
(2014) 09 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 38057 of 2014

Sushil Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : (2014) 4 UPLBEC 3043

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : S.D. Yadav, Advocates for the Appellant; Ramesh Prasad, Advocates for the Respondent

Judgement

Pradeep Kumar Singh Baghel, J.—The petitioner has preferred this writ petition for quashing of the order of the District Inspector of Schools dated 16.5.2014, whereby he has rejected the claim of the petitioner on the ground that the petitioner did his M.A. without obtaining proper permission from the Management of the Institution. Briefly stated the facts are that Adarsh Inter College, Baharampur, Fatehpur (for short, "the Institution") is a recognized and aided Institution. The provisions of the U.P. Intermediate Education Act, 1921 (U.P. Act No. II of 1921), U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1971) and the U.P. Secondary Education (Services Selection Boards) Act, 1982 (U.P. Act No. 5 of 1982) are applicable to the Institution.

2. It is stated that the post of the Principal fell vacant due to retirement of a regular Principal on 30.6.2013. In terms of Section 18 of the U.P. Act No. 5 of 1982 the senior most teacher is to be promoted as an ad hoc Principal. The petitioner claims that he is the senior most teacher in the Institution, however, ignoring his claim the respondent No. 5, who is junior to the petitioner, has been appointed as hoc Principal of the Institution.

3. Previously, the petitioner has preferred a Writ Petition No. 5857 of 2014. The

said writ petition was disposed of on 29.1.2014 with a direction to the District Inspector of Schools, Fatehpur i.e. respondent No. 3 (for short, "the DIOS") to pass a fresh order after hearing respective parties. In compliance thereof the DIOS has rejected the claim of the petitioner only on the ground that the petitioner did his M.A. when he was in service and without any information and permission from the Management of the Institution, he appeared in M.A. examinations. Since he has got the degree without informing the Committee of Management, therefore, the DIOS has ignored his Post Graduation degree and has held that in absence of Post Graduation degree the petitioner lacks essential qualification for appointment on the post of ad hoc Principal of the Institution, therefore, his claim has been rejected.

4. A counter affidavit has been filed, wherein it is stated that the respondent No. 5 was initially appointed as an Assistant Teacher in 2006 in Gandhi Smarak Kisan Inter College, Kiraoli, Agra and after following the procedure he was transferred in the present Institution in the year 2011. The respondent No. 5 has also contended that the Degree of the petitioner had been rightly ignored on the ground that he obtained the said degree without permission.

5. I have heard Sri S.D. Yadav, learned Counsel for the petitioner, learned Standing Counsel for the State functionaries, and Sri J.N. Singh, learned Advocate holding brief of Sri Ramesh Prasad, learned Counsel for the respondent No. 5.

6. Learned Counsel for the petitioner submits that the petitioner possesses the essential qualification for appointment on the post of ad hoc Principal. His degree has been ignored by the DIOS on only unsustainable ground. He further submits that the respondent No. 5 had been transferred from the other Institution as such in terms of the Regulation 61(2)(b) of Chapter-III of the Regulations framed under the U.P. Act No. II of 1921 he would become the junior most teacher in the present Institution.

7. Learned Counsel for the petitioner has placed reliance on a judgment of Division Bench of this Court in the case of Dr. Vibha Pandey v. Ashok Kumar Srivastava and others, 2004 (4) ESC 2492 (All.).

9. Sri J.N. Singh, learned Advocate appearing for respondent No. 5 submits that the petitioner has obtained the degree without permission, therefore, his degree has rightly been ignored by the DIOS. He has placed reliance on a judgment of Supreme Court in the case of Ram Murti Singh v. District Inspector of Schools, Deoria and others, 1995 Supp (3) SCC 170.

9. I have heard learned Counsel for the parties and considered their respective submissions.

10. The petitioner was appointed on 12.10.2007. He did his M.A. from Chhatrapati Shahu Ji Maharaj University, Kanpur in the year 2010. A copy of the statement of marks has been brought on the record.

11. The DIOS has ignored the degree on the ground he did not take permission from the Committee of Management. This Court in Dr. Vibha Pandey (supra) has considered the similar facts and held as under;

"10.....This submission cannot be accepted in our opinion, the M. Ed. degree obtained by the petitioner cannot be over looked merely on the ground that the said degree was obtained without taking leave from the College where he was working. We are unable to subscribe to the view taken by the learned Judge in the case of Ikramul Haq (supra). A degree obtained by a candidate from a recognised Institution cannot be ignored merely on the ground that the candidate, who was also a teacher in the College had not taken leave. In such circumstances, it cannot be said that the petitioner/respondent No. 1 did not possess the requisite qualification for being considered for promotion to the post of Lecturer in Education in the College."

12. A perusal of the observation of the abovenoted judgment it is evident that the order of the DIOS ignoring post graduate degree is unsustainable. The DIOS has also failed to advert to the issue that the respondent No. 5 had been transferred from other Institution and in view of the Regulation 61(2)(b) of the Regulations he will become junior most member of the cadre. For the sake of convenience Regulation 61(2)(b) is extracted herein below;

13. As regards the judgment in Ram Murti Singh (supra), on which learned Counsel for the respondent No. 5 has placed reliance, in the said case there was allegation against the senior most teacher. His relationship with the teachers and other employees were not satisfactory, therefore, the Management feared that he will not be able to draw the cooperation from the teachers and the employees for working as a team.

14. Moreover, the Supreme Court has considered the Rule 4 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981. The said issue was not involved before the Supreme Court.

15. For the reasons stated hereinabove, I am of the view that the order of the DIOS dated 16.5.2014 is unsustainable and is liable to be set aside. It is accordingly set aside. The matter is remitted to the DIOS to pass a fresh order in the light of the judgment of the Division Bench in Dr. Vibha Pandey (supra) as expeditiously as possible preferably within six weeks from the date of communication of this order.

16. The writ petition is, accordingly, disposed of. No order as to costs.