
(2004) 08 AHC CK 0160

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9787 of 1986

Subhash Chandra Rai and Others

APPELLANT

Vs

Additional Director of Education and Others

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

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

Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 10, 20

Citation : (2005) 2 AWC 1953 : (2004) 3 UPLBEC 2985

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : V.B. Khare and A.K. Shukla, for the Appellant; Suman Sirohi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri A.K. Shukla, learned Counsel holding brief of Sri V.B. Khare, learned Counsel for the petitioners and Miss. Suman Sirohi, learned Standing Counsel for the State respondents.

2. In this petition, prayer has been made to quash the order dated 7.5.1986 (Annexure-11 to the writ petition) passed by the Additional Director of Education (Intermediate), Allahabad, U.P.

3. It appears that Pratap Narain Singh Janta Intermediate College, Barhi Sonbarsa, District Gorakhpur (hereinafter in short called as the "College") is a recognized College under the Uttar Pradesh Intermediate Education Act, 1921, (hereinafter in short called as the "Act, 1921"), where some posts alleged to have fallen vacant and the petitioner No. 1 by virtue of being in possession of degree of B A and B.T.C. along with other petitioner Nos. 2, 3 and 4, who were also having prescribed minimum qualification, participated in the selection in pursuance of advertisement published in the newspaper. The petitioner No. 1 was appointed in J.T.C. Grade in the said College and the petitioner Nos. 2, 3 and 4 were appointed as teachers in C.T. Grade temporarily and the appointment of the

petitioners made by the management was approved by the concerned District Inspector of Schools on 9.7.1980.

4. It appears that the defects in the selection were noticed and acknowledged by the Additional Director of Education, who issued show cause notice to the petitioners. In the said show cause notice it was indicated as under-

(a) The advertisement was not made within a period of three months from 6.12.1979 as provided in Regulation 20 of Chapter II. The post cannot be filled after the period without permission.

(b) The advertisement was made on 14.4.1980 beyond the period prescribed under Regulation 20 of Chapter II.

(c) The application form of the petitioner No. 1 was received on 1.5.1980 after the last date 29.4.1980.

(d) The advertisement has been made in Newspapers not approved by the Deputy Director of Education, Gorakhpur.

(e) The Committee had committed a contravention of Regulation 10 of the Chapter II and the result was that suitable candidates could not apply.

(f) The Committee had committed a breach in advertising four posts in C.T. Grade when there was only three vacancy.

(g) That petitioner No. 1 was not qualified for the post of C.T. Grade as he was B.T.C. The section was for C.T. Grade but the appointment has been made in B.T.C. Grade.

5. After hearing the petitioners and taking into consideration the response given by the petitioners it was found by the Additional Director of Education that only three vacancies were available in the College and against these three vacancies appointments of four candidates petitioners were made not by a duly constituted Committee and without proper advertisement in the newspaper. The advertisement was not published in the widely circulated newspapers depriving the participation of adequate number of candidates from the open market. The Additional Director of Education also found that there was inherent lack of compliance of provisions of Regulation 20 of Chapter II of the Regulation framed under the "Act, 1921" as well as the said appointments were made against the provisions of Regulation 10(a) of Chapter II of the Regulations framed under the "Act, 1921", therefore, the Director/Additional Director of Education in view of the provisions of Section 16-E(10) of the "Act, 1921" after affording the petitioners opportunity of hearing cancelled their appointments. According to learned Counsel for the petitioners the said advertisement in question was sufficient to convey to the public at large and cannot be taken with narrow view to infringe the provisions of Regulations 10(a) and Regulation 20 of Chapter II of the Regulations framed under the "Act, 1921", more so, when the approval of the said appointments was already given by the District Inspector of Schools.

6. According to learned Counsel for the petitioners, even if some procedural deficiencies and formalities were not fulfilled at the relevant time of selection and the petitioners were selected and allowed to work and after having worked for large number of years on the strength of the interim order, their candidature could not be cancelled in view of the decisions of the Supreme Court as well as of this Court.

