

(2014) 12 AHC CK 0096

In the Allahabad High Court

Case No : Special Appeal Nos. 1359 and 1360 of 2013

Tariq Maqbool and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Constitution of India, 1950 — Article 20, 30

Citation : (2015) 1 ADJ 650 : (2015) 108 ALR 864 : (2015) 1 ESC 551 : (2015) 1 UPLBEC 210

Hon'ble Judges : Vivek Kumar Birla, J;Vineet Saran, J

Bench : Division Bench

Advocate : Ashok Khare and Vishnu Gupta, Advocates for the Appellant; Vivek Rai and V.K. Singh, Advocates for the Respondent

Judgement

1. The respondent No. 5 is the committee of management of Siddiq National Intermediate College, Pilibhit, which is a duly recognized minority institution. It is an aided Inter College governed by the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the "Act of 1921") as well as the Regulations framed thereunder and also the U.P. High Schools and Intermediate College (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as the "Act of 1971"). By virtue of Section 30 of the U.P. Secondary Education (Services Selection Boards) Act, 1982 (hereinafter referred to as the "Act No. 5 of 1982"), the provisions of the said Act No. 5 of 1982 would not be applicable to the said institution. The undisputed facts of this case are that there were 14 Assistant Teachers (L.T. Grade) working in the institution. According to the appellants-writ petitioners, the sanctioned strength of the Assistant Teachers (L.T. Grade) was 30, against which only 14 Teachers were working and thus there were 16 vacancies. Besides this, there was one vacancy of Lecturer in Commerce. An advertisement was issued by the respondent No. 5-Institution on 8.9.2011 for filling up one post of Lecturer and 15 posts of Assistant Teacher (L.T. Grade). Pursuant thereto, selection was held and papers pertaining to the selection of the appellants-writ petitioners were submitted in

the office of District Inspector of Schools, Pilibhit on 5.12.2011 for approval. In turn, the District Inspector of Schools, Pilibhit forwarded the papers to the Regional Level Committee headed by the Joint Director of Education for its approval. The approval to the post of one Lecturer in Commerce was duly accorded by the District Inspector of Schools and the appointment on such post is not disputed in the present appeals.

2. The dispute in the present two appeals relates to the appointment of Assistant Teachers (L.T. Grade), for which recommendation was made and sent by the Management on 5.12.2011 for approval of the District Inspector of Schools, Pilibhit. When neither the approval was accorded by the District Inspector of Schools nor the same was rejected, the Management issued appointment letters to the selected Assistant Teachers, including 9 appellants-writ petitioners in the two writ petitions-appeals, which have been Bled. When financial approval was not accorded for payment of salaries to the appellants-writ petitioners, they filed writ petitions No. 4273 of 2013 and 4275 of 2013, which have been dismissed by a common judgment dated 29.8.2013 primarily on the ground that as per the student-teacher ratio provided in the Government Order dated 20.11.1976, the number of Assistant Teaches required in the institution was only 9, whereas 14 Assistant Teachers were already working. The other ground, on which writ petitions have been dismissed, is that Regulation 20 of Chapter II of the Regulations framed under the Act of 1921 provides that where the Committee of Management does not fill up the vacant posts within three months from the date of occurrence of the vacancy, such post shall be deemed to have been surrendered and shall be not filled up unless its creation is sanctioned afresh by the Director. Aggrieved by the said judgment of the Writ Court, these two appeals have been filed.

3. We have heard Sri Ashok Khare, learned Senior Counsel alongwith Sri Vishnu Gupta, learned counsel appearing for the appellants-writ petitioners in both the appeals, as well as learned Standing Counsel appearing for the State respondent Nos. 1 to 4 and Sri Vivek Rai, learned counsel holding brief of Sri V.K. Singh, learned counsel for the respondent No. 5 and have perused the record.

4. The submission of Sri Ashok Khare, learned Senior Counsel for the appellants is two fold. It has firstly been contended that the Regulation 20 of Chapter II of the Regulations framed under the Act of 1921 would not be applicable in the present case, as the institution being a minority educational institution, the appointment would be governed under Section 16-FF of the Act of 1921 read with Regulation 17 of Chapter II of the Regulations, which provides for a complete procedure for appointments in minority institutions. It has next been contended that after the enforcement of Act No. 5 of 1982, in terms of Section 32 of the said Act, the Regulation 20 would not be applicable to minority or non-minority institutions and as such, the committee of management would be entitled to fill up the 16 vacant posts as against the 30 sanctioned posts of Assistant Teacher (L.T. Grade). In support of his submissions, Sri Khare has

relied on certain decisions, which shall be referred to at the relevant stage.

5. Sri. Vivek Rai, learned counsel holding brief of Sri V.K. Singh, learned counsel for the respondent No. 5-Institution has supported the case of the appellants-writ petitioners and has adopted the submissions made by Sri Khare, learned Senior Counsel for the appellants.

