
(2008) 04 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29235 of 2007

Tej Pal Kaushik

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Citation : (2008) 118 FLR 33

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Advocate : Shashi Nandan and P.S. Chauhan, for the Appellant; S.C., R.B. Pradhan and Arvind Kumar, for the Respondent

Final Decision : Allowed

Judgement

Dr. B.S. Chauhan and Arun Tandon, JJ.—This writ petition has been filed for quashing the impugned order dated 1st June, 2007 by which the Petitioner has been denied regularisation of services on the ground that at the initial stage of appointment on ad-hoc basis he did not possess the requisite qualification.

The facts and circumstances giving rise to this petition are that Petitioner was appointed as Principal on ad-hoc basis in Government Industrial Training Institute vide order dated 5.10.1988 for a period of one year or till the regular selections are made by the Public Service Commission whichever was earlier.

2. As the vacancies could not be filled up by the Commission on regular basis, period of employment had been extended from time to time by passing specific orders. While granting the re-employment, there has been an artificial break of two days' time and the Petitioner continued to serve the institution at different places as is evident from different transfer orders till 26.10.2005. After serving 17 years on ad-hoc basis, the Petitioner's service came to an end vide order dated 26.10.2005 only on the ground that his service could not be regularized as the regularization have been made in cases of other similarly situate persons on the ground that Petitioner did not possess the requisite qualification for

appointment on the said post on the date of initial appointment.

3. In fact, the Petitioner has passed M. Sc. (Physics) with specialisation in Electronics and subsequent thereto M. Tech. from IIT, Khadakpur though the requisite qualification for the post of Principal as per rules was B. Tech. (Electronics) or any other equivalent qualification.

4. Being aggrieved, Petitioner challenged the said order by filing Writ Petition No. 72154 of 2005 wherein the interim order was passed on the basis of which Petitioner continued to be in service and as an interim measure this Court directed the Respondent authorities to re-examine the case of the Petitioner. In pursuant thereto, the impugned order dated 1st June, 2007 has been passed refusing the relief of regularisation on the ground that on initial date of appointment the Petitioner did not possess the requisite qualification i.e. B. Tech./ B.E. (Electronics) or equivalent thereof.

5. We have heard Sri Shashi Nandan, learned Senior Counsel duly assisted by Sri P.S. Chauhan, learned Counsel for the Petitioner and Sri R.B. Pradhan, learned Standing Counsel for Respondents.

It has been submitted on behalf of the Petitioner that Petitioner's experience of 18 years has completely been ignored and while recording the finding of fact that Petitioner did not possess the qualification equivalent to requisite qualification, no reasons have been recorded. More so, the opinion sought by the Respondents from the Vice Chancellor of Chaudhary Charan Singh University, Meerut and from the Vice Chancellor of U.P. State Technical University, Lucknow, the same had been in favour of the Petitioner but benefit of their opinion has not been given to him. Thus, the petition deserves to be allowed.

On the contrary, Sri R.B. Pradhan, learned Standing Counsel for the Respondents submitted that issue of equivalence of qualification etc. lies within exclusive domain of the authority and as the Court lacks expertise in the subject it should leave the matter to be decided by the Expert Committee. Therefore, petition lacks merit and is liable to be dismissed.

6. We have considered the rival submissions made by the parties and perused the record.

Undoubtedly, the issue of determination of equivalence of qualification has to be done exclusively by the Expert Committee and as the Court lacks experience/ expertise in the subject, it remains outside the scope of judicial review in ordinary circumstances.

A Constitution Bench of the Supreme Court, in *The University of Mysore and Anr. v. C.D. Govindarao and another*, 1965 SC 491 held that in academic matters where the decision under challenge has been taken by the Committee of Experts, "normally the Court should be slow to interfere with the opinion expressed by the experts" unless there are allegations of mala fide against any of the members of the expert committee.

In *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, the Hon''ble Supreme Court held as under:

It is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the Court should not disturb the decision taken by the University.

7. A similar view has been reiterated by the Hon''ble Supreme Court in the *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, *Dr. M.C. Gupta and Others Vs. Dr. Arun Kumar Gupta and Others*, *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, *Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others*, *Dr. Uma Kant Vs. Dr. Bhika Lal Jain and others*, *Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others*, *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, *Central Areca Nut and Cocoa Marketing and Processing Cooperative Ltd. Vs. State of Karnataka and Others*, *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*, and *The Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another*, wherein the Hon''ble Supreme Court held that in the matter of academic courses, the Court should not disturb the decision taken by the educational institution/State etc. unless there are compelling circumstances and sufficient material warranting the interference.

8. Admittedly, two opinions have been sought by the Respondent-authorities. It is evident from the report of the Vice Chancellor of Chaudhary Charan Singh University, Meerut dated 12.2.2002 that he has opined that the Petitioner possessed the equivalent qualification. So far as the report of Vice Chancellor of U.P. Technical University dated 30th May, 2002 is concerned, a similar opinion has been expressed mentioning further that as the Petitioner had been working for last 18 years and person having similar qualification had earlier been appointed as Principal on similar institutions, appropriate decision may be taken.

9. Respondent authorities passed the impugned order observing that expert opinions sought by them were not binding on them. The Petitioner did not possess the requisite qualification at the time of initial appointment. Placing reliance upon the judgment of Hon''ble Supreme Court in *Secretary, State of Karnataka and Ors. v. Uma Devi and others*, 2006 (109) FLR 826 (SC). the claim of the Petitioner has been rejected. No reasons have been recorded for not agreeing with the opinions expressed by the two Vice Chancellors though deemed to be expert in their respective fields.

10. It is settled legal proposition that while passing such an order reasons have to be recorded, particularly when a person successfully held the post for last 18

years and it has not been brought on record that the service rendered by the Petitioner had been unsatisfactory or he had played any fraud/misrepresentation at the time of initial appointment. In such a fact situation, the authority ought to have considered that the State authority could not be permitted to take benefit on his own mistake, though estoppel does not lie against the statutory provisions.

11. While dealing with the similar situation, the Hon"ble Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, wherein the regularisation has been refused on similar ground held as under:

"The indisputable facts are that the Petitioners were appointed between the period 1983 and 1986 ever since, they have been working and have gained sufficient experience in the actual discharge of duties attached to the posts held by them. Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications."

12. Undoubtedly, regularisation has to be granted considering large number of factors including possession of requisite qualification on the date of appointment. But where incumbent had held the post successfully for about two decades, his experience on the post could have also been taken into consideration.

13. Thus, in view of the above, we are of the considered opinion that the Respondent authorities while passing the impugned order did not record any reason for not agreeing with expert opinions and in case of doubt why they failed to refer the matter to Expert Committee for its opinion and under what circumstances experience possessed by the Petitioner for about 18 years has been completely ignored.

14. In the facts and circumstances of the case, it is warranted that the matter be remanded for re-examination. As the Petitioner is out of service, the case requires to be decided within a stipulated period.

Thus, in view of the above, we set aside the impugned order dated 1st June, 2007 and request the Respondent No. 1 to re-determine the issue involved herein by making reference to an Expert Committee, by a speaking and reasoned order expeditiously, preferably within a period of three months from the date a certified copy of this order is filed before him. Writ petition is allowed subject to the observation made.