7. In order to adjudicate the controversy involved in the present case, the relevant provisions of Section 16-E(10) of the "Act, 1921" and Regulations 10(a) and 20 of Chapter-II of the Regulations framed under the "Act, 1921" are provided herein as follows :--

"Section 16-E (10).-Where the State Government, in case of the appointment Head of Institution and the Director in the case of the appointment of teacher of an institution, is satisfied that any person has been appointed as Head of Institution or teacher, as the case may be. in contravention of the provisions of this Act, the State Government or as the case may be, the Director may after affording an opportunity of being heard to such person, cancel such appointment and pass such consequential order as may be necessary."

"Regulation 10.-The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognised institution shall be as follows :-

(a) After determining the number of vacancies to be filled through direct recruitment, posts shall be advertised by the Managed of the institution at least in two such newspapers out of which one be local having large circulation and the other be having large circulation in the State. Provided that list of the newspapers shall be prepared by the Inspector after approval of the Regional Deputy Director of Education of his region and advertising by all Management Committees of the District in any two newspapers out of that would be compulsory. Details regarding type of vacancy (i.e., permanent or temporary) and number of vacancies, particulars of post (i.e., Principal or Headmaster, Lecturer or Teachers of L.T., C.T. or J.T.C., B.T.C. Grade and such subject/ subjects in which lecturer or teacher be required) pay scale and other allowances, required experience, minimum prescribed eligibility for the post and minimum age limit, if any, be given in the advertisement and such last date (which generally should not be less than two weeks of the date of the advertisement) shall be prescribed upto which applications duly filled in prescribed form by the candidates shall be received in the office of the following :

(i) District Inspector of Schools; or

(ii) Regional Inspectress of Girls' Schools, in case of institution for girls.

The advertisement shall also state that the prescribed application forms can be had from the office of any Inspector on payment of Rs. 9 per form by a crossed postal order or bank draft or through Treasury Challan by depositing the amount

in the State Bank of India under the head indicated by the Inspector. In no case, the payment shall be accepted in cash in the Office of the Inspector. A copy of each advertisement shall be simultaneously sent by the Manager to the District Inspector of Schools or the Regional Inspector of Girls Schools concerned and in case the post of the head of institution is advertised a copy of the advertisement shall also be sent to the Regional Deputy Director of Education.

Notes.-(1) All vacancies in the post of teachers and the head of the institution existing at the time of advertisement shall be advertised.

(2) No new post shall be advertised unless sanction of the Appropriate Authority for the creation thereof has been received by the management."

"Regulation 20.-Where the Committee of Management has failed to advertise any sanctioned post which has fallen vacant in accordance with the Regulations contained in this Chapter within a period of three months from the date of occurrence of the vacancy, such post shall be deemed to have been surrendered and shall not be filled up unless its creation is sanctioned afresh by the Director."

8. Learned Counsel for the petitioners has placed reliance on 1984 UPLBEC 172, Hari Krishna Tripathi v. State Government of U.P. and Ors., where at the instance of the candidate, who could not participate in the interview, appointments of the selected candidates were not cancelled, but in view of the Section 16-E(10) of the Act, 1921 the Director of Education was empowered to test the validity of the teachers suo moto also, however, the facts and circumstances of the case of Hari Krishna Tripathi (supra), were different and are not applicable in the present case.

9. Learned Counsel for the petitioners has also placed reliance on 1994 (3) ESC 117, Rajendra Prasad Srivastava v. District Inspector of Schools, Gorakhpur, now Maharajganj and Ors., where the teacher having been appointed in violation of Regulation 4 of Chapter HI of Regulations framed under the Act, 1921 was allowed to serve for 20 years, thereafter removal of the writ petitioner after such a long period was held to be unfair. In this case, the appointment of the writ petitioner in question was being tested on the ground that one of the member of the Management Committee was related to the writ petitioner and in those circumstances, that deficiency was ignored. In my respectful consideration the deficiency in question, which was tested in Rajindra Prasad Srivastava (supra), does not go to the root of the present case as the facts and circumstances of the case in the hand are different.

