
(2006) 09 AHC CK 0126
In the Allahabad High Court

Udai Kant Tiwari	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16E(3)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18

Citation : (2007) 1 ADJ 252 : (2007) 6 AWC 6249 : (2007) 2 UPLBEC 63

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard Sri K. Sahi, learned Counsel for the petitioner, Sri Shashi Nandan, Sr. Advocate assisted by Sri Indra Raj Singh, learned Counsel for respondent No. 5 and learned Standing Counsel for respondent Nos. 1 to 3. In view of the counter affidavit filed on behalf of contesting respondents, it is not necessary to issue notice to respondent No. 4.

2. Learned Counsel for the parties agree that the present writ petition may be disposed of at this stage on the basis of the affidavits which have already been exchanged between the parties.

3. Post of Principal in Janta Inter College, Sohasa Mathiya, District Kushinagar has fallen vacant on 30.06.2006 with the retirement of the permanent incumbent.

4. It is not in dispute that the petitioner was appointed as Lecturer in the institution on 08.07.1970. Respondent No. 5 was similarly appointed as Lecturer on 01.07.1970.

5. The District Inspector of Schools approved the appointment of the petitioner vide order dated 16.12.1970 while he approved the appointment of respondent No. 5 vide order dated 08.02.1971.

6. With reference to the date of order of approval of the District Inspector of Schools, petitioner has come up with a plea that he is the senior and is therefore

entitled for the appointment as officiating Principal.

7. Respondent No. 5 on the other hand submits that approval granted in his favour on 08.02.1971 would relate back to the date of initial appointment i.e. 08.09.1970 and further since he has been paid annual increments and provided all benefits namely selection grade etc. with reference to the said appointment only i.e. 01.07.1970, he is senior to the petitioner.

8. The dispute of seniority between the parties was referred for adjudication under Judgment and Order of this Court dated 29.06.2006 passed in the writ petition No. 33501 of 2006 to the Joint Director of Education, Gorakhpur Region, Gorakhpur.

9. Joint Director of Education, Gorakhpur Region, Gorakhpur, by means of the order dated 11.08.2006 has held that the respondent No. 5 is senior to the petitioner with reference to his initial date of appointment i.e. 01.07.1970 as also on the ground that the seniority list published, from time to time in the institution, was never objected to by the petitioner. This order of the Joint Director of Education is under challenge in the present writ petition. Linked with the said dispute of seniority is the issue of appointment of officiating Principal of the institution.

10. On behalf of the petitioner, it is contended that the order passed by the Joint Director of Education is based on completely non-consideration of the statutory provision with regard to appointment on the post of Lecturer in a recognized institution. Even if it is assumed that the order passed by the Joint Director of Education is correct and therefore Shri Riyasat Ali is senior to the petitioner, he can not be appointed on the post of Principal in an Intermediate College inasmuch as he has to his credit only a diploma of post graduation. Shri Riyasat Ali is not trained, therefore, is not possessed of the prescribed minimum qualification as per appendix A to Chapter II of the Regulations framed under the Intermediate Education Act. Possession of prescribed minimum qualification is a condition precedent for any appointment being made on the post of Principal u/s 18 of the U.P. Secondary Education Service Selection Board Act, reliance has been placed upon Rule 5 of the U.P. Secondary Services Selection Board, Rules, 1998.

11. Sri Shashi Nanda, Sr. Advocate on behalf of respondent No. 5 on the contrary contends that the petitioner never raised any objection to the seniority lists published from time to time and settled seniority cannot be permitted to be unsettled on the basis of new ground raised for the first time before this Court. With regards to the academic qualification possessed by Respondent No. 5, it is stated that no such issue was raised before the Regional Joint Director of Education and, therefore, the petitioner should not be permitted to question the order on grounds not raised before the authority.

12. At this stage counsel for petitioner contended that this Court may not enter into the issue of seniority and the dispute qua appointment as officiating Principal

be resolved. Accordingly, this Court proceeds to examine as to whether respondent No. 5, even if held to be senior to the petitioner is entitled to be appointed as officiating Principal or not.

