

(2000) 12 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 51422 of 2000

Udai Veer Singh and another

APPELLANT

Vs

District Inspector of Schools, Deoria and another

RESPONDENT

Date of Decision : 04-12-2000

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF, 16G
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 30

Citation : (2001) 1 AWC 494

Hon'ble Judges : V. M. Sahai, J

Bench : Single Bench

Advocate : Khalil Ahmad Ansari and M. S. Ansari, for the Appellant; M. C. Chaturvedi, Addl. C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—The short question that arises for consideration is whether the mandatory provision of Regulation 101 of Chapter III of the Regulations framed under the U. P. Intermediate Education Act, 1921 (in brief Regulations) applies to a minority institution?

2. Aiysha Rasheed Girls Higher Secondary School, Deoria is an aided and recognised institution (in brief institution). It has also been recognised as a minority institution. Two Class-IV employees working in the institution retired. Abdul Ghani retired on 31.7.2000 and Smt. Sayra retired on 31.8.2000. Before the retirement of these Class-IV employees, the officiating principal on 15.7.2000 and 7.8.2000 informed the District Inspector of Schools, Deoria (in brief D.I.O.S.) that permission be granted to fill the posts after retirement of these employees. No order was passed by the D.I.O.S.. The principal advertised both the vacancies on 7.8.2000 in the newspaper "Nirmal Swar". The petitioners were selected on 2.9.2000. The principal issued appointment letters to them on 4.9.2000. They joined on 5.9.2000. The principal forwarded the papers on

5.9.2000 to the D.I.O.S. for grant of financial approval. The D.I.O.S. by order dated 10.10.2000 refused to grant financial approval on the ground that in-charge principal could not make appointments and vacancies were not advertised in two newspapers having wide circulation in the State. And the Joint Director of Education, Gorakhpur had passed an order on 14.12.1999, that no appointments be approved till the conclusion of inquiry held by him with regard to serious irregularities in the institution. The petitioners have challenged the order passed by the District Inspector of Schools on 10.10.2000 by means of this petition.

3. Sri A. K. Ansari the learned counsel for the petitioners has urged that the institution is a minority institution. Regulation 101 and other provisions contained in the Regulations are not applicable to minority institutions, therefore, the appointing authority was not required to obtain any prior approval of the D.I.O.S. before making appointment of the petitioners on the Class-IV posts. He further urged that none of the grounds mentioned in the impugned order were in existence, therefore, approval could not be refused by the D.I.O.S.. He urged that the Full Bench decision in *J. K. Kalra v. Regional Inspectors of Girls School, Meerut and others* 1996 (3) UPLBEC 1691, was with regard to termination of a teacher. And it would not apply to non-teaching staff. He urged that Regulation 101 would not apply to a minority institution as it confers unguided power on the D.I.O.S. to grant or refuse permission to the appointing authority to fill the non-teaching post. He lastly urged that the provisions of U. P. Intermediate Education Act (in brief Act) and Regulations framed under the Act (in brief Regulations) would not apply in matters of recruitment as there is no provision either in the Act or Regulations which provide the mode and the manner of direct recruitment.

4. On the other hand, Sri M. C. Chaturvedi the additional chief standing counsel appearing for respondent No. 1 has urged that the provisions of Regulation 101 are mandatory. Regulation 101 and other regulations framed for regulating appointments and conditions of service and disciplinary proceedings framed for non-teaching staff are applicable to all unaided and recognised institutions including the minority institutions. The institution is an aided and recognised minority institution. The petitioners have not filed any material on record to show that their appointments have been made by the appointing authority after obtaining prior approval from the D.I.O.S.. He relied on the decision of this Court in Civil Misc. Writ Petition No. 50286 of 2000, *Amit Kumar v. District Inspector of Schools, Jaunpur and another*, decided on 21.11.2000 wherein it has been held that Regulation 101 is mandatory. He further urged that for direct recruitment on non-teaching posts, the rules applicable to government institutions would be applicable. He urged that The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 would apply to direct recruitment of Class-III employees. And for Class-IV employees The Group "D" Employees Service Rules, 1985 would be applicable.

5. The first question is whether the ratio laid down by the Full Bench in *J. K. Kalra* (supra) with regard to teachers would apply to non-teaching staff as well.