10. In support of his contention learned Counsel for the petitioners has also placed reliance of (1990) 1 UPLBEC 189 , where approval of termination of a Clerk was sent to the District Inspector of Schools and the suspension in question was against the provisions of sub-sections (6), (7) and (8) of Section 16.9 of the Act, 1921, on refusing to give approval by the District Inspector of Schools, such action of District Inspector of Schools was held to be unjustified as there was lapse of eight years, during which writ petitioner had worked in the institution. In my respectful consideration the facts and circumstances of the above case were

different as the case in hand had suffered from structural deficiencies, which could not be overlooked, more so, when the wide publication in respect of vacancies was not made and the selection was made in excess of posts in existence and also when the petitioners' applications were not well within time, cannot be considered ignoring the wide participation fundamental rights of the candidates from the open market.

11. According to learned Counsel for the petitioners, the Supreme Court observed in *Ram Sarup Vs. State of Haryana and Others*, , the writ petitioner appointed as a Labour-cum-Conciliation Officer was not in possession of requisite experience required for, however, despite his irregular appointment he continued for several years by virtue of his continuance in the employment and he was deemed to have acquired the necessary experience. Hereto, in my respectful consideration the facts of above case were different and the defects do not go to the root of cause of the present case.

12. Learned Counsel for the petitioners, has also placed reliance on 1993 (1) ESC 231, *Mrs. Rekha Chaturvedi v. University of Rajasthan and Ors.*, where the writ petitioner was said to have acquired of minimum qualification on the date of publication, not on the date of selection, however, the selection of the writ petitioner, who acquired the minimum qualification on the date of selection and despite the fact that the selection was illegal, could not be set aside after a period of eight years. Here also the facts and circumstances were different, where the writ petitioner of *Mrs. Rekha Chaturvedi (supra)*, on the date of publication was not having the minimum qualification and there only issue in question to be adjudicated upon was that what would be the cut of date for the required qualification and this minor discrepancy was overlooked after her having served for about eight years in the institution. In my respectful consideration, the decision of the Supreme Court in *Mrs. Rekha Chaturvedi (supra)*, does not resolve the issue of the present case.

13. In respect of Regulation 10 of Chapter-II of Regulations framed under the "Act. 1921" this Court in *Braham Deo Vs. District Inspector of Schools and Others*, , has elaborated the situation and is the relevant decision, where it was held that the provisions with regard to advertisement of the post, are mandatory provisions and are necessary for free and fair selections and the violation of the provisions shall vitiate the entire selection proceedings and this judgment fully applicable in the present case.

14. I have heard learned Counsels for the parties. I find that when number of vacancies were less and without publication of advertisement in the newspapers widely circulated in the local area as well as at State level and depriving and ignoring legal rights of the number of candidates from participation from the open market and after entertaining the applications of the petitioners received after cut of date of applications, the Selection Committee without being duly constituted had illegally issued appointment orders and the petitioners have served on the strength of the interim order of this Court for a few years,

however, rendering of such service on the strength of the Court's interim order shall not compensate the deficiencies inherited in the selection of petitioners since beginning and it will not rectify the flaws in selection by merely granting erroneous approval of the appointment by the concerned District Inspector of Schools. The clear defiance of Regulations 10(a) and 20 of Chapter-II of the Regulations framed under the "Act, 1921" and Section 16-E(10) of the "Act, 1921", have been noticed, which deficiencies are of structural nature and go to the root of the cause and have crept since inception in selection and could not be ignored and the judgments referred by the learned Counsel for the petitioners are not of any help. In these circumstances, the order dated 7.5.1986 (Annexure-11 to the writ petition), impugned order in the present writ petition, passed by the Additional Director of Education (Intermediate), Allahabad, U.P. requires no interference.

15. In view of the above observations, the writ petition is dismissed.