
(2012) 04 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15950 of 2012

Tapeshwar Prasad Gautam

APPELLANT

Vs

state of U.P. and Others

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 7AA
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 16

Citation : (2012) 6 ADJ 417 : (2012) 4 AWC 3352

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Lalji Chaudhary, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Arun Tandon, J.—Petitioner before this Court seeks a writ of mandamus directing the respondents to pay salary to the petitioner in the grade of Rs. 5500-9000 w.e.f. 15.7.1996 alongwith interest through an account payee cheque, in the alternative to consider and decide his representation dated 19.1.2012. It is the case of the petitioner that Jai Sat Gurudev Janta Inter College, Dullahpur, Ghazipur is an institution recognized under the provisions of the Intermediate Education Act, 1921 (herein after referred to as the Act, 1921). It is further stated that the institution has been taken on grant-in-aid list in the year 1983 and the provisions of U.P. Act No. 24 of 1971 were made applicable to the said institution. In paragraph 5 of the writ petition, it is stated that the petitioner was appointed as Assistant Teacher (Social Science) vide letter dated 10.7.1996. He joined the institution on 15.7.1996. The respondent, Committee of Management, is not making payment of salary admissible to the post of Assistant Teacher of an Intermediate College. On the contrary petitioner is being paid a meager amount. It is submitted that the petitioner is discharging the same duties as are being discharged by any other Assistant Teachers working in the institution.

2. Reliance has been placed upon the judgment of the Hon''ble Supreme Court in the case of The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, , wherein it has been held that the salary to be paid by the unaided institution must be at par with that paid by institutions receiving grant-in-aid. It is stated that a hostile discrimination is being practiced by the Committee of Management in the matter of payment of salary to the teachers who have been appointed against non sanctioned post like the petitioner and those who have been appointed by the management against sanctioned post.

3. This Court may record that the case set up by the petitioner is wholly misconceived. From the appointment letter enclosed as Annexure-1 to the writ petition, it is apparently clear that the Manager of the institution has recorded that on an application being made by the petitioner, the Committee of Management has decided to appoint the petitioner as Assistant Teacher and order was being issued for his joining on 1.7.1996. Petitioner joined in pursuance thereof.

4. Counsel for the petitioner could not demonstrate that such appointment offered to the petitioner was against any sanctioned post available in the institution duly created u/s 9 of the U.P. Act No. 24 of 1971. For this reason only, the petitioner cannot claim salary from the State exchequer in view of the Full Bench judgment of this Court in the case of Gopal Dubey v. District Inspector of Schools, Maharajganj; 1999 1 UPLBEC 01, wherein it has been held that the liability of the State to make payment of salary is only against the posts duly created u/s 9 of the U.P. Act No. 24 of 1971.

5. Even otherwise, this Court may record that u/s 16 of the U.P. Secondary Education Services Selection Board Act, 1982 (herein after referred to as the Act, 1982) it has been provided that all appointments in recognized Intermediate institutions shall be made on the recommendation of the Selection Board, except where the appointments are ad hoc or as contemplated under other sub sections of Section 16 of the Act, 1982 and the Rules framed thereunder from time to time. Section 16(2) declares appointment made contrary to the provisions of the Act as void ab initio. It is admitted on record that the petitioner has not been appointed on the recommendation of the Selection Board nor his appointment is "covered by any other clause of Section 16 of the Act, 1982. Therefore, the appointment of the petitioner has to be treated as void.

6. If the case of the petitioner is that he has been appointed against the post of Assistant Teacher in respect of Subject wherein recognition has been granted u/s 7-AA of the Act, 1921 i.e. Self Finance, then the payment of salary has to be made in accordance with the Government Order issued for the purpose but there is no such pleading in the present petition.

7. The claim of parity has also to be rejected by this Court inasmuch as the Hon''ble Supreme Court has repeatedly held that the nature and the manner of appointment, the qualifications prescribed etc. can be a reasonable basis for

denying the parity of salary.

8. In view of the aforesaid, no relief as prayed for by the petitioner can be granted. The petitioner has not been able to demonstrate that he has been appointed in the institution under the provisions of the Intermediate Education Act or under the provisions of the U.P. Act No. 05 of 1982. The appointment of the petitioner appears to be purely contractual. The petitioner may seek his remedy, qua payment of salary, against the manager by way of Civil Suit.

9. The judgment relied upon by the counsel for the petitioner is clearly distinguishable in the facts of the present case. For the reasons recorded above, the present writ petition is dismissed.