13. In the opinion of the Court, it is not material as to whether the issue of qualification possessed by the Respondent No. 5 was raised by the petitioner before the Joint Director of Education or not inasmuch as all appointments under the U.P. Secondary Education Services Selection Board Act, 1982 are necessarily to be made from amongst the persons who possess prescribed minimum qualifications.

Counsel for Respondent No. 5, has not been able to dispute the statement made on behalf of the petitioner that the Respondent No. 5 has only a Diploma in Post Graduation and that he is not trained.

14. In such circumstances, it has to be seen as to whether with reference to Rule 5 of 1998 Rules, Respondent No. 5 is eligible for appointment as Principal of an Intermediate College or not. Rule 5 reads as follows:

Academic Qualification:- A candidate for appointment to a post of teacher must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education, Act, 1921.

15. Appendix A to Chapter II of the regulations under the Intermediate Education Act, 1921 which laid out the minimum qualification for the post of Principal reads as follows:

Anivary						Arhatayein
-----						Kram Sankhya
Padnam	Shakshik	Prashikshan	Anubhav	Aayu	Variyman	Arhtaven

1. Sanstha ka Pradhan.- (1) Prashikshit M.A. Ya M.Sc. Ya M.Com. Ya M.Sc. (Krishi) ya eske samkaksh koi snatkottar ya anya upadhi jo uparyukt para mein nirdisht nikay dwara pradan ki gayi ho aur vibhag dwara manyataprapt kisi prashikshan sanstha mein ya uparyukt pratham para mein nirdisht kisi vishvvidyalay ya sanstha ya eise yishwidyalay ya sanstha se sambadh kisi upadhi mahavidyalay mein ya parishadon dwara manyataprapt sanstha ki ya anya rajyon ki pariishadon se sambadh kisi sanstha ki ya esi prakar ki sansthaon ki jinki parikshain parishad dwara manyataprapt hain, kaksha 9 se 12 tak mein kum se kum char varsh ka shikshan anubhav ho, ya vibhag dwara manyataprapt kisi junior highschool ke prashikshit snatak pradhanadyapak ke rup mein kum se kum char vaarsh ka anubhav ho, pratibandh yeh hai ki veh 30 varsh se kum aayu ka/ki na ho.

ya

[(2) Kisi manyatapraapt sanstha mein intermediate kakshaon mein das varsh ka shikshan anubhav ke sath sath pratham ya dwitiya shreni ki snatkottar upadhi ya

pandreh varsh ke shikshan anubhav ke sath tritiya shreni ki snatkottar upadhi.]

ya

(3) Vigyan mein prashikshit snatkottar diplomadhari: pratibhandh yeh hai ki usne yeh diploma pathyakram pratham ya dwitiya shreni mein utarna kiya ho aur kisi manyataprapt sanstha mein aisa diploma pathyakram utarna karne ke pashchat kramshah 15 ya 20 varsh ki prashansniya seva ki ho.

Tipanee.-- (1) kum se kum dwitiya shreni ki snatkottar upadhi natha manyataprapt sanstha ki intermediate kakshaon mein das varsh ka vishisht shikshan anubhav hone par sahayak adhyapakaon ko prashikshan yogyaon se choot di ja sakti hai. (adhiniyaam mein nihit pravidhan ke anusar).

(2) Shikshan anubhav mein prashikshan purv athva pashchat ka shikshan athva dono milakar samilit hain.

(3) Uchchatar kakshaon ka tatparya kaksha 9 se 12 tak ka hai aur in kakshaon ko padhane ka anubhav intermediate college ke pradhanacharya pad ke liye manya hai.

16. From the aforesaid it is apparently clear that for appointment on the post of Principal of a recognized Intermediate College, persons possessed of a post graduate diploma only must necessarily be trained.