6. Learned Standing Counsel appearing for the State respondents has submitted that the approval was never granted for appointment of the Assistant Teachers, although in the case of appointment of one Lecturer in Commerce, it was duly accorded vide order dated 24.12.2011 as there was a clear vacancy on such post. He has referred to the Government Order dated 20.11.1976 to substantiate that as per the student-teacher ratio, there were sufficient number of teachers already working in the institution and since the committee of the management of the institution did not fill up the vacancies for several years together, the said vacancies would be deemed to have been surrendered and in the absence of the fresh sanction by the competent authority, the same could not have been filled up by the management. It is contended that vide a detailed order dated 24.12.2011 the Joint Director of Education had referred the matter to the State Government wherein the details of the Assistant Teachers working as well as the sanctioned strength and the required student-teacher ratio had been given and it was also mentioned that the State Minister was the Manager of the respondent No. 5-Institution, who was putting pressure for granting approval to the appointment of the Assistant Teachers so appointed by the management. It is stated that in such circumstances, the matter was referred to the State Government and before the State Government took a decision in the matter, the writ petitions as well as the appeals were filed.

7. Before we deal further with the facts of this case, it may be relevant to extract the provisions of the Act and the Regulations relevant for the purpose of the case.

"U.P. Intermediate Education Act, 1921:

16-FF. Savings as to minority institutions--(1) Notwithstanding anything in sub-section(4) of Section 16-E, and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in Clause (1) of Article 20 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management:

Provided that one of the members of the Selection Committee shall-

(a) in the case of appointment: of the Head of an institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a teacher, be the Head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed.

(3) No person selected under this section shall be appointed, unless-

(a) in the case of the Head of Institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the Case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualification prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section the Committee of Management may, within three weeks from the date of receipt of such disapproval make a representation to the Director in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of teacher.

(6) Every order passed by the Director or the Regional Deputy Director of Education on a representation under sub-section (5) shall be final.

16-G. Conditions of service of Head of Institutions, teachers and other employees.--

(1).....

(2).....,

(3)(a) No principal, Headmaster or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.

Regulations 17 and 20 of Chapter U of the Regulations framed under the Act of 1921:

17. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognized institution referred to in Section 16-FF, shall be as follows:

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e. whether temporary/permanent) and number of vacancies, descriptions of post (i.e. Principal or Headmaster, Lecturer or L.T., C.T. or J.T.C./B.T.C. grade teacher

including the subject or subjects in which the lecturer or teacher is required), scale or pay and other allowances, experience required minimum qualification and age prescribed, if any, for the post and prescribing a date which should not ordinarily be less than two weeks from the date of advertisement) by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

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.

U.P. Secondary Education (Services Selection Boards) Act, 1982 (Act No. 5 of 1982):

21. Restriction on dismissal etc. of teachers.--The Management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void.

30. Exemption to minority Institutions.--Nothing in this Act shall apply to any institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India.

32. Applicability of U.P. Act II of 1921.--The provisions of the Intermediate Education Act, 1921 and the Regulations made thereunder in so far as they are not inconsistent with the provisions of this Act or the rules or regulations made thereunder shall continue to be in force for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a teacher."

8. What has to be first considered by this Court is as to whether Regulation 20 of Chapter II of the Regulations framed under the Act of 1921 would be applicable in the case of minority institution or not. Sri Ashok Khare, learned Senior Counsel for the appellants has submitted that after the Act No. 5 of 1982 has come into force, the said Regulation 20 is not applicable in the case of minority institutions by virtue of Section 30 of the Act No. 5 of 1982. Sri Khare has submitted that Regulation 20 has been held to be non-applicable for non-minority institutions and according to him, the said Regulation would not be applicable for minority institutions also. According to the learned counsel for the appellants, the appointments would be governed by Regulation 17 and Section 16-FF of the Act of 1921.

9. In the case of Yogendra Nath Singh Vs. The District Inspector of Schools and Another, , in paragraph 8 the Single Judge of this Court has held that after

coming into force of Act No. 5 of 1982, Regulation 20 would not be applicable and every vacancy has to be filled in only by the Commission. Such decision, as relied upon by the learned counsel for the appellants, would not be applicable to the facts of the present case as the said case related to non-minority institutions in which case the provisions of the Act No. 5 of 1982 were applicable whereas by virtue of Section 30 of the said Act, in the case of minority institutions, the Act No. 5 of 1982 is not to be made applicable.

10. The decision in the case of Subhash Chandra Singh Vs. District Inspector of Schools and Another, , was also regarding non-minority institutions and as such, the ratio of the said judgment would not be applicable in the facts of the present case.