Section 16G as is clear from the heading, applies to conditions of service of Heads of Institution, teachers and other employees. Sub-section (1) provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by regulations. Chapter III of the regulations framed under the Act deals with conditions of service of teachers and employees. Regulations 1 to 22 deal with the conditions of heads of the institution and teachers. Regulations 23 to 34 deal with employees. Regulation 31 provides for prior approval of the Inspector. Regulations 35 onwards deal with procedure to be followed for suspension and punishment, etc. The Full Bench after considering these provisions in detail held that they furnished sufficient guidelines for the D.I.O.S. to grant or withhold approval. Since regulations both for teachers and employees have been framed in exercise of powers given to rule-making authority by sub-section (1) of Section 16G, there appears no valid reason to argue that the Full Bench decision would not apply to employees. The use of words "other employees" widens the ambit of Section 16G. It extends its applicability to employees as well. In absence of any indication it should be held to apply to Class-III and Class-IV. Section 16G (1) is a beneficent piece of legislation. It should be interpreted widely and liberally. The legislative intent is amply clear by the use of expression "every person" in the section. It makes it clear that it includes teaching and non-teaching staff of the institution. The perusal of the regulations clearly demonstrates that there are sufficient guidelines to the D.I.O.S. for granting or refusing to grant approval in matters of punishments and the employees are protected by various regulatory provisions contained in Chapter-III of the regulations safeguarding their interest against arbitrary actions. It has been held by a Full Bench decision of this Court in *J. K. Kalra v. Regional Inspectors of Girls School, Meerut and others* 1996 (3) UPLBEC 1691, that the regulatory provisions of termination provided in Section 16G (3) (a) of the Act apply to minority institutions as well. A Division Bench of this Court in *Committee of Management A. B. Vidyalaya Inter College, Kanpur v. Raj Kumar Shukla* 1999 ACJ (2) 1437, held that the Full Bench decision is no longer good law in view of the Apex Court decision in *Yunus Ali Sha Vs. Mohamed Abdul Kalam and Others*, The decision of the Apex Court was based on the provisions of the Orissa Education Act, which is different from U. P. Intermediate Education Act, 1921, and the regulations framed thereunder. In *Committee of Management St. Charles Inter College, Sardhana, Meerut and another v. District Inspector of Schools Meerut and others*, Civil Misc. Writ Petition No. 47795 of 2000, decided on 2.11.2000, it has been held that the Division Bench decision in *Raj Kumar Shukla* (supra) was in per incuriam and principle laid down by the Full Bench was not only correct but it was binding. Section 30 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 excludes its applicability to institutions established and administered by minority, therefore, the provisions of the Act and regulations are applicable to minority institutions. The regulatory provision u/s 16G of the Act and Chapter III of the regulations would apply to teaching and non-teaching staff of a minority institution. I have earlier given in detail various regulatory provisions that clearly demonstrate that there are

sufficient guidelines in the Act and Chapter-III of the regulations for granting or refusing approval to the proposed punishment. Therefore, the provisions of Section 16G of the Act and Regulations 2 (1), 21, 31, 32, 33, 35, 36, 37, 39 (2), 40, 41, 44, 44-A, 45, 46, 47, 48, 49, 50, 51, 52, 68, 99, 100 and other regulations applied by it, 101 and 102 are applicable to non-teaching staff of an institution established and administered by the minorities. Thus, the ratio of Full Bench decision in J. K. Kalra (supra) would apply to both teaching and non-teaching staff of minority institution.

6. The next question is whether the mandatory provisions of Regulation 101 would apply to an aided minority institution. This Court has held in Amit Kumar (supra) that the provision of Regulation 101 is mandatory. It is not disputed that the appointing authority did not obtain prior approval of D.I.O.S. before appointing the petitioners on the Class-IV posts. The argument of the learned counsel for the petitioners that there being no guidelines for the D.I.O.S. in matter of grant of prior approval the Regulation 101 would not apply to a minority institution does not appear to have any substance. Regulation 101 provides that the appointing authority should not fill any vacancy of a non-teaching staff except with the prior approval of the D.I.O.S.. The only requirement under this regulation is that the appointing authority shall apply to the D.I.O.S. intimating him that a vacancy in non-teaching post is to be filled by the appointing authority for which permission be granted. The reason for obtaining prior approval is that the person appointed in an-aided institution is entitled for salary from the grant-in-aid received from the government sanction for the institution. Therefore, the Inspector must have information that the non-teaching post is to be filled by appointing authority. After prior approval is granted by D.I.O.S., the appointing authority proceeds to fill the post. The management is free to advertise the post in accordance with law. And make selection and appointment of the candidate, which according to the appointing authority is the most suitable candidate. But the State can regulate the conditions of employment. The regulatory measure provided in the Regulation 101 is that in case the Inspector finds that the post is not created or sanctioned in the institution, or as per the standard fixed by the department, teaching or non-teaching staff is surplus in the institution, or with regard to mal-administration some inquiry is going on, or for any other valid reasons, he can withhold grant of prior approval to fill the post. The obtaining of prior approval by the D.I.O.S. for making appointments does not infringe the minority status of the institution. The liberty to appoint any suitable employee is not curtailed by obtaining prior approval for appointments.

