to the appointment of other persons was also granted. In the light of the aforesaid appointment, respondent no.1 was given the salary of a Lecturer. It seems that

later on, the scale of pay of the Lecturer was revised and his entitlement to receive the revised pay scale of Lecturer came to be examined by the Director of Education. The Director by communication dated 13.7.1983 observed that respondent no.1 possesses the qualification of Shastri and, therefore, he shall not be entitled to the Lecturer's scale of pay.

4. In the light of the aforesaid order of the Director, the District Inspector of School issued consequential order dated 18.8.1983 and the Principal of the Inter College where respondent no.1 was working also issued the order dated 9.9.1983.

5. Respondent no.1 challenged the aforesaid orders before this Court and on consideration of the submission and the materials available on record, the learned Single Judge allowed the writ application and while doing so observed as follows:

"I have heard learned counsel for the parties. I find that the petitioner according to possession of Shastri degree duly were not being paid lecturer scale and by chance some provision and policy the petitioner's earlier benefit cannot withdrawn and the legitimate expectation cannot be declined without any reason or justification. In these circumstances, the stand of the respondents are illegal and petitioner is entitled to be given salary in lecturer grade. His official appointment is entitled to be given lecturer in the categories scale from time to time and mandamus is issued to the respondents to fix salary and make a payment accordingly within four months from rendering certified copy of this order. The writ petition is allowed with above observations. No order as to costs."

6. Aggrieved by the same, the appellants preferred this special appeal. The special appeal was heard by a Division Bench of this Court and by an order dated 26.7.2006, the judgment and order of the learned Single Judge was set aside primarily on the ground that the writ petition was not maintainable as respondent no.1 had not impleaded the State Government as a party in the writ petition.

7. Aggrieved by the same, Respondent no.1 preferred a Civil Appeal No.7303 of 2008 before the Supreme Court. The Supreme Court by its order dated 12th December, 2008 set aside the order of the Division Bench and remitted the matter back to us for disposal on merits in accordance with law. Relevant portion of the judgment of the Supreme Court reads as follows:

"We, therefore, allow this appeal, set aside the impugned order of the Division Bench, and restore Special Appeal No.401/2004 to the file of the High Court, for disposal on merits in accordance with law. It is needless to say that the state government and the Director of Education will also be heard, on the merits, even though they were not respondents in the writ petition."

8. This is how the matter has come up before us.

9. Learned Standing Counsel appearing on behalf of the appellants submits that

the appointment of respondent no.1 being illegal, cannot be cured. He points out that as respondent no.1 did not possess the qualification required for appointment as a Lecturer, his appointment is void ab initio and, therefore, the authorities did not err in declining him the Lecturer's scale of pay. In support of his submission, reliance has been placed on a Bench decision of this Court in the case of Sushil Kumar Dwivedi Vs. Basic Shiksha Adhikari, Banda and others, reported in (2003) 2 UPLBEC 1216 and our attention has been drawn to paragraph 12 thereof, which reads as follows:

"12. The submission of the Counsel for the appellant that since by passage of time the appellant had acquired qualification, thus the said lack of qualification cannot be made a ground for termination, is also to be considered. Before proceeding further, it is relevant to note that the lack of qualification of the appellant are both lack of minimum qualification as well as lack of minimum prescribed age. Admittedly the appellant did not have three years teaching experience in recognised school. The minimum age prescribed for Head Master is 25 years. The date of birth of the appellant is admittedly 5th June, 1973 and at the time of joining he was only 21 years and six months. The minimum age of 25 years for the post of Head Master had a specific purpose and to permit appointment of a person who was only 21 years 6 months on the post of Head Master, is wholly illegal. The learned Single Judge has rightly referred to Rule 5 which is in negative form providing that no person shall be appointed as Head Master or Assistant Teacher in substantive capacity unless, he possesses the minimum qualification. It is further to be noted that under the Rules there is no power of relaxation in qualification or in age given to any authority including the Selection Committee or the Basic Shiksha Adhikari. The requirement of qualification as well as age was not relaxable. These facts clearly show that lack of qualification and of age on the part of the appellant cannot be termed as mere irregularity which can be said to have been cured by passage of time."

10. Mr. P.K. Jain, appearing on behalf of respondent no.1 however, contends that respondent no.1 was appointed as a Lecturer in the scale of pay of a Lecturer and, therefore, he shall be entitled for the Lecturer's scale of pay as revised from time to time. He points out that in case, the authorities believe that the appointment of respondent no.1 is in contravention of law, they could have taken recourse to a proceeding contemplated under Section 16E (10) of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the Act, 1921). He emphasises that till date the appointment of respondent no.1 has not been rescinded and so long he is allowed to function as Lecturer, he is entitled to the Lecturer's scale of pay as revised from time to time.

11. Having appreciated the rival submission, we do not have slightest hesitation in accepting the submission of the learned counsel for the appellants that an appointment, which is void initially cannot be cured, but here in the present case, the appointment of respondent no.1 has not yet been declared to be void. Respondent no.1 was appointed in the Lecturer's scale of pay and thus, he shall

be entitled for the scale of pay of the Lecturer as revised from time to time.

12. In case, the appellants believe that the appointment of respondent no.1 is in contravention of the provisions of the Act, 1921, nothing prevented them from taking recourse to the proceeding under Section 16E (10) of the Act, 1921. Admittedly, no such proceeding has been resorted to. Ordinarily, we would have given an opportunity to the appellants to take recourse to the proceeding as contemplated under Section 16E (10) of the Act, 1921, but as respondent no.1 is going to superannuate from his services within one year, we consider it unjust to give such an opportunity to the appellants.

13. We are of the opinion that the consideration of the matter by the learned Single Judge does not suffer from any error calling for interference in this Special Appeal.

14. Accordingly, this special appeal stands dismissed, but without any order as to costs.