17. A Division Bench of this Court in the case of Shamshul Zama v. District Inspector of Schools, Chandauli and Ors. (2001) 3 UPLBECC 2181 reported in 2001 3 2181 has held as follows:

(9) "Section 16-E(3) of U.P. Intermediate Education Act, 1921 clearly provides that no person shall be appointed as Head of Institution or Teacher in an institution unless he possesses the minimum qualifications prescribed by the Regulations. U.P. Secondary Education (Services Selection Board) Act, 1982 and especially Section 16 thereof only provide for manner and method of selection of a teacher and it has neither any hearing nor it effects or curtails the operation of Sub-section (3) of Section 16-E of U.P. Intermediate Education Act, 1921. It, therefore, follows as a corollary that in absence of minimum qualifications prescribed by the Regulations a person cannot be appointed as Head of Institution or a Teacher.

(11) It will not be out of place to look to another angle of the problem. The dictionary meaning of the word "Principal" as given in Webster's Thrid New International Dictionary is as under:

- (i) a person who has controlling authority or is in a position to act independently;
- (ii) one who has a leading position or takes the lead as a Chief or Head Master;
- (iii) the Chief Executive Officer of various educational institutions;
- (iv) one presiding as ruler, leader, superior or Lord.

In Chambers dictionary, the meaning has been given as under:

- (i) taking the first place, highest in rank, character or importance"
- (ii) a principal person or thing;
- (iii) a head, as of a school or college;
- (iv) one who takes a leading part.

(13) as the qualification of the appellant is concerned, it is not in dispute that he doesn't possess a post-graduate degree. He is a postgraduate diploma holder in science but not a "trained" one as this word "trained" as already shown above, has a special meaning in Appendix A. Therefore, the appellant does not possess essential qualification for the post of head of Institution and consequently he has no claim to be appointed as an ad hoc Principal. We, therefore, find no infirmity in the order passed by the D.I.O.S. in asking the committee of Management to appoint respondent No. 4 as ad hoc Principal of the institution.

18. To similar fact is the decision of the Division Bench reported in 2001 UP. L B E C 934 Harihar Prasad Kushwaha v. District Inspector of Schools, Kushinagar. The relevant part whereof reads as follows:

We are unable to accept this submission made on behalf of the appellant-writ petitioner. It is true that an observation has been made by the Division Bench of this Court in the aforesaid decision that for appointment as officiating Principal in the Post Graduate Department in an affiliated College the criteria was seniority. In our view, this decision of the Division Bench of this Court would not be applicable to the facts and circumstances of the present case, as we find by the statutory provision in Appendix-A that for appointment as Principal or Head Master certain qualifications are necessary.

Before we part with this case, we may refer the case of "Shamshul Zama v. District Inspector of Schools, Chandauli and Ors. (2001) 3 UPLBEC 2181 ", wherein Paragraph 13, it has been clearly stated that when a particular candidate is not a Post Graduate Degree Holder, but only a Post Graduate Diploma Holder in Science and not "trained", but one as this "trained" word has been shown a special meaning in Appendix-A. It has to be held that the appellant-writ petitioner or any other candidate like him does not possess essential qualifications for the post of Head of Institution and consequently he has not claim to be appointed as officiating Principal. Same view was also expressed by another Division Bench in the Case of Bansh Lal Singh Sengar v. District Inspector of Schools, Kanpur Dehat and Ors. (1989) UPLBEC 425.

19. The judgements relied upon by the counsel for the respondents are distinguishable as facts of the case inasmuch as in the aforesaid judgements there was no issue about the minimum qualification required to be possessed by the senior most Lecturer before he can be appointed as officiating Principal. It is

needless to emphasize that appointment on the post of officiating Principal has to be made in accordance with Section 18 of the Selection Boards Act which by necessary implication would include the fulfilment of other conditions mentioned under the Act and the Rules framed thereunder, as also the applicability of the provisions of the Intermediate Education Act and Regulation framed thereunder in so far as they are not inconsistent with the provision of the U.P. Secondary Education Services Selection Board Act.

20. In view of the aforesaid, it is held that respondent No. 5 is not possessed of the minimum qualification prescribed for being appointed as officiating Principal of the recognized Intermediate College. The District inspector of Schools shall take appropriate action in the matter of appointment of officiating Principal of the Institution in accordance with law. The aforesaid exercise may be completed within two weeks from the date of receipt of a certified copy of this order. It is clarified that respondent No. 5 being not qualified shall not be allowed to work as officiating Principal any further.

21. Writ Petition stands disposed of finally.