7. There is another reason for holding that Regulation 101 applies to minority institutions. In Section 16FF of the Act, it has been provided that a teacher or head of a minority institution can be appointed by the management committee of the institution but such an appointment, in case of head of institution, has to be approved by the Regional Deputy Director of Education and in case of teachers. It has to be approved by the D.I.O.S. If further provides that approval shall not

be withheld where the person selected possesses minimum qualification prescribed and is otherwise eligible. After a person is appointed, the D.I.O.S. has to grant financial approval to the appointment as the salary is paid from government fund. He has to be satisfied that appointment is made of a qualified person and the post is a sanctioned post. The D.I.O.S. does not control the appointment nor he has got any say in the matter of appointment. But after the appointment, the papers have to be forwarded to the D.I.O.S. for grant of financial approval. If post is sanctioned and the candidate possesses the essential qualifications and appointment has been made in accordance with law, financial approval would be granted by the D.I.O.S. The D.I.O.S. does not control the selection and appointment made by the appointing authority or the management of a minority institution, which is free to select and find out the best suitable person and appoint him in the institution. The appointment of such employees is totally at the discretion of the management. Same principle applies to employees.

8. The learned counsel for the petitioner lastly urged that the provisions of Act and Regulations would not apply in matters of recruitment as there is no provision either in the Act or Regulations, which provide the mode and the manner of direct recruitment. Regulation 2 (1) of the Regulations provides that for appointment on a Class-III or IV post in an institution, the minimum educational qualification would be the same as laid down for Class-III and IV employees of Government Higher Secondary Schools from time to time. Regulation 2 (1) of the regulations is extracted below :

^2- ?1? fdLh laLFkk esa fu;qfDr gsrq fyfid ,oa prqFkZ oxhZ; deZpkfj;ksa dh u;wure "kSf{kd ;ksX;rk ogh gksxh tks jktdh; mPprj ek;/fed fo|kky;ksa ds led{kh; deZpkfj;ksa ds fy, le;≤ ij fy/kkZfjr dh xbZ gks A**

It is true that neither under the regulations nor in the Act detailed procedure has been prescribed laying down the manner of direct recruitment, selection and appointment. Apart from Regulation 2 (1) and 101 of the regulations, there is no other provision either under the Act or the regulations which provides the criteria for recruitment of a Class-III or Class-IV employee in an aided institution. The question is, if there is no provision either in the Act or the regulations providing the mode of direct recruitment to Class-III or IV posts, what method of recruitment should be followed. Regulation 2 (1) clearly provides that educational qualification for appointment of Class-III or Class IV employee would be the same as of similar category of employees in the Government Higher Secondary Schools. The learned additional chief standing counsel has rightly pointed out that in absence of any statutory rule either in the Act or regulation, the direct recruitment rules framed by the State Government which are applicable to similar Class-III and IV employees working in the Government Higher Secondary Schools would apply to general institutions as well as to minority institutions. "The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985" would apply to direct recruitment of Class-III employees. And for Class-IV

employees "The Group "D" Employees Service Rules, 1985" would be applicable. Both the rules are general rules. They have an overriding effect. They provide detailed procedure for direct recruitment. The language of both the rules are wide and comprehensive enough to include all State and subordinate services and posts except to the extent otherwise expressly provided by the rules. Therefore, in appointments of non-teaching posts in aided institutions recognised under the Act. The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 would apply to recruitment of Class-III employees. And The Group "D" Employees Service Rules, 1985 would be applicable for Class-IV employees.

9. For the aforesaid reasons. I do not find any merit in this petition.

10. The writ petition fails and is accordingly dismissed.