11. Much reliance has been placed on the case of C/M. St. John Inter College Vs. Girdhari Singh and Others, , to support the submission that the legislative intent was never to subject the order of termination of an employee of a minority institution to the approval/disapproval of the Selection Board. In the said case, the Supreme Court was dealing with the case of termination, which was under Section 16-G of the Act of 1921 and as such, the ratio of the said judgment would also not apply in the present case.

12. On the other hand, it has been held in several learned Single Judge decisions of this Court that the provisions of the Regulation 20 would continue to apply to a minority institution by virtue of Section 30 of the U.P. Act No. 5 of 1982, therefore, where the vacancies are not notified/advertised within the stipulated period, they can be filled up only after a fresh sanction by the Director and any appointment dehors such fresh sanction would not be valid.

13. In this regard, we may refer to a decision of Hon"ble Single Judge of this Court in Mumtaz Ahmad v. Deputy Director of Education, Allahabad Region, Allahabad, 1997 (37) ALR 150 , which relates to minority institutions. In this decision, while considering Regulation 20 Chapter II of the Regulations, it was clearly held that in case of minority institutions, provisions of Regulation 20 continue to apply. In the case of Mohd. Rafey Vs. State of U.P. and Others, , it was again held that Regulation 20 of Chapter II of Regulations apply in the case of minority institutions and that in view of Regulation 20 of the Regulations the Management has to seek a formal sanction and approval in order to proceed to make an appointment against such a post, which is deemed to have lapsed on account of non-filing of such vacancy within a period of three months from the date of occurrence of the vacancy and such measures are not hit by Article 30 of the Constitution of India. We are in respectful agreement with the aforesaid decisions.

14. In view of the fact that the Act No. 5 of 1982 is not to be made applicable in the case of minority institution, as has been specifically provided under Section 30 of the said Act No. 5 of the Act of 1982, and the appointments in minority institution are governed by Section 16-FF of the Act of 1921 read with

Regulations 17 and 20 of Chapter II of the Regulations framed thereunder, in our opinion, the posts would be deemed to have lapsed on the vacancy not having been filled up within three months from the date of occurrence of vacancy and the same shall be deemed to have been surrendered. In the present case, the vacancies on the post of Assistant Teachers (L.T. Grade) in the institution had admittedly occurred several years back and in any case much prior to three months and the same had not been filled up by the Manager and even the advertisement had not been issued. As such, without there being any fresh sanction of creation of such posts by the Director, the committee of management could not have proceeded to fill up the vacancy. Even otherwise, although on 24.12.2011 sanction had been accorded by the District Inspector of Schools for appointment on the post of Lecturer in Commerce, yet by communication dated 24.12.2011 made by the Joint Director of Education to the State Government, the sanction was not accorded for reasons given therein and the matter was referred to the State Government.

15. A perusal of the said communication dated 24.12.2011 makes it clear that the student-teacher ratio as provided by the Government Order dated 20.11.1976 was duly filled up as there were 14 Assistant Teachers working in the institution having 579 students from Class VI to Class X. In the said communication, it has also been stated that reference to the State Government was necessitated because there was pressure of the Manager of the committee of management, who happened to be Minister in the State Government.

16. Considering the totality of the circumstances and the facts of the present case where because of a Minister of the State Government himself being the manager of the institution in question, reference by the competent authority to the State Government for further guidance would imply denial of sanction, as in a situation such as where the Minister of the State Government is himself the manager of the institution, who was putting pressure for approval, a clear denial by an officer would not be ordinarily expected. Every matter has to be considered in the peculiar facts of the case. Though it has been argued that there is a provision of deemed approval under Regulation 17(2)(g) of the Regulations but in the present case, at no stage the District Inspector of Schools or the Joint Director of Education could have taken a decision in the matter of respondent No. 5-Institution because of which what has been stated in the communication dated 24.12.2011 is that the said Minister in the State Government is the manager of the institution and hence guidance had been sought from the State Government itself.

17. Much has been argued by the learned counsel for the appellants that in terms of the Government Order dated 20.11.1976 itself, besides considering the student-teacher ratio, what was also to be considered was the number of subjects, which had been duly approved by the State Government and hence the number of teachers could be more, even though the number of students were not as many, as separate teachers were required to teach different subjects.

18. Be that as it may, since we are of the opinion that the Regulation 20 of Chapter II of the Regulations framed under the Act of 1921 would be applicable in the case of minority institution such as the respondent No. 5-Institution and posts had been lying vacant for several years without taking any steps to fill up the same, the committee of management could not have proceeded to fill up the posts without a fresh sanction having been accorded by the competent authority as the said posts would be deemed to have been surrendered. In such view of the matter, we do not find any good ground to interfere with the judgment and order dated 29.8.2013 of the learned Single Judge.

19. Both the special appeals are accordingly dismissed. However, this order will not come in the way of the respondent-Institution in approaching the competent authority for fresh sanction of posts and thereafter fill up the vacancy, in accordance with law. There shall be no order as to costs.